

Transcript of Proceedings

Issued subject to correction upon revision.

THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

MR PHILLIP CUMMINS, Deputy Commissioner

MR P CALLAGHAN SC, Counsel Assisting

MS E WILSON, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2011

QUEENSLAND FLOODS COMMISSION OF INQUIRY

BRISBANE

..DATE 05/10/2011

..DAY 42

THE COMMISSION RESUMED AT 10.01 A.M.

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COMMISSIONER: Yes, Mr Callaghan.

MR CALLAGHAN: I call Sally Anne Doyle.

SALLY ANNE DOYLE, SWORN AND EXAMINED:

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MR CALLAGHAN: Could you tell the Commission your full name, please?-- My name's Sally Anne Doyle

Ms Doyle, you prepared a statement for the purposes of the Commission, a statement with a number of attachments; is that correct?-- Yes.

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I'll just get a copy of that shown to you. That's it?-- That's it.

Yes, I tender that.

COMMISSIONER: Exhibit 715.

ADMITTED AND MARKED "EXHIBIT 715"

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MR CALLAGHAN: Ms Doyle, we're concerned with an insurance claim that was made on your property at West End?-- Yes.

It's the case, we can tell from your statement, that you were not present at that property until after the water subsided; is that correct?-- That's correct.

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It was tenanted?-- It was tenanted and I physically couldn't return to Brisbane because my - at my place of work in Esk I'd been flooded-in earlier in the week and couldn't physically get out of that area until Friday.

So in terms of what actually happened by way of inundation you rely upon what you've been told by others?-- Correct.

But just in that regard, the issues involved there concerning the inundation itself may be of interest to the Commission in another context so I'll just ask you a little about them. The most convenient way to do that might be to refer to a conversation between yourself and your tenant and representatives from WorleyParsons-----?-- Yeah.

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-----a report from whom is attachment 7 to your statement, is that right, or part of attachment 7?-- That's correct.

Now, if we go to page 6 of that report there is a summary of what's described as the "insured's recollections", would appear to be the recollections of others, but you were present whilst this conversation took place, according to this note at least; is that right?-- That's correct.

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And so does that - that note of that conversation appear accurate to you?-- Yes, I read it earlier this morning and it is.

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Was there anything else about the process of inundation that is not reflected there which you thought to be of relevance?-- I guess just in general terms the comment that the tenants made again and again was that water was coming from everywhere. It was coming from the front of the property, it came up from the back of the property, and they were stunned at the amount of water and they were stunned at how quickly it came up and that was something that they repeated to me.

And, in essence, this gave rise to a concern that the inundation of the property began because the drains couldn't cope with the amount of water flowing into them; is that right?-- That's correct. In terms of my experience of the property and just basic knowledge of the property it sits at the low point of the street at the bottom of two hills. There's large drain - stormwater drainage areas at the front of my property and at the rear of the property and my understanding is that drains from each side of those two hills drains down into the lower part which is at my house and that the drains couldn't cope, and that was the information also that I had from one of my neighbours, that that was her concern.

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The drains initially at the rear and then-----?-- At the front.

-----at the front?-- Yep.

All right. Well, you made your claim via your insurance broker on the 13th of January; is that right?-- Correct.

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And on that date you sent an e-mail, which I believe is attachment 9, in which you give this account of the way in which the flood developed or at least what you were told about that; is that right?-- Correct.

And moving through your statement, at paragraph 12 you say that you made numerous phone calls between the 14th of January and the 1st of February of this year?-- Sorry, is that still attachment 9?

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No, sorry, back to paragraph 12 of your statement?-- Okay. Yes.

And, as you've said in paragraph 8, just a bit further up that page, you now have access to the CGU file notes, which are attachment 4?-- Yes.

And, look, I don't want to traverse all the communications in that period, but there is a file note on the 24th of February which records - or the broker is recorded as saying, I think, that you were very persistent and you wanted to know what was going on?-- Yes.

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That's a fair summary of the way things were during that period?-- Yes.

Okay. In paragraph 13 you indicate that the first contact you had initiating from CGU itself was on the 1st of February?-- Correct.

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And in paragraphs 14 and 15 you describe the conversation that you had with Ms Tarabay?-- Yes.

You say in your statement that it seems to you that Ms Tarabay was sticking strictly to a script; is that right?-- Yes.

And now that you've seen the file notes, we go back to attachment 4, the bottom of page 2 over to the top of page 3, there appears what is described as a "template set of questions"?-- Yes.

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Does that reflect what you describe in your statement as a "script"?-- Yes, it does. I - my recollection of the content of that conversation was that several - or a number of questions were asked. I can't specifically recall all of the questions that are listed on page 3 but I do recall that - questions about whether the water was muddy or not and whether my house was highset. Were asked - some of the other questions I don't - that are listed there I don't specifically recall.

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And whilst that script might reflect part of the conversation, I think you've indicated - I might go back to paragraph 15 - that this conversation actually went for, you recall, about 30 minutes; is that right?-- Correct.

So it clearly wasn't as simple as just running through that script, which wouldn't have taken-----?-- No.

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-----that long? You've described this - or your sense of, I suppose, frustration at this process or about this conversation in various documents. In attachment one, for example, in an e-mail there, I think that's to your broker, in paragraph 1.1 there you describe it as, "part amusing and part distressing double-speak"; is that right?-- Correct.

Perhaps you can just recount your feelings about the process at this stage?-- Yep. Up until I received that phone call I'd been reassured by my broker, RockSure, that each claim would be looked at individually and would be looked at on its merits so I guess I still had some sense of confidence that the process would be fair and reasonable. In the course of the conversation on February the 1st I started to feel, I suppose, that I wasn't going to have access to a fair and reasonable and even-handed process with CGU. I felt by the

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end of the conversation that it had just been draining and torturous and incredibly distressing and the reason for that was that - one of the reasons for that was that I felt that when I tried to provide information that was outside the set questions that information which I thought fairly obviously contradicted Danielle Tarabay's information that my claim was going to be denied, so information that I thought was a dissenting view was then reflected back to me by Miss Tarabay as proof that flood had occurred and it actually supported CGU's decision, so we had this circular strange kind of conversation where I would say, "But actually I think the drains were important and I think stormwater was a very significant part of what happened," and she would say, "Yes, and that supports the view of CGU and the decision to deny your claim," and I said, "No it doesn't, it contradicts it," and around and around we would go. And so I felt that there was this strange, bizarre double-speak going on where information that I gave that contradicted the position taken by CGU was somehow being turned around to support their position, so I felt like my dissenting view actually wasn't being heard and it wasn't being considered. The other reason that I felt totally demoralised by the end of the conversation was that these set questions seemed quite bias. There weren't really any questions to explore the information that I'd given about my understanding that stormwater and the stormwater drains were significant, so the questions seemed to me to be looking for evidence of flood. So there was a question about, "Was the water muddy?" and I said, "Well, yes it was muddy," and then afterwards - and that was taken as proof that it was Brisbane River water. And then after the conversation I thought, "But hang on a minute, I'm at the bottom of two hills, of course any water's going to have something in it. Like, water's not going to come in a pristine state down two hills to me." And again when I was - the other question I recall very vividly being asked is, "Is your house highset or lowset?" and obviously Danielle was expecting a "yes" or - you know, is it - "Yes, is it highset?" "No." What I gave was a more complex answer because my house is a bit of both. It's - sits at street-level at the front and because of the lie of the land it drops off to the rear and so it's mid - midset, I suppose, or highset at the rear and I was trying to explain this, and again it seemed to me that a simple answer was wanted but I was trying to give the specifics of my property that wasn't so simple. So by the end of the conversation I felt like the process that being - that was being applied to my claim was skewed very heavily in favour of looking for flood and skewed very heavily against - or actually didn't want to consider information that I gave that was dissenting to the position. The other thing I was really concerned about was that I'd actually in an e-mail on January 13, and during conversations with my broker as well, outlined quite specifically what I thought were significant factors, and this was before I had any clue that my claim was going to be declined, but it didn't seem like any of those factors had been looked at by Danielle or much less been considered.

All right. Well, how were things left at the conclusion of that phone call? Specifically, I'd suggest, we would gather

from your statement, that there was no mention of an assessor or an assessment-----?-- No.

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-----or anything like that?-- No, there wasn't. I think - look, I think both Danielle and I were exhausted with each other by the end of that conversation, and because I wasn't letting it go, because I wasn't, I suppose, playing by the rules and I wasn't sticking to or just blithely accepting the decision by CGU that flood had occurred and hence I wasn't covered, and because I persisted in arguing that other factors specific to my property were really important to be considered, the conversation went on and on and on, and I think, you know, by way of sort of drawing the conversation to a close Danielle said, "Oh, look, why don't you get more information from your tenants then," and I said, "Yeah, okay." When I put down the phone and afterwards again I reflected on what had happened and I thought to myself, "God, I'm not going to get a fair hearing and why would I bother getting any more information when it's not going to be treated objectively," so I kind of thought, "Why would I persist?"

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And I think that takes us to paragraph 17 of your statement where you record that you were discouraged-----?-- Yes.

-----as a result of this-----?-- Yes.

----- conversation? But you did, as you say in paragraph 18, make a further call on the-----?-- Yep.

-----2nd of February?-- Yep.

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We can trace through there what's said in paragraphs 18 and 19 and your e-mail to your broker, that you refer to in paragraph 20. Paragraph 21 you talk about a visit from the Premier on the 9th of February?-- Yes.

And some interest being shown by The Courier-Mail on the 10th of February; is that right?-- Yes.

And again we can read that there, but if we pick up at paragraph 24, I take it that from what we read there, and what we understand from the documents, as at the 10th of February, at least, you were under the impression that your claim had been denied; is that right?-- Yes.

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Hence your request for a letter confirming that?-- Yes.

You did in fact receive an e-mail from Ms Rough at around about this time; is that right?-- Yes.

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And on the 11th, at least, you became aware of the fact, as you say in paragraph 25, that a decision had been made to send an assessor?-- Yes.

Apparently that had been sent the previous day but you weren't-----?-- Yes.

-----aware of it until the 11th; is that right?-- What happened was I was sent an e-mail, I think it was around about half past 3 in the afternoon from Danielle Tarabay and the e-mail was entitled "Open letter to CGU". So earlier that day I'd sent to CGU and to RockSure, to various politicians and media contacts, an open letter again explaining my frustration with various processes-----

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That's referred to in paragraph 23 and-----?-- Correct.

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-----appears in attachment 10?-- Correct. So that's how the e-mail was entitled, and I don't recall making a decision to not read the e-mail but I do know that for some reason I didn't open the e-mail possibly for a day or maybe several days, so the first time I was actually aware that an assessor was an option and was going to be provided to me from CGU's point of view was first thing in the morning on the 11th, which is when I received a phone call from CGU.

Right. Okay. So that was - the phone call was actually your first awareness-----?-- It was, yes.

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-----not the e-mail?-- Not the e-mail.

Well, can we move then to the 14th of February when there was a meeting that you've described between yourself, Joanne Doyle, Ben Bessell and Mr Peter Harmer; is that correct?-- Yes, it is.

And, look, you have your recollections of that meeting. We know from a statement that Mr Harmer has provided that he has his. The only aspect I particularly wanted to ask you about was the point you raise in paragraph 27.3 of your statement?-- Yes.

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And that is about the triage process?-- Yes.

Do you recall anything else said about that, and specifically as to whether Mr Harmer told you that this had come about or was some sort of result of customer feedback following floods in Coffs Harbour?-- I don't recall that Coffs Harbour was mentioned specifically and it was a general conversation. We were all seated around on the front patio of the house, and basically Mr Harmer said, "On the basis of feedback we've had in past situations where flood has occurred, we've had feedback that we've been too slow in providing a decision and because of that criticism we have set in place a system, a triaging system," and that word was used, I recall that because I thought it was kind of a funny, medicalised kind of word to use in an insurance context, but, anyway, so he said, "we've set up a triaging system so that a number of questions can be asked and it can be then decided whether it was flood or not and a quick decision could be provided to customers."

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All right. In any case, you've said, in paragraph 30, that the tone of this meeting was pleasant and-----?-- Yeah.

-----aimable; is that correct?-- Correct.

And then you detail further communications on the 15th and 16th and talk about the rally that was held on the 18th; is that right?-- Correct.

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Can I ask you this, how many people, not specifically but just broadly, how many people do you think were at that rally?-- Probably somewhere between 40 and 50. The rally started at about 7 a.m. with the idea that people who had to go to work could still come by, be part of things. It's difficult to provide a specific number because it's not like I kept-----

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No?-- -----a record of names or anything and people kind of came and went as the morning progressed but it would have been roughly that.

How many of these people do you think - were you in contact with any of them specifically? I mean, in as much as were you sharing grievances about CGU with other individuals who were there and-----?-- Yes, I was, and, in fact, one of the processes that happened earlier after the floods was that there were community forums held that were attended by Legal Aid, the Financial Ombudsman and the Insurance Council of Australia, and that gave flood victims, I guess, an opportunity to network and to share stories of what had happened with them individually, and it was on the basis of that that I've made contact with quite a few other CGU policyholders.

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Do you have any idea how many?-- Probably in total something like 20. There were - at the rally there was a delegation of six of us that went to - upstairs to meet with CGU executives after the rally and there were probably - I didn't speak individually to everybody who was there but there probably would have been that number again, and, I suppose, possibly double that that that were CGU people, policyholders that were there, but again I can't be specific because I didn't speak to everybody who was there.

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You speak about that meeting in paragraph 34 and 35, which brings us to the 22nd of February, and a conversation which you had over the telephone with Mr Harmer-----?-- Yes.

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-----the Chief Executive officer?-- Yes.

Now, you've - we've all read your statement and we know what you've had to say but just, as best you can as you sit there, are you able to relate to us what happened in that conversation?-- Yes, I am. At the rally that happened on the 18th several requests were put to CGU executives from the delegation of policyholders and an agreement was made by people in the delegation and by CGU executives that feedback would be provided about those requests and that that would be provided on Wednesday, which I think is the 23rd. Now, up to the day before then I still hadn't heard from anyone from CGU about how or when that feedback was going to be provided. Given that the meeting that the delegation had had with CGU executive was face-to-face and was quite reasonable, I thought, I presumed that any feedback regarding those requests

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would be in person and face-to-face, so I had presumed that we would need to talk about a time and a place, et cetera, so I'd made a couple of phone calls on the 22nd to Mr Harmer's office to try and find out what was going on because I was aware that it was the day before the time that they were going to give us the feedback. Now, we - Mr Harmer did return my calls and we played phone tag. It was at about 3 o'clock that afternoon, and I can't recall whether it was me that made the phone call or whether it was Peter Harmer returning my earlier calls, I can't remember who picked up the phone, but, anyway, we spoke then. Mr Harmer told me - his first comment was that he was phoning because a media release was going to be made that afternoon and he wanted to walk me through the contents of that media release. Now, I didn't have the media release in front of me so I didn't know what he was reading from or whether he was just speaking spontaneously but basically he went through two of the three requests that we had put to the executives the week before, and he said, I'm pretty sure having read - obviously afterwards I read the media release he talked about the assessment process and the use of the set questions or triage or whatever you want to call it, and said that that would continue to be used, and that the position of CGU was that if a policyholder was unsatisfied with a decision that they were free to ask for an assessor to come out. Now, the request that the delegation had made was that an assessor - onsite assessment be provided as a matter of course and automatically in the case of major loss, so that was a "no" to that request. The other request that was made was that some fund be set up to provide financial assistance to CGU customers who found themselves in difficult situations because they had been defined as being flood-affected and weren't eligible for cover, and the answer to that was "no", that wouldn't happen, and my recollection of the media release was it was a very difficult decision to make and they thought about it very carefully, however they didn't feel it was fair to previous flood-affected CGU policyholders who had been declined to now provide assistance. Now, the other request made by the delegation was that there be some recognition of the fact that the assessment process followed by CGU was inadequate and that compensation be provided to people who'd been subjected to that inadequate over-the-phone assessment process. No mention of that was made in the media release but he - in the conversation that's what he said to me. He said there has been - the assessment process is adequate, it's proper and therefore no compensation will be provided. So it was quite specific and sort of focused on the three requests that we talked about and he talked about each one in turn.

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Now, because I had been anticipating having a sit-down meeting with someone from CGU and a face-to-face meeting, I was caught fairly unawares that all of this detail was going to be thrown my way. So I was at work in a shared office space, and I kind of grabbed some pieces of paper and was madly jotting down notes as he went, so that I could try to be clear - obviously other people who were in the delegation would want to hear back about what the outcome was, and obviously contacts I had in the media would want to hear back about what the feedback was. So I was very focussed on what we'd asked for, what their response was and trying to get it all down clearly. And then the tone of the conversation shifted and Mr Harmer's voice was very deliberate and the tone was, I guess, rather than the kind of matter of factness and flow that happened earlier on when he was talking about their response to the three requests, the tone was deliberate and careful and very simple and very precise, and he said, "I have copies of tapes of conversations between you and CGU. I have listened to those tapes and I know you misled the media." And I was kind of in the middle of writing down all this stuff, and getting my head around that stuff, and I sort of went, "What?", and he repeated again, "I have tapes of the conversation" - "of conversations between you and CGU. I've listened to those tapes and I know you misled the media about the reasons for you being provided an assessor visit." So it was really simple and it was very deliberate and it was quite a simple kind of statement, and it just stayed with me. But my head, I suppose, was still - was still thinking about, "Oh, shit, we've not got a positive response on any of the three requests we've made.", and so that's where my head was. And I said to him, "Well, I suppose it is open season on CGU now." And he said, "Well, you do what you need to do", and that was the end of the conversation.

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Well, can I ask you, you say that you were making some notes of the conversation as it was occurring?-- Yes.

Do those notes still exist?-- No.

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Can I ask you whether you made any use of those notes at a subsequent time?-- I did. I used those notes when I was talking to media contacts I had and when I was talking also to - when I rang a few of the members of the delegation and gave them feedback. I also used them when I put together - while all this was going on, I was in contact with Legal Aid, because I'd come in contact with them when I'd gone to the community forums, and basically keeping them up to date on where my claim was at and what was happening. Catherine Uhr was my representative there and she had suggested that it would be useful for Legal Aid to have summaries of key parts or key aspects of my experiences with CGU. So, those notes I referred to again when I put together a summary for her of my contact with Peter Harmer.

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And is that the document which now appears at attachment 5?-- Yes, it is.

While we're there can we look at attachment 6, which is a handwritten set of notes entitled "Summary of sequence of events", is that right?-- Yes.

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Can you just explain that document to us as well?-- Yep. That also was put together in response to a request from Catherine to have some kind of timeline and summary of what had happened with my claim.

And just to tidy up on that, paragraph 29 of your statement, you identify attachment 5 there as the typed summary. Is attachment 6 something that was also - did you also refer to any handwritten notes that you had in the preparation of attachment 6 or was that something that you-----?-- That was something that was - that was something that probably was more from memory-----

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Yes?-- -----and also I made use of the trail of emails that I'd exchanged sort of mainly between - well, not so much between me and my broker or me and CGU, but ones that I'd actually sent to them.

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We might go to the trail of emails. If we pick up at perhaps paragraph 39 of your statement, you record your feelings as a result of the conversation in paragraph 38, and in paragraph 39 we pick up on the 23rd of February where you say you contacted CGU and RockSure requesting copies of all tape recordings?-- Yep.

And your emails start with attachment 3, is that correct?-- The first email that I sent to RockSure actually was dated the 13th of January.

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Yes, sorry, but within that-----?-- But the first one that relates to a request for copies of taped conversation is attachment 3 and it is dated the 23rd of February.

Specifically I am interested in the one at 4.06 p.m.?-- Yes.

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In which we can read you say that Mr Harmer has advised you that he has been in receipt of and listened to taped conversations of you?-- Yes.

Did you refer to any note before you compiled that email, or was it just a reflection of your memory of your conversation, do you recall?-- I can't recall. I think it was mainly from memory. It was only the day - well, it was the day after the phone conversation, so it was fairly close.

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All right. Just while we're on that email, can I take you down to the second last paragraph beginning, "Since that time"?-- So "Since that time as you are no doubt aware", that one?

That's the one?-- Yep.

In that photograph you conclude - or the final sentence reads,

" You can imagine my surprise when on February 14 I was contacted at 8 a.m. by Theresa from CGU claims"?-- Yep. 1

In fact, I think you told us earlier that might have been on the 11th, is that right?-- That's correct. It was actually February the 11th that I was contacted, and I knew it was first thing in the morning. Now that I've actually looked at CGU sort of computer notes, I think it was more like 8.30 or something, but it was the 11th of February, not the 14th. 10

We might actually go to those. Are they at attachment 4?-- Yes.

Are we on page 5? Would that be right?-- Yes.

That would seem to indicate that there were calls both on the 11th and the 14th-----?-- Yes, there were.

-----would that be right?-- Yeah. 20

Were they from the same person?-- Yes, they were.

So might it be that you've just swapped those dates in your mind?-- Yep.

All right. Well, the balance of the contents of the email of the 23rd, I suppose, speak for themselves but I have to ask you this, Ms Doyle: how certain are you that Mr Harmer said, "I have copies of the tapes of the conversations you've had with CGU staff and I've listened to them."?-- 100 per cent certain. 30

Subsequently, that is to say after you requested a copy of the tapes, Mr Harmer sent you a letter and that also appears in attachment 4, is that right?-- Yes.

He says there what is written there. Does that affect your recollection of the conversation at all?-- It doesn't change my recollection at all. 40

All right. Look, we can read for ourselves the balance of your statement from paragraphs 43 to 47 but you conclude by noting that your claim has been denied and referred to the Financial Ombudsman service, is that correct?-- Correct.

All right. Thank you. They are the questions that I wanted to ask, but just stay there, there will be some more?-- Sure.

COMMISSIONER: Mr Newton? 50

MR NEWTON: Thank you, your Honour.

Ms Doyle, I see from paragraph 6 of your statement that your house was obviously inundated with water?-- Uh-huh.

You say in paragraph 6 in the second line that the level of water had reached the top most point of the front French doors of the house?-- Correct. 10

So there was, you would accept, an extreme inundation of water in terms of the damage it caused to your property?-- Correct.

Now, can I just take you to the chronology of some key documents, if I may? Your claim is lodged through your broker on the 13th of January?-- Correct.

All right. And if we can skip ahead, on the 15th of February there was a booking made for an assessor to attend to inspect your property?-- I don't know when it was booked but I was - I was aware that an assessor would be available on the 11th and I was aware that the booking was made for the 16th. 20

Right. But in any event, the assessor actually attended your property on the 16th of February?-- Correct.

So clearly there was a booking made some time in advance of that to suit everybody's convenience?-- Yep. 30

Can I take you to - do you have Mr Harmer's - sorry, Mr Merchant's statement in front of you? If you do, can I take you to-----

MR CALLAGHAN: I don't think I've tendered that yet.

MR NEWTON: Would you mind doing that?

MR CALLAGHAN: It would make it easier for everyone if I do. 40

COMMISSIONER: There are two, I take it, that you're going to tender?

MR CALLAGHAN: Yes. I tender first the statement of Mr Peter Harmer.

COMMISSIONER: Exhibit 716. 50

ADMITTED AND MARKED "EXHIBIT 716"

MR CALLAGHAN: I tender the statement of James Merchant.

COMMISSIONER: 717.

ADMITTED AND MARKED "EXHIBIT 717"

MR NEWTON: Thank you.

Mrs Doyle, I assume you will be using the hard copy. You will find there are some numbers down the right-hand side which are the documents I will take you to?-- Uh-huh. 10

Can I take you first to the one numbered 17, which will be the assessment report of 16th of February?-- Mmm.

All right. Now, you will see that it is carried out on Wednesday the 16th of February?-- Uh-huh.

It records there that the client has provided lots of photographs showing that the house became inundated by rainwater and water coming out of the drains?-- Uh-huh. 20

You will see on the front page there is a question "recommended expert report", and the word "hydrologist". So there is a recommendation that a hydrologist be appointed to carry out an expert assessment. If you go over the page, you will see that it reflects some discussions which took place with you where at about line 5 of the section headed "Discussions", it said, "Insured agreed that if the river had flooded without the rain contributing, then she would accept that that was flood." Now, I accept there is a dispute about what the cause actually was-----?-- Uh-huh. 30

-----but that reflects accurately one of the matters discussed with the assessor. Do you agree with that?-- I don't have recollection of that level of specificity.

But it sounds right?-- I don't have recollection of that amount of specificity. 40

Well, it doesn't sound wrong to you?-- No, it doesn't sound wrong. What I'm saying is I don't recall that level of detail about the discussions that I had with the assessor.

Then you will see that you have made reference to the fact that you had called the council to come and pump the drains but that they hadn't come?-- Where is that, sorry?

In the following paragraph-----?-- Yep. 50

-----"The insured advised"-----?-- Yep.

-----"had called council", et cetera?-- That's correct.

If you skip over to the next page, at about halfway down the page there is a reference to Nick. Now, Nick is your tenant, is that right?-- He was.

Was your tenant, all right. And it says, "Nick believes that the floodwater and stormwater met on Wednesday at some stage" - that would be Wednesday the 12th of January, do you see that? Then there is an observation about how far from the river your property is. Do you see that?-- Mmm.

Then the recommendation in relation to the next action is "appoint hydrologist to confirm if water coming out of drains before the river peaked was floodwater or stormwater run-off"?-- Uh-huh.

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Now, that accurately records, doesn't it, the distinction that you wanted to draw and bring to your insurance company's attention?-- The distinction I wanted to bring to CGU's attention was my concern that stormwater and the stormwater drains were significant in producing what ended up happening to my house and producing damage to the house. That was - that was my point that I was trying to have heard by CGU.

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All right. But bearing in mind this is a paragraph asking for a recommendation, it is an accurate enough precis of what the process was that had to be undertaken, isn't it?-- I have just given my precis of what I wanted to have happened.

Right. Now, you will understand then that the next step was the preparation of the hydrologist report which was done on the 16th - it was arranged for the 16th. If you go to tab 20 of the document that is in front of you, now this is the same day, you will understand, as the assessment was carried out, which I just took you?-- Mmm.

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If you go to tab 20, you will see that the date of that document is on the second page on the reverse. You will see it is dated 16th of February, and this is the document by which WorleyParsons was appointed to carry out a hydrology report on the property. Do you see that? If you go to the back page of the document?-- Sorry, which section are we at?

It should be tab 20?-- Yep. And it is annexure 20?

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Yes. Sorry, annexure/tab, I use the terms interchangeably, probably?-- Yep.

Number 20?-- Yep.

You will see, if I start again, it says, "Property assessment notification." Is that the document you're looking at?-- Yes.

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All right. This is the document that is the instruction sheet by CGU dated 16 February 2011 to WorleyParsons-----?-- Uh-huh.

-----to carry out a report in relation to your property?-- Mmm.

If you go to the back page, which is the last page, you will

see there is a heading "Cause of damage needs to be determined"?-- Yep.

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Then about halfway down that page it says, "In order to determine policy coverage, CGU needs to know if stormwater did enter the premises prior to the flood and, if so, to what height." Do you see that?-- Uh-huh.

All right. Now, that's a question that you certainly wanted answered?-- Mmm.

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All right. Now, the point I wish to make is that that request for the hydrology report is made on the same day that the assessment had been carried out, namely the 16th of February. Now, the WorleyParsons report is dated the 9th of March but they in fact carried out an inspection at your premises on the 24th of February. Do you understand that? Right. If you go to the next tab, which is tab 21, if you go to page 8 of the document, you will see two matters of interest. There is a reference to the fact that the property was inspected on the 24th of February. Do you see that?-- Yep.

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There is a photograph of your house?-- Uh-huh.

And there is a dotted line almost at the roof level which indicates the level of water inundation. Do you see that?-- Yep.

That accurately reflects the height of the water?-- Probably a touch lower, but roughly, yes.

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As in the line is a touch lower, or the water was a touch lower?-- The water was a touch lower because I could see the-----

All right. And if you go to page 15 of the document, which is the conclusion page, you will see they - at the end of the first paragraph there is a reference to the fact that what happened caused the property to be inundated directly from the Brisbane River. Do you see those words?-- Yep.

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If you go to the end of the second paragraph - in other words the last paragraph on the page - I want to direct your attention to this part. It concludes by saying, "A small proportion may have entered in through the side of the basement level of the house causing damage to items, such as the air-conditioner, prior to the site being inundated by water from the Brisbane River." Now, this is the point that you were trying to make, wasn't it?-- Mmm.

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Yes, all right. Now, if you then - you will see that report is the 9th of March. You will see that your insurance company receives that report probably the following day, the 10th of March, and on the same day the insurance company asks for a supplementary report to deal with the passage that's at the conclusion, what I just took you to?-- Uh-huh.

If you go, for example, to the email of the 10th of March,

which is part of tab 3 to Mr Merchant's statement?-- Sorry,
which part of the statement?

1

It should be tab 3, and if you go to the section which is the
10th of March - it is not paginated, but the 10th of March
commences at the bottom of the left-hand page?-- Sorry, so
this isn't in the body of his statement; this is one of
the-----

It is part of the annexures, the numbers down the right-hand
side?-- Yeah.

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If you go to the one numbered 3, there will be a series of
file notes. And if you can go to - it is all done
chronologically?-- Uh-huh.

And if you can go to the one that commences on the 10th
of March, which will be on the bottom of the left-hand page?--
Yep.

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All right. Now, the passage which commences at the bottom of
that left-hand page, which is dated the 10th of March, is a
reflection of the receipt by your insurance company of the
WorleyParsons report to which I just took you?-- Mmm.

It is dated the 9th of March. This conversation happens on
the 10th. They note there what the report says. And if you
can go to the top of the next page, the first complete
sentence says, "Chris Rodd has also reviewed this report" -
this is a reference to the WorleyParsons report - "and I agree
with his conclusion that" - and then there is a passage - "if
our insured is to be given the benefit of any doubt, you would
act upon the conclusions on page 15."?-- Uh-huh.

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Then there is a quote and the page 15 reference is a reference
to the passage that commences "with a small proportion." Do
you remember that?-- Uh-huh.

So what your insurance company is saying is the WorleyParsons
report may in fact give you an out, so to speak, in your
favour, because it talks about the fact that there may be a
small proportion of the loss which is contributed to by the
stormwater?-- Uh-huh.

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And they then speak, if you have a look at the rest of that
paragraph, of trying to assess what sort of loss would be
referable to the stormwater inundation-----?-- Mmm.

-----if you just read down?-- Uh-huh.

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And you will see at the end of that first paragraph on the
second page it says that they "recommend we go back to WP",
which is WorleyParsons, "to get an idea of the likely depth of
stormwater inundation so that appropriate settlement can be
calculated."?-- Mmm.

Do you see that?-- Mmm.

Now, they certainly weren't saying then that they were denying your claim; they were in fact acting on a qualification, as they saw it, in the first WorleyParsons report-----?-- Mmm.

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-----to have another report prepared which may in fact give you the benefit of the doubt?-- Can I ask a question?

COMMISSIONER: Well, you can't actually, I am sorry, Ms Doyle. That's not the process?-- Okay. Could I make a comment?

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No, not really?-- Okay.

It may be that Mr Callaghan, when he re-examines you, gives you that opportunity. But this is cross-examination so you should stick to answering the questions you are asked?-- Yep.

MR NEWTON: You will see, if I can move on - perhaps this will provide the answer - you will see the next date, the 10th of March, on the same page. You will see this is an email from your insurance company to WorleyParsons?-- Uh-huh.

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Right. Now, what they are asking for is urgent advice about the qualification they had on page 15 of the earlier report. Can you have a look at that, please?-- Is that the bottom of the page?

You will see in about the middle of the page there is another date of 10 March. Do you see that?-- Uh-huh.

With a time 7.47. What this is, it is an email from your insurance company to WorleyParsons which says, "Thank you for your report. Can you please ask engineer T McCluskey to provide me with additional information urgently as follows."?-- Uh-huh.

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Now, I won't bother reading through it, but it concludes by saying, "Your urgent response will be appreciated as we are anxious to finalise this claim"?-- Uh-huh.

And they suggest if you need further information to contact them. But the particular information that they seek is this: "In order for us to determine an appropriate settlement, can you please provide your opinion as to the likely depth of initial stormwater inundation in the basement level of the house." Now, that reflects the point you were trying to make, that there may have been some damage caused to your property in the basement as a result of stormwater inundation?-- That wasn't my entire point. My point was a more general one than that, and the point was that I was concerned that the functioning or the dysfunctioning of the stormwater drains contributed. Now, to what degree, I suppose I am not a specialist, but my concern was not necessarily that it affected the basement, but that it affected the whole - the whole situation. My concern was that being at the bottom of the street and being in receipt of a large amount of stormwater which may have overwhelmed the drains, and then the drains not being able to cope with that and then backing up was a significant factor. So I wasn't specifically saying,

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"Look, there might have been some damage in the basement", what I was saying was the stormwater drains as a whole had an impact on what happened with water that ended up on my property.

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Which might have affected damage to your basement or, indeed, more extensive damage? All right. That's what they were going to investigate for you. All right. Now, they then ask WorleyParsons for a supplementary report, and you will find the supplementary report at the tab numbered 26. It is dated the 15th of April 2011?-- Uh-huh.

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And the most relevant two paragraphs are the second last and the last paragraph in the addendum section?-- Uh-huh.

Now, you will see there, if I can introduce it to you in this way: the second last paragraph refers to the photograph at figure 5 in the hydrologist's report. Now, that's in tab 21 to which I took you earlier. That's the 9th of March report?-- Yep.

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Now, you will remember that's the photograph that showed the inundation of the house and you suggested the water may have been a little lower?-- Mmm.

And it shows the driveway?-- Mmm.

And the basement - there is a basement window, a casement window, which is abutting the driveway, you will recollect. It just had the window sill, it didn't actually have a window in it, do you recall?-- No, are you talking about-----

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Well, if you go back-----?-- -----part of the house that's under the house has never had a window in it?

If you go back to tab 21, if you go to page 8, you will see on the right-hand side of the photograph there appears to be a driveway going down, is that correct?-- Yep, yep.

Then there is an obvious window space on the left-hand side?-- That's not a window space.

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What is it? It is a space-----?-- That is a section of palings that were under the house. If you notice that further to the back of the house there are sections of palings. What happened was is that section was removed so that debris from under the house could be taken.

What I mean is there is a gap in the wall. Would you agree with that much?-- Yes.

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All right.

COMMISSIONER: I think that that's picked up in the notes, actually, Mr Newton.

MR NEWTON: I am sorry, your Honour?

COMMISSIONER: I think it gets picked up in the CGU notes that it is actually not a window that they've made a mistake-----

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MR NEWTON: It is not a window. I mean, it is a window space, as we call it.

WITNESS: It is not a window space.

COMMISSIONER: I thought, from my reading of the notes, that they realised it wasn't a window space or intended-----

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MR NEWTON: That's why I say in the end would you agree it is a gap in the wall?

COMMISSIONER: But it is a post-flood gap, is it, or did it exist-----?-- It is post-flood gap. It was a section of paling that were taken away so that volunteers could easily access under the house and remove all of the wrecked stuff.

MR NEWTON: All right. What you will see, underneath that section there is part of the concrete wall you can see, which is the support for the house?-- Uh-huh.

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All right. Now, the point that's taken up in the WorleyParsons report, the second one that's at tab 26, they say that the photograph at figure 5 indicates "the basement window sill" - that's the section that we're talking about - "is in the order of 30 millimetres to 50 millimetres above the driveway, and depths in excess of these amounts could not have been sustained given the limited potential overflow." Do you see that?-- Uh-huh.

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And they then conclude - and this is in response to the query that your insurance company had made on your behalf - "It is concluded that inundation damage to items in the basement as a result of stormwater flows on those dates is highly unlikely." Do you see that?-- Yep.

You were provided with a copy of this report, weren't you?-- I was.

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And it is on the basis of that supplementary report that your insurance company then declined to pay your claim?-- Uh-huh.

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And they did that by their - by two things, by a phone message to you or a phone conversation with you on the 27th of April?-- Mmm-hmm.

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And by a letter of the same day?-- Mmm-hmm.

Which, if you wish to, you can read at tab 27.

COMMISSIONER: Mrs Doyle, can I get you, if you're agreeing, don't just go, "Mmm.", because that's a bit confusing to type?-- Sorry, yes.

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But if you wouldn't mind just saying, "Yes.", if you do agree?-- Yes, yes.

MR NEWTON: All right. So, the whole process has now been concluded in just over three and a half months, the claim on the 13th of January and to the ultimate denial letter on the 27th of April?-- Correct.

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Right. Now, what I would like to take you to, Mrs Doyle, if I may, is the communications that you had through your broker with the insurance company. Now, probably the most convenient way of doing this is to go to your statement, because you have annexed the documents. So, if I can take you to your statement? Right. If you go to your annexure 4, please? Right. You will see that once you have those, the initial reference is for the 13th of January when the claim is made through your broker. You see that?-- Yes.

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All right. Then on the 14th your insurance company receives an e-mail from your broker, a photograph of the property. You see the reference to that on the 14th?-- I do.

All right. And then on the 17th of January there's a reference to the fact that the claim has been referred to the Claims Management Centre in Queensland. You also will appreciate that the office of your insurer was, in fact, flooded?-- Mmm, I - I believe that was the case.

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Yes, and that there was a period of time before which they couldn't operate?-- Mmm-hmm.

It became operative-----?-- Yes.

-----again somewhere around the 20th. If you look at the item for the 18th of January, you will see that your broker called. Your broker called and advised that the insured is very irate - now this is five days after the claim was made - and wants an assessor appointed, and it's pointed out in that conversation that the CGU Queensland office had been evacuated and closed to all staff on the 11th of January due to rising flood waters and that it didn't open until the 18th and that they're hoping to begin the review of all claims on the 20th of January. Do you see that?-- That's what I was advised, yes.

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Now, you will see there's a reference then on the 19th of

January to the fact that the claim has been referred to the Queensland Flood Team for action?-- Mmm-hmm, yes.

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Now, on the 20th of January, there is a phone call that you place to the insurance company. See that?-- Correct.

And you were told there that the office is not up and running yet following the floods?-- Correct.

And you were told that a dedicated flood team is going to be looking after the claim when the office is back up and running. Do you see that?-- Correct.

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Right. Then on the 22nd of January there's a call from your broker, "Therese from RockSure called for an update of the claim."?-- Yes.

And it's there recorded that there was a high volume of claims and someone would be in contact with you in the near future?-- Correct.

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And there is also then the receipt of an e-mail from Therese, who is Therese Ruff from RockSure, also e-mailed a photo of the property provided by the insurer which shows property inundated by water. Do you see that?-- Sorry, is this the entry on the 1/2?

It's still part of the - no, the 22nd of January, sorry. It should be-----?-- Yes, yep.

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-----about an inch and a half down from the top of the page?-- Yes, yes.

All right. Then there's a reference on the 24th of January to the fact that Jenny from RockSure called, that's your broker?-- Yes.

She advised, "The insured is very persistent and wanting to know what is going on." See that?-- Yes.

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And there's an explanation that the teams are working hard to contact every customer as soon as possible, but they didn't have a timeframe at this point. See that?-- Yes.

And then some information was given to you in relation to - permitting you to go ahead and remove internal walls and so forth. Do you see that?-- Yes.

All right. Then on the 25th of January there's an e-mail from Therese Ruff at RockSure which attached another e-mail from you and this outlines - says that the tenant has advised certain circumstances of the loss. Now-----?-- Yes.

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That's a reflection of the fact that the tenant had told you certain things and you were passing them on to the insured - sorry, to the insurance company, I should say. Do you see that?-- Yes.

That's the document which is - if you go back to Mr Merchant's statement, it should be annexure 9. Can I take you to that for a moment?-- Can I just clarify with you the entry on the 25th of January where it's, "Received an e-mail from Therese at RockSure with attached e-mail."

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Mmm-hmm?-- I assume that that refers to the e-mail that I had sent my broker on the 13th-----

Mmm-hmm?-- -----of January and there seems to have been some difficulty in CGU receiving it.

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I see?-- So I assume - and this is an assumption from me, because I assume that that's what they are referring to.

Well, I will show you what I think they're referring to. If you go to annexure 9 to Mr Merchant's statement, the one you had initially?-- Yes.

That should be a two page document or three page document. The first part is from Therese Ruff. You see that, where it says, "Please find attached an e-mail received from the insured with a more detailed description of incident and photo for the above claim."?-- Yes.

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And then what follows is a note that seems to be from you to Therese. It commences, "Hi, Therese." Do you see that?-- Yes.

There's a photograph attached which is on the next page-----?-- Yes.

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-----which shows the level of-----?-- Yes.

-----flood inundation of the property?-- Yes, and that - that is the e-mail that was-----

Yes?-- -----initially sent on the 13th of January.

All right. And then you will see that in that, in the second paragraph, it mentions the fact that you have had certain feedback from the tenants?-- Mmm-hmm.

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And you refer to that again in the second last paragraph, "Feedback from the tenants and from neighbours"?-- Yep.

And then you go on to explain what you understood happened, because, as we now know, you were in Esk?-- Yes.

All right?-- Can I also clarify that at that point, at the 13th of January, given that I was still at Esk and I didn't have access to the tenants' direct phone number, the information that I had received and that I repeated in that e-mail was information that I had been given by my property manager, Tracey Harrington-----

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Thank you?-- -----who'd attended the property. So, that was the mechanism by which I received that information.

All right. Then on the 1st of February, if you go back to the annexures to your statement, that's part of annexure 4 to your statement?-- Yes.

You will see under the date, "1st of February 2011", there's a reference to Therese from RockSure calling for another update. Do you see that?-- Yes.

"The response team has not actioned this file yet due to high volume of claims."?-- Mmm-hmm.

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"Claim consultant has e-mailed Queensland Flood Team to contact broker ASAP.", and you will see there - I'm sorry, you see that there will follow another reference to the 1st of February where there's a phone call to Therese at RockSure, and this is from your insurance company, and it seems that RockSure have now provided permission for CGU to contact their customer, because the relationship that you have is with your broker, you organise this policy through your broker and the claim was made through your broker?-- Yes.

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Thank you?-- And - and I had also directly contacted CGU.

On the 20th of January?-- On the 20th.

That's right?-- Which was-----

But CGU obtained permission on the 1st to actually speak to you about it because, in fact, you're the client of the broker. That's the reference to permission having been obtained - do you see that -on the 1st of February?-- Yes, I see that.

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Right. And then again on the 1st of February there's an attached image of a property showing the water inundation and then there's a phone call to you. You see that? Now, this is the all important phone call. You will see there's a reference on the 1st of February, "Received phone call from customer Sally Doyle."?-- Yes.

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Now, this is the lengthy phone call that you suggested took about half an hour or so. Do you remember what I'm talking about?-- Yes, yes, I do.

And it records there on the first page, "Advised flood is excluded from CGU's policy."?-- Mmm-hmm.

"Sally advised she already knows this.", and then you were asked what's been referred to as the template question?-- Yes.

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And one of those questions at about the middle of the next page was as to how high the water inundation actually was. Now-----?-- Yes.

There's nothing controversial about this. Your answer was it's approximately 50 centimetres below the ceiling?-- Yes.

Right. And it goes on to say the water is very muddy and dirty?-- Yes.

And it goes on to acknowledge that you were not there at the relevant time?-- Yes.

All right. Now, what the note then goes on to say is that, "As per the hydrology report to hand for the Brisbane region, the result is consistent with flooding of the Brisbane River." See that?-- Yes, I see that.

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It says that, "The consultant advised the insured that in this instance it appears the proximate cause of damage is flood and will be declined."

COMMISSIONER: Ms Doyle, I think you might be writing on an exhibit or drawing on one?-- Oh, sorry.

It's not fatal, but it's probably not a good idea?-- Sorry.

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MR NEWTON: All right. So, you may have understood it that way or misunderstood it that way, but this is part of an ongoing conversation?-- Yes.

Right. And she said that, "The proximate cause of damage is flood and will be declined." She meant if that's so, it will be declined because you'd already accepted that the policy doesn't cover flood?-- Mmm-hmm.

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Right. All right. But it's then recorded accurately, you can assume, that, "Customer did not agree with this." You see the next paragraph?-- Yes.

All right. And in the paragraph that follows, it's accepted that you were not there, but it then goes on to say, "Consultant explained to the customer that the information she has provided is consistent with the hydrology report which confirms flooding." Now-----?-- This - sorry, this was the Brisbane-wide hydrology report?

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Yes, correct, correct, and it then goes on to say, "Consultant explained that this would be insufficient to inundate the property to this height." Now, we can accept that there was, no doubt, debate between yourself and the consultant as to the merits of that view?-- Mmm-hmm.

But I want to direct your attention to the next page, in particular, if I may, because this is, as you said a lengthy conversation. Can I direct your attention to the second paragraph on the next page and the third paragraph? The second paragraph reads, "The customer said that she believes rainwater came through the property first before the flood waters because they are at the lowest point of the street."?-- Yes.

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"And water drains down the road." Now, this is a significant passage that follows. It then says, "Consultant has advised

that in this instance as customer has now said she believes water ran down road and not just rising up stormwater drains, they will consider the claim further before declining and asked if CGU are able to contact the tenant for a witness account of the event to gather more information for consideration as the customer has already confirmed she was not there and does not know the full detail."?-- That wasn't what was said to me. 1

Well, you have acknowledged in your statement, Mrs Doyle, that you said you would get back to them about the tenant details?-- Yes. 10

But you declined to do so?-- I did. However, what I'm also saying is that the comment that, "The consultant has advised that in this instance she now says - the customer believes that the water ran down the road and was coming up through the drains, they will consider the claim further before declining.", that wasn't said to me. 20

Were the words-----?-- That might have been what the consultant is writing here, but that wasn't said to me. What was said is, "Oh, well, perhaps we can get some more information from your tenant.", and I said, "Yes."

Well, you put these notes in, Mrs Doyle, as an accurate recollection of what took place. You-----?-- I didn't put these notes in as an accurate recollection of what took place.

You say in your statement that in relation to - first of all you annexed them and, secondly, you say in relation to particular conversations that that's what took place, for instance-----?-- I have given a statement about what I said took place. What I'm pointing out is that these notes that were given by Mr Harmer word for word are not notes that I necessarily - that necessarily reflect my recollection of what was discussed. My recollection is reflected in my statement. 30

Well, you accept in your statement that you were asked to provide information in relation to tenants?-- Yes, I accept that. 40

And that wouldn't make sense to request that information if the claim had already been denied, would it?-- My understanding was that both of us had come to the end of our tether with that conversation and that comment was by way of closing up a conversation and me agreeing was also by way of closing up the conversation. After the conversation ended, as I have said in my statement, I felt so demoralised and so dispirited by the whole process that I thought why would I get more information if I'm not going to get a fair hearing? 50

So-----?-- That was - that was my understanding of what happened. At no point was I told that, "There will be further consideration of this claim and its in that context that we are going to wait for the tenant."

Well, let's see what we can agree upon. You agree on the fact

that at the end of the conversation you were to volunteer to your insurance company-----?-- Yes.

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-----details in relation to the tenants?-- Yes.

They had asked you to do that?-- Yes.

You had said you would?-- Yes.

And I think you have accepted in your statement that for the reasons you have just explained, you didn't bother doing that?-- No.

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All right?-- I didn't think it was going to be useful for me.

Right. So, you didn't do what the insurance company by your own admission had asked you to do, namely provide them with the tenant details?-- My understanding of that comment was that it wasn't crucial to progressing my claim. My understanding of that comment was that it was by way of concluding a tortuous, long and difficult conversation. I agreed to provide the details of the tenants, and on reflection I thought - and I was exhausted, I thought why would I do that? In hindsight, I probably should have.

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Yes?-- But I - but I had no way of mind reading the importance that CGU was going to put on that and I certainly had no way of mind reading that any - the provision of an assessor was going to be contingent on providing my tenants' details. That was never said to me.

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But, you see, the mind reading is, in fact, in the reverse, isn't it, because you were asked to do something which you declined to do because of a particular attitude you attributed to somebody else?-- No, it was - it was an experience that I had on the basis of how I was dealt with in that phone conversation and there are very specific reasons as to why I came away from that phone conversation feeling like my energy - expending more energy on this was ultimately not going to be fruitful because I wasn't being heard.

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All right. Well, assume for the moment that's your genuine view?-- Based on the facts of the conversation that's my view.

You would accept the person to whom you were speaking may have had an entirely different approach?-- My understanding of how that conversation went was that it didn't go well.

You want to assume everything in your favour, Mrs Doyle?-- I think I - I'm making assumptions on the basis of reported fact.

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But the reported fact upon which you agree is that the insurance company had asked you to provide certain information and you declined to do so?-- I did.

Because of an attitude that you attributed to them which was,

in fact, totally at odds with what they had asked you to do?--
It's an attitude that I attributed to myself and that was
exhaustion and frustration and the feeling of being absolutely
demoralised-----

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All right?-- -----by the process.

Well, for whatever reason you decided because you were
demoralised you weren't going to provide the information?-- I
also wasn't given the benefit of any information from CGU that
provision of an assessor, which I'd actually asked for right
back in January the 13th, was going to be contingent on
following through with information from the tenant. At no
point did CGU call me, at no point did CGU e-mail me and say,
"We are now considering providing an assessor." That was
never said to me, never mind saying to me, "Provision of an
assessor is now going to be contingent upon you - you doing
what you said you would do and provide details of the tenant."
Neither of those two pieces of information was provided to me
by CGU.

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But you accept, I assume, that a lot of communication is
taking place at this time between your broker and the
insurance company?-- Well, can I broaden my statement, then,
and say that my broker, as you said, who I have my primary
relationship with never communicated with me via e-mail or
phone that an assessor was going to be available at this
point. CGU didn't phone me. Now, Danielle had my number and
had my details. I think it's reasonable for all parties to
assume that it was acceptable for CGU to be contacting me.
CGU were the ones who actually had this conversation with me.
CGU were with ones from what I can make out from these notes,
they were the ones saying, "Yeah, look, we might have an
assessor now.", but they didn't take the responsibility of
letting me know that and they didn't take the responsibility
for letting me know that from their perspective they weren't
going to do that unless I provided the tenants' details.

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Well, can I say about all of that wasn't it safer to work on
the assumption that if the insurance company had asked for
something they regarded it as important?-- I guess I counter
that with wouldn't they actually give me the respect and
courtesy of communicating the important information to me?
They have known from the 13th of January that I wanted an
assessor out. They would have known that I would have been
extremely happy to have an assessor offered, but nobody
actually communicated to me ever until the 10th in the e-mail
and the 11th in the phone call that an assessor was even on
the horizon.

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Well, would you mind answering my question? Isn't it safe for
you to work on the assumption that if the insurance company
has expressly asked you for something, they regard it as
important?-- I think that's fair.

Right. Thank you. That's what I actually asked.

COMMISSIONER: If you're going on to another topic, we might

take the morning break.

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MR NEWTON: Certainly.

COMMISSIONER: Can I just ask you, is it Mrs, Miss or Ms, what do you prefer?-- Miss.

Okay. We will stick to that then?-- Thank you.

We will come back at 25 to.

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THE COMMISSION ADJOURNED AT 11.19 A.M.

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THE COMMISSION RESUMED AT 11.36 A.M.

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SALLY ANNE DOYLE, CONTINUING:

COMMISSIONER: Yes.

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MR NEWTON: Thank you, your Honour. Mrs Doyle, before we move on from the 1st of February can I direct your attention to the same page where you should be, page 4 of your annexure 4, which is the end of the conversation of the 1st of February, if I could take you to that. It's about halfway down the page. Now, I have already taken you to this in relation to the, "Sally agreed," that's a reference to providing information in relation to the tenants, but the next passage is the one to which I want to direct your attention, "Sent e-mail to broker RockSure confirming details of conversation." Now, can I take you to Mr Merchant's affidavit? Mr Merchant's statement, I should say. Paragraph - sorry, annexure 12. All right. Now, this is an e-mail from Danielle Tarabay to your broker, RockSure, that was sent as a result of the conversation that I have just taken you to. It says, "We have discussed the claim with the insured Sally. While the information considered indicates the property has suffered damage as a result of flood the insurer's of the opinion that stormwater caused damage to the property prior to the flood. CGU will be considering this claim further and await contact details for the tenant to gather more information surrounding the circumstances of the event." Now, that's the e-mail that is sent by CGU to your broker immediately after the conversation to which I've already taken you?-- I hadn't read it before but-----

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You hadn't read it before or you had?-- No.

You hadn't. All right, thank you. Right, now-----?-- That e-mail wasn't sent to me.

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I'm sorry?-- The e-mail wasn't sent to me.

It was sent to your broker, thank you.

COMMISSIONER: How do you pick up when it was sent Mr Newton, is there something on it?

MR NEWTON: It's deposed to in paragraph 25 of Mr Merchant's statement, your Honour.

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COMMISSIONER: Okay, the document itself doesn't give you any-----

MR NEWTON: The document doesn't - it's a hard document to read anyway but the date-----

COMMISSIONER: Yes, I'm just peering at it-----

MR NEWTON: I'm having the same trouble, your Honour, but it's in - it's dealt with in paragraph 25 of Merchant's statement.

1

COMMISSIONER: Thank you.

MR NEWTON: Now, Mrs Doyle, if you then go on to-----?-- Sorry, "Ms" Doyle.

Sorry, "Miss" Doyle, is it?-- Ms.

10

Ms.

COMMISSIONER: I thought we'd rather established that just before the break.

MR NEWTON: I was concentrating on other matters, I'm sorry, your Honour. "Ms" Doyle. Sorry. Ms Doyle, if you go to the 2nd of February entry. You will see it refers to a number of things, including the fact that you wish to dispute CGU's interpretation of the policy, but can I direct your attention to the last passage where it says, "Consultant advised team member of feedback and recommended CGU appoint an assessor due to the nature of the event and possible rainwater and flood damage together. As per oral assessor request this has been made to team manager." Now, that's on the 2nd of February, so internally CGU was talking about appointing an assessor, you will see, on the 2nd of February?-- That wasn't communicated to me.

20

It may not have been. Now, on the 4th of February there's a reference to a complaint letter that had been sent by you and that's a letter that you've annexed to your statement. It's also annexed as Exhibit 13 to Mr Merchant's but we needn't go to that, I think my friend took you to it. If you then go to the item for the 8th of February. You'll see a reference to a request having been made to appoint an assessor, and you will see the reference to, "Consultant also advised that claims are waiting on response from Sally Doyle providing contact details for tenant to gather more information about the loss from a person who was present." See that?-- Yes.

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All right. Then on the - if you go over the page to the item for the 10th of February you'll see there's a reference to the fact that it is in order to appoint an assessor to inspect the property and you will see that there was an appointment made of Crawford & Company. Now, you will see that - if I can take you to Mr Merchant's statement. If you were to go to annexure 14. Do you have that document, Ms Doyle?-- Yes.

All right. You'll see that it's dated the 10th of February and it's a letter of instruction to Crawford & Company to carry out an assessment in relation to the cause of damage to your property at West End. All right? You see that?-- Yes.

50

All right. Now, in fact, that instruction was cancelled on the same day because your insurance company anticipated delays in Crawford's completing it. If you go to the entry for the 10th of February, the second entry of that date on the page,

on page 5, you will see, "Team manager has advised that there are several delays with assessment by Crawford & Company. It is best to appoint a CGU assessor to speed up the process for the customer." Do you see that?-- Yes.

1

All right. So they're thinking of your interests in having the assessment done as speedily as possible.

COMMISSIONER: I don't think the witness can answer that, really.

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MR NEWTON: Thank you, your Honour. If your Honour - sorry, if, Ms Doyle, you were to go to the 10th of February, the entry in about the middle of the page, you will see there's a reference to "Therese", being a reference to Therese Ruff, from RockSure, "called. Asked for a copy of CGU's decline letter. Consultant advised CGU has not declined the claim at this point and has, per our e-mails, an assessor has been approved" - I'm sorry, "an assessor has been appointed to inspect the loss." Do you see that?-- Yes.

20

All right. Now, what I'll take you to next is a series of exchanges that follow from the bottom of that page to the next page where there was an attempt by CGU to organise with you at your convenience an assessor to inspect. If you can go to the item of the 11th of February. You'll see it refers to, "an assessing support officer has called customer Sally. Customer advised she will need to coordinate a time with the tenant regarding the assessment. They will be able to provide more details as to what happened as they were present." You see that?-- Yes-----

30

Right?-- -----and the 11th was the first time I was aware of the availability of an assessor, so the other points you've made reference to on the 10th, the internal discussions were entirely unknown to me.

And they're not matters of which your broker informed you?-- No. Neither CGU, and I had the direct number and Danielle Tarabay from CGU had my direct number, so CGU didn't inform me of any of these internal discussions.

40

Well, there was a lot going on on your behalf, that's true, Mrs - Ms Doyle. You'll see-----?-- There was by the 10th.

You will see - well, we've already taken you to the chronology of the communications, Ms Doyle?-- Yeah, I'm just saying that there seems to be an increase in activity around then after the 10th.

50

You'll see the next paragraph says, "Consultant advised Sally that an assessment time is available at 11 a.m. on Monday." Do you see that?-- Yes.

"However, if this time is not suited to the tenant we can look at other availabilities," and there's a reference there to the fact that you call back to confirm-----

COURT REPORTER: I'm sorry, Mr Newton, would you please slow down. 1

MR NEWTON: I'm sorry, it's my fault. "There's a reference"-----

COURT REPORTER: "if this time is not suitable"-----

MR NEWTON: "if this time is not suited to the tenant we can look at other availabilities," and then it says that you would call back to confirm whether this assessment time is suitable for the tenants. Do you see that?-- Yes. 10

And then there's another exchange on the 14th. "No return call received from the insured regarding possible assessment today. No booking yet made. Customer has been offered appointment for today at 11 a.m. on two occasions but has not been able to make this appointment time."-----?-- That's correct. I was actually meeting with Peter Harmer and various other people that morning----- 20

Mmm?-- -----so I'd gone from a situation where I'd had very little response from CGU to a situation where I was getting phone calls and visits from the CEO. It was quite a difference I was experiencing and I wasn't able possibly to respond as quickly as I might have because I found myself inundated with contact from CGU. It was - felt like all my Christmases had come at once.

But you expected immediate responses on the part of the broker and on part of the insurance company, though, didn't you?-- I expected that an assessor would be appointed. I hadn't lost a computer, I'd lost my house. 30

Mmm?-- I expected that an assessor would be provided and I'd asked for that and I'd explained the specifics of my circumstances and the specifics of my loss. I was concerned that wasn't being heard and I'd asked since the 13th of January for an assessor and I understand your point that there's a lot of activity now but that's the 10th of February so that's quite some considerable time down the track and it's also, I don't think coincidentally, after there was interest expressed by exterior parties in my case, including The Courier-Mail. 40

Now, in relation to the 14th, said, "No booking made yet. Customer has been offered opportunity". I just took you to that. Now, if we go over to the 15th of February. "Call received from customer Sally Doyle. She advised tenant had advised that they work and cannot attend assessments unless they are booked for particular times." You see that?-- Correct. 50

All right. And it then records that the, "Assessing officer has confirmed with customer that she is also available at the times nominated by the tenants." You see that?-- Correct.

All right. And then there's a reference to the insurance company having "advised that they will check the assessor's calendar and call back to confirm the assessment time". Now, the - there is then an advance about 3 minutes later. You will see that call was at 11.23. At 11.26, "Assessor has been called," you see that?-- Yes.

1

"to discuss available booking times," and there's then an arrangement made for the assessor to attend on the following day at 8 a.m.?-- Yes.

10

All right. Now, the assessment then took place on the 16th of February?-- Yes.

And there's a record there for the item of that date, "Due to nature of the loss team manager has appointed a hydrologist to attend the situation and provide a report." You see that?-- Yes.

And then there's a reference on the 17th of February to the fact that they're awaiting on the hydrologist's report, "in order to determine liability," and that's report to which I took you earlier, which was the report of the 9th of March, which is annexure 21?-- Yes.

20

I have nothing further, your Honour.

COMMISSIONER: Thank you. Anyone else got any questions of Ms Doyle?

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MS McLEOD: No questions, thank you, Commissioner.

COMMISSIONER: Mr Callaghan.

MR CALLAGHAN: Just two things. Go back to the point where you were concerned enough to ask if you could make a comment or ask a question. At that point I think you were asked about certain work that was being done on the 10th of March?-- Yes.

40

And the phrase was used to you, and I accept it was being used in a very broad sense, that the finding that - or the finding that there was a possibility of some damage being done by stormwater-----?-- Yes.

-----"gave you an out". Did you have any awareness at all that these sorts of things were going on at that time?-- You're talking about the 10th of February when - sorry, you said the 10th of March, I'm just wanting to make sure that we're-----

50

No, this was the hydrology that was being done on the 10th of March?-- Oh, the hydrology report - yeah.

And there was the finding that some minimal damage might have been done. You were taken to the documents that were being produced at around about that time?-- Yes.

And the question is simply whether you had any awareness of those things being done at that time?-- I had some awareness because I'd actually asked the question at some point, and to be honest I can't think of exactly when that was, but I'd ask the question about the air-conditioner damage and also damage to the front patio of the property and I was asking about whether that was covered or not, so I'm not sure exactly the point at which I was aware that there was discussion about levels of water and what the hydrologist thought.

1

Well, perhaps just to jog your memory re dates. In annexure 23 to Mr Merchant's material there's a fax which includes a copy of an e-mail sent on the 22nd of March, apparently. You say, "It's almost four weeks since the hydrologist's visit. Nine weeks since my claim"-----?-- Yes.

10

-----"provide me an update". Had you had an update or had you had further information in that time?-- From the hydrologist's report?

20

Yes?-- It would appear not on the basis of that e-mail. I guess one of the challenges for me through all of this was that I was working full-time and attempting to rebuild my house and so I didn't actually keep a log of specifics, so I can't remember myself what amount of time passed but I do remember there was quite some - there was some weeks between the visits from the assessor and the visits from the hydrologist and actually getting some feedback about that.

All right. And just remind us when you actually got the hydrology report?-- The hydrology report was - in the first instance, from my recollection, was e-mailed to me and I'm not sure exactly when that was but it was e-mailed to me before I got the formal written decline of my claim but I can't recall when that was e-mailed.

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All right. There's some e-mails which probably we can look to which probably tell the story without testing your memory at this stage. Just finally, you were asked questions at some length about that conversation that you had on the 1st of February?-- Yes.

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And, in particular, the issue as to whether some information - further information from the tenant-----?-- Yes.

-----was something that was on your mind. You did in fact call back - however exhausted you may have been on the 1st, you did in fact call back on the 2nd-----?-- Yes.

-----as we can tell from the file note in attachment 4?-- Yes.

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There is that file note there?-- Yes.

You've had the opportunity to read that. The question is whether anything else was discussed in the course of that conversation which is not recorded in the file note and specifically whether there was any reference to a tenant or

information from the tenant on that date?-- I don't recall that there was. My understanding at the time was that Danielle Tarabay for CGU asked for more information from the tenant on the 1st and I said "yes", and I guess, you know, if someone asks for something then it's not unimportant but I didn't have any sense that a whole lot of things hinged on the information or contact details of the tenant-----

1

It wasn't mentioned-----?-- -----and I don't - and I don't recall if there was a further follow-up from CGU on the 2nd. I can certainly say that I was - there was never any specific communication with CGU or my broker, not with either of them, after the 1st or the 2nd about getting information from the tenant or to explain that progression of my claim or that provision of an onsite assessment was contingent upon my providing those details.

10

Yes?-- I saw it as a request that wasn't kind of the thing upon which important things hinged.

20

All right. That's all I had, thank you.

COMMISSIONER: Mr Newton, I'm just concerned about one thing-----

MR NEWTON: Yes, your Honour.

COMMISSIONER: -----and you seem as if you want to raise something, too, but can I say this to you: I don't feel called on to make findings of fact about every matter of dispute between insurers and insured-----

30

MR NEWTON: No.

COMMISSIONER: -----and I think that's been indicated-----

MR NEWTON: Yes.

COMMISSIONER: -----in correspondence to your client. I can't give that guarantee, though, about the Harmer conversation-----

40

MR NEWTON: Yes.

COMMISSIONER: -----so that if you had wanted to ask any questions about it you should do so.

MR NEWTON: Yes.

COMMISSIONER: It may be that you think it's enough that the evidence be given, and I think Mr Harmer will be called-----

50

MR NEWTON: Yes.

COMMISSIONER: -----is that right?

MR NEWTON: Yes.

COMMISSIONER: So it's entirely up to you how to handle it. It's certainly not a traditional courtroom scenario in which I could say that because you haven't asked questions you're accepting anything-----

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MR NEWTON: No, no, well-----

COMMISSIONER: -----and I just didn't want you to be under any illusion-----

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MR NEWTON: No, well-----

COMMISSIONER: -----that there was no possibility of findings being made.

MR NEWTON: No. In relation to that, your Honour, can I identify the fact that Mr Harmer has put in a statement which denies material in respect-----

COMMISSIONER: I've seen that.

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MR NEWTON: -----and so there's no point putting all of that to the witness-----

COMMISSIONER: That's fine.

MR NEWTON: -----given the statement-----

COMMISSIONER: As long - yep.

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MR NEWTON: And the only matter I was going to direct you attention to, the Commission's attention, hopefully for your benefit, is in answer to a question my friend just put which Ms Doyle wasn't able to answer, when she first received the assessment. The Commission will find the evidence at exhibit - I'm sorry, annexure 24 to Mr Merchant's statement. The correspondence from Ms Doyle is - sorry, to Ms Doyle is at annexure 24.

COMMISSIONER: All right, thank you.

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MR NEWTON: Thank you.

COMMISSIONER: And Ms Doyle can be excused?

MR CALLAGHAN: Yes, if it please the Commission.

COMMISSIONER: Thank you for your time, Ms Doyle, you're excused?-- Thank you.

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WITNESS EXCUSED

MS WILSON: Thank you, Madam Commissioner. I call Sharron Campbell.

SHARRON LEE CAMPBELL, ON AFFIRMATION, EXAMINED:

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MS WILSON: Thank you, Madam Commissioner. Is your full name Sharron Lee Campbell?-- Yes.

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

Perhaps if you can look at this document for me, please. And that statement has some attachments? Is that the statement that you provided to the Commission of Inquiry?-- Yes.

10

Now, I understand that there - some corrections need to be made to that statement?-- Yes, there are.

I understand that a correction needs to be made to paragraph 12 of your statement; is that the case?-- I'll just have to double-check the numbers. Yes, it is.

20

And can you tell us what - the correction that needs to be made in that paragraph?-- That's not the correct date. I'd attempted to reconstruct that date from the notes that I had, and I do apologise for making that mistake. It was earlier, it was the of January was the correct date. I'm sorry, it's just escaped me off the top of my head.

So where it says in paragraph 12, "around the 15th of February 2011," that date is wrong?-- Yes, it is.

30

And can you give us the date that should be there?-- I think it was around the 22nd.

Of?-- Of January.

2011?-- Of 2011, sorry, yes.

Madam Commissioner, perhaps the witness should make that amendment now.

40

COMMISSIONER: Yes. If you wouldn't mind just writing it on the statement-----?-- Yes.

-----so we've got a track of it in the future.

MS WILSON: Madam Commissioner, issues have been raised with paragraph 3 in relation to Ms Campbell's statement. I can indicate that except for the first two lines of paragraph 3 the rest of paragraph 3 is outside the terms of reference and I am not relying on the contents of the rest of that statement except for those first two lines. So, Madam Commissioner, I do tender the statement of Miss Campbell.

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COMMISSIONER: Exhibit 718.

ADMITTED AND MARKED "EXHIBIT 718"

MS WILSON: We also have a statement with attachment from Matthew Jarrett, who at the time of the Queensland Floods was employed by Insurance Australia Group Limited as a home claim team manager, and this statement addresses issues raised by Ms Campbell's statement, so perhaps it would be a convenient time to tender that statement now.

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COMMISSIONER: Exhibit 719.

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ADMITTED AND MARKED "EXHIBIT 719"

MS WILSON: Ms Campbell, at the time of the 2010/2011 floods, you lived in a multistorey unit complex known as Jabiru Place?-- Yes, I did

And that is situated approximately 1.5 kilometres from the Brisbane River?-- I absolutely have no idea of the correct distance, I am sorry. I wouldn't want to comment.

20

Okay?-- It is fairly close enough to-----

In your statement you refer in paragraph 1 that Jabiru Place is situated approximately 1.5 kilometres. Is that just your-----?-- Yeah, I would have had reference to the material that demonstrate that, but I haven't kept it in my head, essentially.

30

And the address of Jabiru Place is 12-13 Bridge Street, Redbank?-- The complex is 13 Bridge Street, my unit is unit 12.

And Jabiru Place is a development that contains both residential and commercial development?-- No, it is just residential. 42 townhouse complexes.

42 townhouse complexes?-- 42 townhouses, sorry.

40

I understand that you've seen a map - an aerial photograph-----?-- Yeah.

-----of Jabiru Place, and it is marked there with an A. Is that the approximate place of your unit at the time of the floods?-- Yes. Yes, it is.

Is that the case?-- Yes.

50

Madam Commissioner, I tender that map.

COMMISSIONER: Exhibit 720.

ADMITTED AND MARKED "EXHIBIT 720"

MS WILSON: Now, you purchased this unit in 2006?-- I believe, yeah, October 2006.

And at that time you believe your solicitor conducted some normal conveyancing searches?-- He did, yes.

Are you aware what one of the searches revealed?-- One of the council searches showed that during the '74 flood event, that area - the complex wasn't constructed at that time - had flooded to a depth of - I believe it was 18.6 metres.

10

And-----?-- He'd circled this as a point of concern.

Okay. So you saw it?-- Yes, I did.

Did that concern you at the time?-- It did not.

Why is that?-- I guess it boils down to faith.

20

Faith in?-- I had faith that no government would permit a complex to be built if that level of flooding was still a significant danger.

Okay. In relation to your insurance, about five years ago you took out an insurance policy for contents with NRMA Insurance Company?-- When I wrote my statement I believe it had been five years but since seeing the further statement of the gentleman from NRMA I realise it was actually in 2008.

30

2008?-- Yeah.

Okay. So at the time of the 2010/2011 floods you were insured with NRMA?-- Yes, I was.

And you made a claim-----?-- Yes, I did.

-----with NRMA for flooding that occurred in your property?-- Yes, I did.

40

Well, if we can now go to that flooding?-- Yep.

And you pick this up in your statement at paragraph 6-----?-- Yep.

-----where you refer to the events of 11 January 2011?-- Yes.

You became aware that floodwaters were likely to affect suburbs in the Ipswich area?-- I did indeed, yes.

50

And that included residences in Bridge Street, Redbank?-- I had not been able to find any specific mention of Bridge Street, I only knew suburbs in Ipswich at that time.

How did you know that you were in threat of being flooded?-- I was on leave at the time and my best friend, who is aware that I don't pay that much attention to what's going on when I'm on leave, sent me a text message to essentially say, "Do

you know that something's going on? Are you okay?", which was the first that I'd become aware that there was danger of flooding in that area.

1

In your statement at paragraph 6 you refer to a time of 7 o'clock and 8.47?-- Yes.

Where you observed the floodwaters rise?-- Yes.

And slowly through the tennis court and over the end of Jabiru Place driveway?-- Yes.

10

Now, if we've got that map on the screen?-- Yes.

And you've got it just there?-- Yep.

Will you be able to indicate where - was it possible on that map - would you be able to indicate what you are referring to when you talk about the Jabiru Place driveway and the tennis courts?-- Yeah, the townhouse complex which is the red-roofed area, if you look to the right of that you can see a - what looks like a wobbly grey line. That's the driveway that runs down into Jabiru Place. Immediately at the end of that driveway, the tennis court and swimming pool are located. I believe the tennis court is that brownish grey area that abuts off to the right.

20

So it is on the right-----?-- Yeah.

-----of that drive bay which comes off Bridge Street, is that the case?-- Yeah. It is not that first sort of grey blob to the right, it is farther down towards the end of Jabiru Place.

30

COMMISSIONER: I am a little confused, sorry. What's A indicate, anything?

MS WILSON: A indicates, Madam Commissioner, approximately where her unit is.

COMMISSIONER: Right, thank you.

40

MS WILSON: Is it near that intersection of Bridge Street and the driveway?-- It is towards the rear. So essentially in parallel with the back of the units.

Okay. Just to be clear-----?-- Yep.

-----we'll try - there is a pointer on your right - we haven't been too successful lately with that point?-- Oh, this?

50

Yes?-- Okay, yes. Hey, look at that. Yeah, no. It doesn't. It doesn't show on the screen at all.

Would you mind just popping up there and showing us?-- Absolutely.

COMMISSIONER: Maybe we can get another pointer. If you wouldn't mind going up?-- Happy to. This is the Jabiru Place

driveway here, it runs down the right of the complex. This is the tennis court here. So this grey blob there is the tennis court.

1

MS WILSON: Okay. That's where you observed the water?-- The water was coming - there was actually massive construction works here and the water was coming up through there. You could see it through the fence here and across the tennis court.

10

Okay.

COMMISSIONER: So the construction works are to the south of the tennis court, if that's a north-south orientation?-- To the right, so to the west - east, sorry.

Okay?-- Here.

Yes?-- I apologise. I am not good with directions.

20

To the right of the tennis court, anyway. That's good enough?-- Yeah.

The tennis court is to the left of the letter A?-- No, to the right of the letter A.

To the right of the letter A?-- Yep.

Right, thank you.

30

MS WILSON: Thank you, Ms Campbell. If you can return to your seat?-- Thank you.

On the 11th of January you were evacuated-----?-- Yes, I did.

-----on that night. And the floods peaked about halfway up on the walls of the upper level of the townhouse?-- Yes, they did.

And is that about approximately eight metres from ground level?-- I realised that I have absolutely no ability to tell heights and that that's probably not correct.

40

Yes?-- It is - the WorleyParsons report says that it was - I can't remember the exact distance but I would think that that would be more correct than what was essentially my best guess.

Okay. So we'll refer to - you are happy to refer to the WorleyParsons report?-- Absolutely, yeah.

50

As a consequence of the floods, you lost all of your possessions?-- Some small amount of possessions were able to be salvaged that were above the water line, and some friends of mine took some nicknack type things and they were able to scrub them mostly clean.

Okay. If we can now refer to your contact with your insurance company, NRMA. That starts in paragraph 8 of your

statement?-- Yes.

1

You had a phone conversation with an NRMA representative-----?-- Yes.

-----some time on the 12th of January, the early hours?-- Yeah.

Now, you are aware that this conversation was recorded?-- Yes.

10

And you've heard this recording?-- I have now, yes.

And you agree with the recording as being accurate?-- Absolutely.

There has also been a transcript prepared of this conversation-----?-- Yep.

-----in that recording. And you have read that transcript?-- I have.

20

Are you satisfied that the transcript is accurate?-- There is a few minor errors but nothing substantive.

Madam Commissioner, I tender the transcript of the telephone conversation of January 12, 2011.

COMMISSIONER: Exhibit 721.

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ADMITTED AND MARKED "EXHIBIT 721"

MS WILSON: Just one thing of interest of this conversation?-- Yes.

If I can take you to page 9, at the bottom of that page-----?-- Yes.

40

-----the consultant acknowledges that there is a lot of contents in your home?-- Yes.

But asks you to name three very, very important items that's in your contents that's damaged?-- Yes, they did - she did.

And then you name three single items?-- Yes.

50

Throughout your communication with NRMA insurance did you ever get any explanation of why they wanted three?-- No.

Now, you've also seen the statement of Matthew Jarrett that I tendered-----?-- I have, yes.

-----before. And annexure - there is an annexure contained in Matthew Jarrett's statement that sets out the contact that

NRMA had with you?-- Yes.

1

And you have had an opportunity to go through that annexure?--
I have, yes.

And can you tell us whether that, in your opinion, accurately
reflects in summary form the contact that NRMA had with you?--
Yes, it does.

Now, have you got that annexure open?-- I do.

10

If I can take you through some of those entries-----?-- Yes.

-----contained in that annexure. And this is a document that
goes backwards, forwards in chronology?-- Yeah, it is
reverse, yeah.

We can see at page 89-----?-- Yeah.

-----at the bottom of that page, it refers to the conversation
that you had on the 12th of January?-- Yes.

20

And the bottom works up to 11.54 to 12 o'clock?-- Yep.

Then there was another conversation later that day, it
appears-----?-- Yes.

-----where the NRMA rang you, is that the case, and left a
message on your voicemail?-- Yes, yes, that's right. I
was-----

30

Now, on the 15th?-- Yes.

You can see above?-- Yeah.

You returned that call?-- I did, yeah.

Okay. Now, there is a summary of that call contained in the
schedule?-- Yes.

40

But you are aware that this conversation was also recorded?--
Yes.

And you've had the opportunity to hear this recording as
well?-- I have.

And do you agree with the recording as being accurate?-- I
do.

There has also been a transcript prepared-----?-- Yep.

50

-----setting out this conversation?-- Yes.

And you've had an opportunity to read that transcript?-- I
have.

And you agree that that accurately reflects the conversation
that you had?-- Again, except for some very minor,

non-substantive errors it's accurate.

1

Nothing that affects-----?-- No, absolutely not.

-----the substance of that conversation?-- Yeah.

Madam Commissioner, I tender the transcript of telephone conversation that occurred between Ms Campbell and NRMA on January 15, 2011.

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COMMISSIONER: Exhibit 722.

ADMITTED AND MARKED "EXHIBIT 722"

MS WILSON: This conversation with NRMA on the 15th, going through it, it looks like that you were again asked the similar questions you were asked on the 12th?-- Yeah, I was asked the same questions minus the "name three items" bit.

20

Did you notice this on the 15th, that you were asked similar questions?-- I absolutely did.

What did you think at that point in time?-- In normal circumstances, I would be highly irritated and ask for an explanation. In those circumstances I didn't care.

30

And why was that?-- Because everything I owned was under water, I had nowhere to live, and things were very stressful. So in the grand scheme of things, the fact that someone was asking me the same questions twice right there and then didn't seem important.

If we can go up on that annexure, we see a conversation on the 20th of January?-- Yep.

And that's where you called?-- Yes.

40

And you called to advise that the neighbour had an NRMA policy?-- Yeah.

And that an assessor was going to the neighbour and you were just wondering whether an assessor could also come to see you as well?-- I just thought it would be more convenient for everybody, but I didn't have enough details to help them, so.

Now, if you turn the page forward, we see on the 22nd of January 2011 an assessment - an appointment is made for Tuesday the 25th of January?-- Yeah.

50

Is that when the assessor came?-- Yeah, it was. Nathan.

Now, if I can take you up to the 24th of February 2011-----?-- Yes.

-----in the schedule?-- Yeah.

1

Now, you had a phone conversation with an NRMA representative on this date?-- I did, yes.

And at that time you made a filenote?-- I did indeed, yes.

Is that the case? When did you actually make that filenote?-- I made it while I was actually on the phone with the NRMA representative.

10

It is - I am going to show you this filenote?-- Yep.

It is typed out?-- Yeah, I did it on the computer because my handwriting is appalling.

And in this conversation you believe that NRMA agreed to send out the general hydrologist report?-- I do believe that.

And that's what your filenote-----?-- That's what my filenote reflects.

20

-----reflects.

Madam Commissioner, I tender that filenote.

ADMITTED AND MARKED "EXHIBIT 723"

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MS WILSON: I can indicate to the parties that this wasn't included in the material but that it - but I can indicate that that filenote has been in the Commission's possession earlier than it was provided in a conference last night. It has been with the Commission for a little time.

Now, this conversation on the 24th of February-----?-- Yeah.

40

-----this conversation was again recorded?-- Yes.

And you've heard the recording?-- I have.

And do you agree that the recording is accurate?-- Yes, I do.

There has been a transcript made of this conversation as well. You have had the opportunity to read the transcript?-- I have.

50

And the transcript is dated 24 January 2011?-- I didn't notice that.

But this conversation occurred on the 24th of February, is that the case?-- Yes, it did.

So just a slight error in the transcript.

Madam Commissioner, I tender that transcript of the conversation that occurred on the 24th of February 2011.

COMMISSIONER: Exhibit 724.

ADMITTED AND MARKED "EXHIBIT 724"

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MS WILSON: You have read the transcript, you agree that that accurately reflects the conversation which you had on the 24th of February?-- Again, minor non-substantive errors.

If I can take you to page 2 of the transcript - now, if I can just set the scene-----?-- Yeah.

-----there was a hydrologist report done, is that the case, to your understanding?-- At this point in time, when I called up I was not aware of any hydrology reports having been done. During that conversation I was informed by NRMA that there had been an overarching hydrologist report done that was not definitive and that a more specific one for Bridge Street would be commissioned.

20

And if I can take you to page 2 of the transcript-----?-- Yes.

30

-----and the top half of the page refers to the more specific hydrology report. Do you see that?-- It is actually at the bottom of the first page.

On page 2. Are you on page 2?-- Yeah. It is at the bottom of my page 1 and the beginning-----

And then it goes over to page 2?-- Yeah, yeah.

And then you see, "That will be brilliant. Will it be possible to get a copy of that hydrologist report?"?-- Yes. A bit further down.

40

"Yeah, no, definitely, definitely."?-- Yeah.

Now, in your understanding at the time, was that referring to the specific - site specific hydrology report?-- Oh, that was the Bridge Street hydrology report that they were going to commission.

50

And then you ask, "Is it possible to get the one that has been done already?"?-- Yes.

And the response was, as we can see it?-- Uh-huh.

Where the consultant was going to check whether she could get a hydrologist report to send out to you?-- Yes.

Is it that part of the conversation that - you took from that part of the conversation that one would be sent to you?-- I did.

1

So that answer that the consultant gave to that question that you asked?-- Yes.

Now, you didn't get this hydrologist report?-- No.

And we'll go to the conversation on the 11th of April where it is raised again?-- Yeah.

10

But did the consultant ring you back or get into contact to say, "Look, you can't get that one, for these reasons"?-- I had no contact, and if I may just add, one of the reasons that I believe what the - what the NRMA person said there was basically an agreement to send it out is that surely if she had to check with someone to find out if that was okay, she would have said so. She would have said, "I have to check on that and get back to you", but she didn't say that, she just said, "Yeah, I will see if I can send one out."

20

Okay?-- Which I took to mean more a matter of do we have a printed copy and can we actually post it to you, so-----

So working through the chronology of your contact with NRMA-----?-- Yeah.

-----and if we can go to the annexure-----?-- Yeah.

30

-----that we were working through before?-- Yes.

You can see on the front of that page the entry on the 11th of April 2011, that "Sharron called wanting an update"?-- Yes.

And then it goes over the page?-- Yes.

Now, this conversation was also recorded?-- Yes.

40

And you've heard a recording of this conversation?-- I have.

And do you accept that the recording accurately sets out the conversation that you had?-- I do.

And also a transcript was prepared?-- Yes.

And you have had an opportunity to read that transcript?-- I have.

50

And do you accept that that transcript accurately sets out the conversation that you had?-- I do.

Madam Commissioner, I tender that transcript of 11 April.

COMMISSIONER: Exhibit 725.

ADMITTED AND MARKED "EXHIBIT 725"

MS WILSON: Now, on page 2 you raise the issue with the hydrology report again?-- I do, yes.

You can see that?-- I can.

10

And then the consultant says that they can't - that they can't send it out but they will pass it on to the person who made that - who you spoke to previously?-- Yeah.

And then end of page 3, halfway down-----?-- Yeah.

-----it is conveyed to you that they are not going to send out the previous hydrology report because they are not relevant?-- Yes, it is.

20

Okay. Now, is that the first time that you heard that you were not going to get that hydrologist's report?-- Yes, it was.

Now, if we can go back to your statement, and if I can take you to paragraph 15 of your statement? At paragraph 15 you refer to a product disclosure statement from NRMA?-- Yes.

And you referred that it took five weeks for the company to send out the company of your PDS?-- I do.

30

Sorry, what was that?-- I do say that.

Yes. Now, can you tell us the history and the context of requesting this PDS?-- Yes, I can. When I relocated to a friend's house at Hendra - because obviously my place wasn't liveable - I wanted to make arrangements that the contents that had survived, and the belongings that had been donated to me would be covered for insurance.

40

Now, Ms Campbell, you are going to have to slow down, because that's being recorded?-- I am so sorry. I relocated to Hendra. A friend was putting me up at her house in Hendra. And given the circumstances, I knew it was important that I have insurance for the contents which had survived and for the belongings which had been donated to me. So I contacted NRMA to have my policy shifted from Redbank, in which there was nothing left to insure, to the house at Hendra. Now, I did not do that through the claims line because it was nothing to do with the claim. I would have contacted whatever number was on the website to discuss existing policies, and I spoke to a very nice gentleman who arranged all that for me, and at that time I requested that they please send out a copy of the PDS.

50

Can I show you a letter from NRMA to you?-- Yes.

Now, it encloses - this letter encloses a PDS and policy book?-- Yes, it does.

It is dated the 5th of February?-- Yeah, it is.

So - and it is addressed to 271 Nudgee Road at Hendra?-- Yeah, that's the house that I was staying in. It was not my personal address that I'd given to NRMA. Now, I say in my statement it took five weeks for them to send it out, but I realise that it took five weeks for me to get it. Based on the date on this letter, my phone call to NRMA about the policy would have been some time in the week commencing 17 January. So it probably took about a week or so for it to be sent out. But because I have no post sent to that house, it could have sat in the letterbox for a significant amount of time before I realised it was there, and the original is very water damaged, which I think indicates that it was there for some time.

10

Okay. So there was just a degree of confusion about when you received the PDS?-- Yeah. I believe that I saw it in the letterbox - I have no idea when it was placed there - on or about the second or third week of February.

20

Just to be sure, just so that I'm clear, this was done independently of the claims process?-- Yeah, completely separate, because it was nothing to do with the claim, it was to do with an existing policy.

Okay. So this PDS has nothing to do with the claims process per se?-- I asked for it when I arranged for the insurance to be transferred to the place I was staying, because I wanted to see what it said in relation to my claims process, but I don't believe I ever communicated that to NRMA. I just said, "Can you please also send me a copy of the PDS", or words to that effect.

30

For completeness, Madam Commissioner, I just will tender that letter because it does relate to paragraph 15 and clarifies some of the issues that have been raised in paragraph 15.

COMMISSIONER: Exhibit-----

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MS WILSON: I don't think it is necessary to tender the PDS that was attached to that.

COMMISSIONER: Exhibit 726.

ADMITTED AND MARKED "EXHIBIT 726"

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MS WILSON: Ms Campbell, can I take you to paragraph 22 of your statement, which is on page 7?-- Yes.

Now, at paragraph (a), in this paragraph you set out some of your complaints against NRMA?-- Yes.

I only wish to take you to one of those?-- Yes.

1

To get you to expand on 22 - paragraph 22(a)?-- Yes.

Where you received only one phone call from NRMA concerning your claim between 12 January 2011 and the 18th of April 2011?-- Yes.

Now, you've been through the documents that have been provided to you by NRMA?-- I have, yeah.

10

Do you still stand by that?-- I do. The - I consider a contact in relation to my claim be a phone call initiated by NRMA phoning me and say, "Hey, here's some news on your claim, here's where we're up to." I did receive a phone call from NRMA in relation to making an appointment for the assessor, I received a phone call from WorleyParsons in relation to making an appointment for the hydrologist, and I received a phone call in response to mine. I don't consider that contact from NRMA in relation to my claim.

20

Are you including in that messages that were left?-- There was only the one voicemail message that was left. I suppose that would have to be considered, I guess, contact in relation to my claim.

Just in relation to the future-----?-- Yep.

-----and about communications between insurance companies and claimants, what do you see that could be done better?-- Okay. I believe - I mean, in this situation, it was obviously going to take longer than normal to process a claim, given what was going on in Queensland. However, given the resources that I would expect a large insurance company to have, I think assigning a team to keep in regular contact with customers to say, "We haven't forgotten you, we are still working on this, we know it has been a long time", to make sure that when someone promises to call you - for example, in my phone conversation with NRMA I said, "Can you please call me when the Bridge Street hydrologist report is received-----"

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40

Slow down, Ms Campbell?-- Sorry, sorry, and they obviously received the Bridge Street report, yet no-one called me to tell me it had been received. There needs to be someone appointed to simply communicate with claimants, to let them know they haven't been forgotten. I think that's really important and I think that significantly affects one's perception of whether or not a process is timely. The reality is that sometimes things are going to take a long time, but you need to make sure people are kept in constant communication and are made aware of that, that they know they haven't been forgotten, especially in circumstances like these.

50

Okay.

COMMISSIONER: Can I ask you - we heard of another insurer which actually sent a weekly text, I think it was, to the

insured. Would something like that have kept you-----?-- I think that would have been - texts, or emails, or anything like that, I think it is human nature to assume if someone's not talking to you, they are not doing anything, even though they may be working frantically behind the scenes. Even if it was just a text saying, you know, "Here is a reminder, this is your claim number, this is a direct contact. We're still working on things. We haven't forgotten you." I mean, obviously not those words but something along those lines, I think that would go a very long way towards making people feel a lot more comfortable with a lengthy process.

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MS WILSON: Ms Campbell, if I can now take you to some of the issues that you raised in relation to land planning issues?-- Yes.

And you confine this in your statement to paragraph 25 onwards?-- Yes.

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You refer to a damming effect?-- Yes.

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Caused by the Ipswich Motorway?-- Yeah.

And the construction of the Monash Overpass?-- Yes.

I think the best way for you to explain that to us is if you could go up again to the aerial photograph and explain what you are referring to there?-- I can't say the exact dates because I just don't remember when construction began on the Ipswich Motorway, but this photo, I believe, reflects the lay of the land when I purchased my property. It's rather significantly different now. The Ipswich Motorway used to lie on the same level as essentially Jabiru Place. It's now been raised significantly higher, I would say certainly over my head, so somewhere around six feet, possibly higher. Coming - basically running parallel to Jabiru Place, essentially straight across here and across the railway, the construction of what's called the Monash Overpass which if you think of it as a very large hill that has been constructed essentially covering the space from this area here to the train tracks, which run across there.

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COMMISSIONER: So, that's south to north, past the tennis court that you identified to us before?-- Yes, ma'am. It's huge, I would say it's at least three storeys high. It's constructed of solid earth. It does have, I believe, three drains through it, but one thing that its construction did was it used to just be open fields. The Pan Pacific Peace Gardens are located down here. This was an open field which gave a place for overland flow to drain. Half of the field no longer exists and in its place is a very large hill that will essentially - overland hill will butt right up against that hill and will start damming. There are three drainage pipes but I don't believe that's significant, like sufficient to pick up the amount of water, given that this part here is essentially a bowl, which now has a significantly raised Ipswich Motorway here and a hill to Monash Overpass here and it's basically at the bottom of what's effectively a dam.

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40

So, what you are talking about a bowl actually is a large area encompassing the units at Jabiru Place?-- Yeah, the units at Jabiru Place, they start low and then they slope up. There was actually two houses at the very top of the slope which weren't affected and every other unit running down the driveway was affected to a greater degree as you move down the slope. Where mine is, it's sort of at the very bottom of the bowl, I guess you would say.

MS WILSON: Thank you, Ms Campbell. What I am going to do, so that remains on the record - you can have a seat - I am going to give you a hard copy of that map, and I am just going to ask you to the best that you can-----?-- Yeah.

50

-----just mark there where that Monash Highway is. Have you got a pen over there?-- I do not have, sorry.

If you can just write your name on that as well?-- I can do

that.

1

Is there any other features that you think that should be included on your map that affects your evidence of when you talked about a damming-----?-- The raising of the Ipswich Motorway but I'm not entirely certain how to draw that.

Okay. We have noted that?-- Yeah. Do you need me to sign this as well as write my name on it?

10

No, that will be fine?-- Okay.

I will just have a look. The only party here is the Commonwealth, Madam Commissioner, which I will show-----

COMMISSIONER: The State is there too right behind you. Ms Brasch is right there behind you.

MS BRASCH: Thank you, Commissioner.

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MS WILSON: Madam Commissioner, I should tender that document, that map, separately.

COMMISSIONER: Exhibit 737.

ADMITTED AND MARKED "EXHIBIT 737"

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MS WILSON: Thank you, Ms Campbell, I have no further questions.

MS McLEOD: No questions.

COMMISSIONER: Mr Newton, any questions?

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MR NEWTON: Thank you, your Honour. Ms Campbell, I think you referred to the WorleyParsons report as giving the best indication of how inundated your property was?-- Yes, I did.

I think you were probably referring to the passage at 148 of the documents which should be in front of you in Mr Jarrett's statement?-- Oh, that's right, it was - what page number is that?

50

If you go to page 148, they're paginated in the top right-hand side corner?-- Thank you. Yes, that's my - yes, photo.

All right. And it says there that, "A flood mark had been retained by the insured which indicated the peak flood water level. This flood mark was submit way through the first floor window and indicates a peak flood depth of about 4.5 metres above ground level."?-- Yes.

Is that the passage to which you are referring to?-- Yes, it is.

All right. Thank you. Now, can I just take you through the essential chronology, as I understand it?-- Yes.

Your claim is made on the 12th of January?-- Yes.

All right. An assessor by arrangement inspects your property on the 25th of January?-- Yes. 10

That's a gentleman called Nathan Larkin?-- Yep, Nathan.

And I think you refer to him in a complimentary fashion in the transcripts that we have seen?-- Everyone I talked to was lovely, so, yes.

And by the 17th of February a hydrology report had been prepared. That's the initial one?-- Yes, yep. 20

And by the 18th of March, some hydrologists attended at your premises to conduct an inspection?-- Yep, two gentlemen.

And again you refer to them in very flattering terms in your statement?-- Yep.

All right. And then the hydrology report was completed on the 8th of April 2011?-- I don't know. 30

That's the - you can have a look at it in the-----?-- Yeah.

-----documents which are in front of you. It should start at page 141?-- Yes, next to M Roberts' signature there.

Yes. You will see a date on the bottom section of the front page-----?-- Yes.

-----of the 8th of April?-- Yes. 40

That was received, it seems, by your insurance company somewhere between the 11th and the 14th of April?-- I don't know.

No. I'm sorry, I didn't mean you-----?-- Oh, I'm sorry.

That's all right. And the decline letter in relation to your indemnity was sent to you on the 19th of April or by letter dated 19 April?-- I will have to check my copy if that's all right? 50

You will find it at page 152?-- Yep. I can see that.

And at the same time, you were provided a copy - with a copy of the hydrology report with that letter?-- Yeah, it was attached to the letter.

Thank you. I just wanted to turn to a couple of things, if I

may, in your statement-----?-- Yep.

1

-----that I think remain after Counsel Assisting's questions?-- Yep.

I wanted to take you first to paragraph 8?-- Yes.

And a point you repeat at paragraph 17 and at paragraph 22B, but if I can just take you to paragraph 8 first, you refer there to the fact that on the first occasion when your call was put through in relation to your claim on the 12th of January you were asked to provide details of three items which were lost-----?-- Yes.

10

-----or damaged and you make the same point a number of times throughout your statement?-- Yes.

If you go, for instance, to paragraph 17?-- Yes.

At about line 3 to 4 you say that you still had no explanation "as to why I was asked to name three items?-- Yes.

20

You see that? Then you repeat it in 22B but I needn't take you to that. Can I take you to the transcript of that conversation, which is-----?-- When was that?

-----on the 12th of January ?-- Yes, I have got that here.

I will take you to the relevant passage but what I want to suggest to you is that, in fact, the consultant was trying to be helpful to you in listing some items that you regarded as important. That will be the point of my question. So, if I can take you to it?-- Yeah.

30

I will show you how it develops?-- What page was that?

If you go to page - the bottom of page 9 of the transcript?-- Yep, yes.

If you read a little above the bottom line on page 9 you will see there's an introduction to it where there's a comment about black humour being used by you-----?-- Yes.

40

-----to alleviate the tension and so forth?-- Yes.

And you comment that, "Black humour will get us through."?-- Yes.

And then the consultant says, "Hopefully. All right. Well, look, Sharron, I - look what I will do is I know that there is a lot of contents in your home.", and you say, "There really is.", or, "That really is."?-- Yes.

50

Then the consultant says, "Just to note something down on it, just give me three very, very important items in your contents that are damaged."?-- Yes.

Or "is damaged" as it reads, and you ask, "Single items or",

and the response is, "Single items."?-- Mmm-hmm. 1

Then you list a number of items?-- Yes.

Big screen TV, refrigerator?-- Yep.

A laptop computer?-- Yep.

A couch?-- Yes. 10

A leather couch that you obviously like?-- Yeah.

And a single bed?-- Mmm-hmm - oh, no, that was a description of the size of the couch, sorry.

Sorry, yes, of course it was, yes, and then if you then go over to the top of the next page-----?-- Mmm-hmm.

-----that continues and if you look at the third item - sorry, fourth item-----?-- Yeah. 20

-----the consultant then says, "All right. Well, that's all noted down."?-- Yes.

And if you go to the next page, which is page 12-----?-- Yep.

-----at about just before halfway down, she says, "Oh, look, I will note everything down for you."?-- Mmm-hmm.

"I have just processed the claim. If the claim is covered", she tells you what the applicable excess will be?-- Yes. 30

All right. I was just a little intrigued as to why you were concerned about the fact that she had asked you to provide details of items which you obviously regarded as important to you?-- Mmm-hmm.

Do you accept that she may have just been doing that to be helpful to you?-- I have absolutely no idea. That's why it appears to so often in my statement. 40

But she was asking you for details of the contents which had been lost-----?-- Well, no, she-----

-----or damaged?-- She asked me to name three specific items which seemed very odd and still seems odd.

Okay. Well, can I suggest to you there's nothing in the transcript that suggests that your reaction to the question was that it was odd. You didn't say it was odd or you didn't express any surprise?-- At that point in time. 50

At being asked - well-----?-- No, no, I didn't.

No, you didn't?-- No, I didn't.

All right. And, in fact, you refer to the consultant in very flattering terms?-- She was lovely.

She was. And if you go, for example, to page 15 or page 13-----?-- Yep.

-----of the transcript?-- Yep.

At about a third of the way down the page you thank her and you say that, "You're just absolutely fabulous" - sorry, fantastic, I should say. Do you see that?-- Yeah.

10

You repeat that accolade throughout the document?-- Yeah.

For example, you go to page 15, towards the top?-- Yep.

You say, "You are so seriously" - sorry, "You are so fantastic seriously.", and I won't continue, but you make very flattering comments about her?-- Absolutely.

So, you agree with this much, that you certainly didn't suggest to her any query about why she was asking you for those details at the time?-- No, I did not.

20

All right. Now, you also say in your statement that you were shocked to discover that you didn't have flood cover?-- Yes.

Now, having looked at the transcript and having heard the transcript-----?-- Mmm-hmm.

-----would you agree that that shock doesn't seem to be reflected in the way the conversation was conducted?-- Yes, I would agree.

30

In relation to the confusion about the hydrology reports, can we work from the premise that you have accepted, I think, that you received the final report on which the insurance company relied. That went out with the declined letter?-- Absolutely.

And would you likewise accept the fact that in the transcript of the 24th of February there does seem to be confusion between which report she's going to send you?-- No.

40

All right. Well, I will take you to the transcript?-- Yes.

But can I - let me just test your memory for a moment?-- Sure.

But can I suggest to you what the consultant was saying is this, she starts the conversation by saying, "There is a need to have a second hydrology report prepared."?-- Oh, yes.

50

All right. And you then ask her whilst that's still the topic-----?-- Mmm-hmm.

-----would you be sent a copy of that report and she responds by saying, "Yes, definitely."?-- Yes.

You then ask her a question in the line that follows could she

also - could you also be sent, I'm sorry, a copy of the report which has already been done?-- Yeah, the overarching one, yep.

1

And she then says I will see what I can do, in effect?-- Okay.

Well, I want to be fair to you?-- Mmm.

If you go to the transcript of the 24th of February?-- Just give me a second to find it, I'm sorry.

10

COMMISSIONER: Could somebody give Ms Campbell some help? The 24th of February, a transcript, either find the one there or give her another copy?-- Was it the 24th of January?

MR NEWTON: 24th February?-- Oh, I don't seem to have that. No, it's marked 24th of January. Sorry, I forgot that bit.

That's all right. Now, just to introduce you to the conversation-----?-- Yeah.

20

-----if you go the page 2-----?-- Mmm-hmm.

You will see towards the top of the page the consultant says, "What we are going to be doing is we are actually going to be requesting another hydrologist's report"-----?-- Yep.

-----"which is more specific."?-- The Bridge Street one, yep.

30

And if you read down to about four or five inches down, there's a passage where the customer says - sorry, where you say, "Do you have any idea what timeframe you're looking at?", and you say, "I understand it's crazy at the moment."?-- Oh, yeah.

And you go on, there's a joke about hydrology being the career to have at the moment?-- Absolutely.

And if you then go down to the passage that - where you say, "That will be brilliant. Will it be possible to get a copy of that hydrologist's report?"?-- Mmm-hmm.

40

That's a reference to the final report-----?-- Yes.

-----because that's the topic that's been introduced at the top of the page. All right. She said, "Yeah, no, definitely. Definitely." All right. That's the report that - with which you were ultimately provided?-- Yes.

50

Yes. All right. Then if you go down after the "definitely" paragraph, you say, "Brilliant. Is it possible to get the one that has been done already?"?-- Yes.

That's the old one which has been superseded?-- The overarching one.

Yes?-- Yep.

And if you go down to the next passage she says, "I could see if I could grab a hold of it because I know that they have been sending them out to the people who we have declined but I will see if I can get another one sent out to you just to give you the overarching one." So, she's saying they have been giving them out and I will see whether I can get a copy for you?-- Yes.

And then ultimately Ms Wilson took you to the passage from the 11th of April transcript where for reasons that the consultant explains, she says that you will be given the final one but not the one on which they were no longer relying on?-- Yes.

10

You accept that? If you go - if you go to that transcript of the 11th of April?-- Yep.

If you go, for example, to the last page?-- Yes.

The consultant says towards the top of the page, "Look, we will still send the - the one that's sort of - on which we're basing our decision.", and you say, "Yeah.", and then the consultant says, "But we obviously - because it's not the one we're basing the decision on, we don't send them out.", and you say, "Yes, I understand, yes, I understand." All right. But you then ask, if you go back a page, page 3-----?-- Mmm.

20

-----you had asked if you would definitely be given a copy of the final one, and you say about four inches from the top-----?-- Mmm-hmm.

30

Sorry, you are assured then - it says she will definitely give a you a call when the hydrologist's report's in, "I will send her an e-mail now." See that?-- I do see that.

Then ultimately when the final hydrologist's report did come in, it came in and we received it some time after the 11th of April. We then telephoned you?-- No.

I'm sorry, we what-----?-- I was not telephoned to say the hydrologist's report I was in, I was telephoned to tell me the claim had been declined.

40

Because the hydrology report had been received?-- But I wasn't - I was-----

Well, if you go to the file notes, for example-----?-- Mmm-hmm.

-----I will show you what happens?-- Mmm-hmm. What page was that again? Is that 87?

50

Page 87 is probably the pest one in Mr Jarrett's statement?-- Yeah. Yep, I have got that open.

Right. If you go to the entry at the bottom of that page, which is the 11th of April?-- Yep.

Now, it says, "Our insured, Sharron, called wanting an update."?-- Yep.

1

And if you read over to page 88, "Advised no report yet but someone will be in touch."?-- Yep.

It then records that you want to be notified when the report comes in?-- Mmm-hmm.

And you requested the original hydrology report?-- Mmm-hmm.

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See that?-- Mmm-hmm.

Okay. And-----?-- Yes, I'm sorry.

You're then - it's recorded that you will be told when the report has come in. See, clearly by the 11th of April the insurance company doesn't have it because they say, "No report yet."?-- Yes.

20

All right. And the next call, I accept, to you is on the 18th-----?-- Yes.

-----where the policy coverage is declined?-- Yes.

All right. But I take it you then accept that they have now - given you have now received the WorleyParsons' report that the insurance company has then received it, it's unfavourable to you, and they have then communicated the fact that they were declining to cover you?-- Yes, they communicated the fact that they were declining to cover not that it had been received.

30

No, but they provided you a copy of it?-- They called me to tell me the cover had been declined but they did not call me to tell me the hydrologist's report had been received.

Well, you were provided a copy of it?-- Yes.

And the chronology is the - it's received - it's dated - sorry, it's received on about the 11th, somewhere between the 11th and the 14th, the insurance company considers it, and then there's a weekend intervening and you are then phoned on the 18th to inform you that cover has been declined?-- Yes.

40

And the report on which they were relying is then sent to you with the declined letter?-- Yes.

All right. Would your Honour excuse me for one moment? Ms Campbell, I think you accepted earlier in your evidence that the file notes that are around the page which you have opened accurately recorded what took place. I won't put the whole individual conversation to you unless you have any particular concern about them?-- May I just have another quick look?

50

Certainly?-- Yep, no, I think they accurately record.

I have nothing further, your Honour.

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COMMISSIONER: Thank you. Ms Brasch, did you have any questions?

MS BRASCH: No, we have no leave on insurance, thank you.

COMMISSIONER: Ms McLeod?

MS McLEOD: No questions, thank you.

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MS WILSON: I have no further questions. May Ms Campbell be excused?

COMMISSIONER: Yes. Thanks very much for your time, Ms Campbell. You are excused?-- Thank you.

WITNESS EXCUSED

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MS WILSON: Madam Commissioner, I call Russell Cuerel.

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RUSSELL KEITH CUEREL, ON AFFIRMATION, EXAMINED:

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MS WILSON: Thank you, Madam Commissioner. Your full name is Russell Keith Cuerel?-- That's correct.

And you're trained as a civil engineer?-- That's correct.

And your current title is manager of infrastructure management within the Office of the Water Supply Regulator?-- That's correct.

10

Within the Department of Environment and Resource Management?-- Yes.

Otherwise known as DERM?-- Correct, yes.

Now, you have now prepared three statements for the Commission?-- Yes.

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The first is dated the 14th of September 2011 and contains attachments?-- Yes.

The second is also dated the 14th of September 2011?-- Yes.

And contains attachments, and this morning another statement was provided to the Commission from you, another addendum statement?-- That's correct.

30

Madam Commissioner, I tender those three statements.

COMMISSIONER: All right. The first will be 728, the second 729 and the third 730.

ADMITTED AND MARKED "EXHIBIT 728, 729, 730"

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MS WILSON: Now, as part of your role, you supervise one engineer who provides advice to the Department of Community Safety-----?-- That's correct.

-----on flood mapping?-- Yes.

And mapping issues?-- In relation to State Planning Policy 1/03 and planning schemes.

50

So, is it the case that there is one designated staff member at DERM who is there to provide advice in relation to SPP 1/03 to the Department of Community Safety?-- Essentially, yes.

There is also you as well?-- Yes.

There are some matters in your statement that I wish to take you to?-- Mmm.

1

And the first is at paragraph 6A. This comes under the heading of DERM interacted with the Department of Local Government-----?-- Yes.

-----and the Department of Community Safety during the process of drafting the SPP 1/03. You were the project officer on an existing departmental project to develop a State Flood Risk Management Policy?-- That's correct.

10

Now, this predated SPP 1/03?-- That's - that's correct. The policy - two projects ran somewhat in parallel. The SPP development was actually a little bit ahead of the policy development and came to fruition. The State Flood Risk Management Policy never came to fruition.

I didn't quite catch any of that?-- The two projects ran somewhat in parallel.

20

Yes?-- DCS had a project to develop the SPP, the Department had a project to develop a State Flood Risk Management Policy. The SPP project was sort of a little bit ahead of our project. The SPP was completed, the flood policy wasn't.

But then what happened to the information gathered and the work that had been done in relation to your project?-- It's been - it's been subject of ongoing discussion, I suppose, within the department as to what course it should take. It finished - my involvement essentially finished at the conclusion of the public consultation on the policy and-----

30

Which policy are we talking about?-- Sorry, on the State Flood Risk Management Policy.

Right?-- So my involvement on DERM's project essentially concluded at the completion of the public consultation on that discussion paper.

40

When was that?-- Around 2003/2004.

This project produced a paper?-- Yes.

When was that paper produced?-- The discussion paper was produced 2002, and then a consultation report in - later in 2003.

Okay. And I understand the final versions of the DERM policy are in the addendum statement that was provided to the Commission this morning?-- As final as they got, yes.

50

Now, you have attached the DERM's policy and what I'm talking about the DERM policy do you know what I'm referring to?-- Mmm-hmm.

You were the project officer on that policy. You have attached that to your statement. Did you draft that policy up?-- Yeah, I had a - yes, I - yes, I suppose, is the answer.

1

Okay. And if I can just clearly understand it, there are two projects running parallel?-- Yes.

And SPP 1/03 got to the finishing line first?-- Got to the - yes, and the Department's DERM project never got to the finishing line.

10

Okay. Now, can I take you, then, to just some of the content of that document that you prepared-----?-- Yes.

-----which is at your - included in your statement with attachments at RKC 03?-- Mmm-hmm.

Now, what was the ultimate purpose of DERM's project?-- The ultimate purpose was to develop a State Flood Risk Management Policy that would comprehensively deal with flood risk. Flood - as you might - I suppose through the course of the Commission you'd probably realise there's a lot of issues associated with flooding relating to things like availability of information-----

20

Mmm?-- -----provision of mitigation measures, planning schemes, role of government departments, all that sort of stuff and flood policy was aimed at trying to get to grips with that and come up with a State policy that would deal with it.

30

And DERM was obviously going to take the lead on that project?-- At that time, yes.

And was DERM going to go so far as to assist councils with flood mapping as part of that project?-- I don't believe so, no, no.

It was to identify issues?-- It was to facilitate better flood plain management and the concept within the policy was that local government would be the principal agency developing things called flood plain management plans, but this would facilitate that happening.

40

Okay. Now, if I can take you to page 15 of that document? The heading is 5.3.1, "Implementation of Policy, Instruments, Commitment."?-- Sorry, we're in the attachments?

Yes, RKC 03?-- Right. There's a number of attachments - there's a number of documents in the attachments.

50

Okay. I understand there is some confusion in relation to this. Perhaps it's best I actually give you the document for you to look at?-- Okay.

And I understand that addendum statement you provided us this

morning has tried to resolve-----?-- Tried to resolve, yes.

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-----some of these issues with attachments. Madam
Commissioner, would that be a convenient time so we can get
these documents?

COMMISSIONER: Yes, it would. 2.30.

THE COMMISSION ADJOURNED AT 1.00 P.M. TILL 2.30 P.M.

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THE COMMISSION RESUMED AT 2.37 P.M.

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RUSSELL KEITH CUEREL, CONTINUING:

COMMISSIONER: Yes, Ms Wilson.

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MS WILSON: Thank you, Madam Commissioner. Mr Cuerel, before lunch I was referring you to the exhibit RKC03?-- Yes.

And the problem with the exhibits attached to your statement is that there is demarcation between any of the documents in the exhibits. There's large attachments containing many documents and there's no demarcation. So what I'm going to do is show you a hard copy-----?-- Yes.

-----of the document, which we've been able to isolate and for the record can you just read the title of that document?-- "Draft State Flood Mitigation Policy Discussion Paper".

20

And that's what we were talking about before lunch, what you were working on?-- Yes.

And now can I take you to page 15 of that document? And the - this part of the paper refers to the implementation of policy instruments and commitment?-- Yes.

30

And discusses that local governments have been reluctant to implement appropriate flood mitigation measures?-- Yes.

And sets out a variety of reasons?-- Yes.

I'm interested in these reasons, and perhaps if I can take you to them now. The first one that you state is the conflict within local government. Can you tell us what you were referring to in relation to that?-- Well, as the point goes on to say, local government is sort of responsible for managing development in its area and it needs to have good reason or sound reasons for why development should or shouldn't go ahead. It's often faced with pressures from developers to pursue development in its area when perhaps it hasn't got sufficient information on what the constraints are for that development, so it becomes a difficult issue for them. Also in terms of, you know, the desire to pursue economic growth in the area, development's often very much a part of economic growth in a local government area so there's these tensions about how to manage development on floodplains, basically.

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50

And where did you get this information from?-- There was a steering committee set up to develop this discussion paper. It was made up of a large number of representatives, including some from local governments, and that would have come through that steering committee, basically.

That first dot point sets out the tension between protecting the public from damaging effects of floods, the need to preserve individual's property rights and a desire to encourage the economic growth, and you acknowledge the tension there?-- Yes.

1

And the concluding sentence finds that, "this affects the adoption of designated flood levels and leads to inconsistencies throughout the State"?-- Yes.

10

How do you get to that final point? Why does that tension lead to that?-- Well, depending on, I suppose, geographically where you are in the State it's more difficult for some local governments to set a higher flood standard on the basis of available developable flood-free land, so the higher standard you go for the more you constrain development in your area if you are in a particular circumstance where, you know, a lot of the area's flood-prone anyway.

This paper goes on to conclude that, "Guidelines are regarded as insufficient to address these issues without some form of imperative. Local governments generally are not incorporating existing guideline best practice into planning documents"?-- Yes.

20

Was some form of imperative considered?-- Well, the imperative that the discussion paper proposes is a State policy that requires local governments to prepare floodplain management plans. That's essentially the bottom line, I suppose.

30

And these issues that are raised here under 5.3.1, were they discussed, to your knowledge, in the development of SPP 1/03?-- Yes - well, they - the developers of SPP 1/03 would have been aware of the same issues because there was a fair bit of cross-fertilisation, I suppose, between the two projects. We had - obviously I was part of the government advisory committee on the SPP-----

Yes?-- -----and you had DCS people on the steering committee for this paper.

40

Were you a part of the government advisory council in relation to SPP 1/03?-- Yes.

You were representing DERM on that body?-- In the end, yes.

You had done significant work in relation to flood mitigation in relation to this paper?-- Yes.

50

Did you bring these type of issues to the table and to the attention of the drafters of SPP 1/03?-- I would have, yes.

COMMISSIONER: Mr Cuerel, can I ask you, you don't explicitly say this but there must be a conflict between the fact that a council by allowing development has a greater rate base so that there's an economic interest in having development-----?-- That's-----

-----and the sort of constraints you're talking about. You don't say that in so many words but it must be a factor?-- That's the implication of the first dot point, yes.

1

Well, it's delicately expressed, all right?-- Well, this was a public discussion paper. It was seeking support from both other State Government agencies and from local government for the introduction of a State policy, so, yes, it was delicately put.

10

MS WILSON: Do you wish to be more blunt?-- Okay. Can I be? I don't know-----

Yes?-- Well, no, it - for - for the State policy the proposed State Flood Risk Management Policy to get up, if you like, it would require support not only from some State Government agencies that probably were less affected by it but also from local governments that would be more affected about it. They would - it was aimed at local governments doing more work in the floodplain management area. So, you know, these issues were canvassed in sort of - what's the word - delicate - delicate language, I suppose.

20

You say there's more work that can be done - that could be done by government agencies?-- Well, the policy paper talks about actions at State Government level as well, yes.

Okay. If I could just take you to page 34 of that document. You'll see a quote in the third paragraph?-- Yes.

30

And the quote is in relation to flood studies, and this paper acknowledges that it would be unrealistic to expect the total cost of flood studies and mitigation that are essential for floodplain management to come from local governments?-- Yes. Alone, yes.

Alone. Just for local governments?-- Yes.

Was it considered who would be the best body to fund such floodplain studies?-- It - it would have been envisaged that there would be some form of government subsidy, be it State and/or Commonwealth. I might add, about the same time as this paper was being developed the Commonwealth was in the process of initiating subsidy programs that would assist in funding local government flood studies, for example.

40

Okay. Was DERM going to play a role in the flood studies?-- In the actual conduct of the flood studies?

Yes?-- Only if by way of providing some sort of assistance in terms of data that the department already had, but, no, essentially the flood studies would be the responsibility of the local government with the funding - the main assistance from State Government being - and Commonwealth Government being the funding.

50

But it was acknowledged then at the time of this paper, when it was written, that even then it was going to be unrealistic for local governments to do it by themselves?-- Yes.

1

Well, we'll come back to that in one moment. The SPP 1/03 is a document that you're well aware of and you did sit on the Government Advisory Committee-----?-- Yes.

-----as DERM's representative. First of all, if we can just set up what DERM's role is in the administration of the SPP 1/03. And there are some documents that I wish to take you to that are attached to RKC09, and I'll provide this bundle of documents to you-----?-- All right.

10

-----so that you don't have to trawl through your exhibits?-- Yes.

Can you see that this is a part of RKC09?-- Mmm-hmm.

It's a letter dated the 2nd of February 2010?-- Yes.

20

It is from the Department of Environment and Resource Management?-- Yes.

And it is to Emergency Management Queensland?-- Yes.

And it attaches a draft memorandum of understanding?-- Yes.

Between those two government agencies?-- Yes.

30

And this is a draft memorandum of understanding, I understand - as - I appreciate. If - go to page 4 of that draft. It sets out the role of DERM?-- Yes.

The second dot point refers to the technical assistance that DERM would provide?-- Under 6 or under-----

Yeah, "DERM will"-----?-- Yes.

-----"consult with DCS on requests"-----?-- Yes.

40

-----"provide advice," then talks - sets out some technical assistance?-- Yes.

And also will provide advice on any relevant legislative or policy changes to flood matters?-- Yes.

Now, the role that DERM plays in policy changes to flood matters, can you assist me with that?-- Well-----

50

The role, if any, now, presently?-- What happens right now?

Yes?-- In the absence of - sorry, let me start again. I suppose what was envisaged there was the assistance that was provided in the original establishment of SPP 1/03. At the time that this was put together there wasn't a lot happening on the DERM - there's not been a lot happening, I should say, on the DERM side of the fence as far as the State Flood Risk

Management philosophy goes so that would have been aimed at any advice or assistance in-----

1

You have to speak up, Mr-----?-- Sorry. That would be referring to any advice or assistance in the further development of SPP 1/03, essentially.

Okay. Further, the final - or the second final dot point is that, "DERM will participate on steering committees as required for NDMP funded flood studies"?-- Yes.

10

What's the role of DERM in that?-- When invited we make someone available to sit on a local government - if a local government establishes a steering committee for their flood study, which they sometimes do, sometimes don't, we'd make someone available to advise them on the course of that flood study, I suppose, mainly in terms of scope and extent, whether they're looking at the full range of floods or whether they've constrained themselves to a lesser range of floods, and that sort of general - general strategic direction, I suppose.

20

And does this still occur?-- It hasn't occurred to a great extent recently but we're still available for that.

Is there any reason why it hasn't?-- Generally it's a reactive role so we don't sort of - where we're invited to participate we get involved, if we're not invited to participate we don't get involved.

Okay. So it's just because not as many invitations have been coming-----?-- That's correct-----

30

-----to you?-- -----yes.

And the final point that is particularised in this document is that, "DCS acknowledges that DERM will support the equivalent of one FTE to these activities"?-- Yes.

One full-time employee?-- Full-time equivalent. You're close, yes.

40

Okay. "to these activities". Okay, I'll just - now, if we can keep on moving. If we get past that draft document we can see a letter which should be in that bundle, which is the 1st of March 2010, dated 1st of March. It is from Emergency Management Queensland-----?-- Yes.

-----to the - to Miss Debbie Best, the Deputy Director-General at DERM. In fact, I apologise, I don't need to take you to that, I need to take you to the next letter, which is the 29th of June 2010. I apologise. This is a letter from Emergency Management Queensland to Lindsay Delzoppo, the Acting Assistant Director-General of DERM. Have you got that document?-- Sorry, which - sorry, what was that?

50

Twenty-ninth of June 2010?-- Yes.

Thank you. Now, this - Emergency Management Queensland is responding to DERM and saying rather than a memorandum of understanding, "our preference is a simple exchange in letters of consent in continuing the current service arrangements"?-- Yes.

1

So was there - what's the bottom line? Was there a memorandum of understanding reached or does it proceed on a - letters of consent between the parties?-- There's never been a memorandum of understanding finalised. There's - attempts have been made but they have never been finalised for one reason or another, and, yes, continuing it's on on this basis of this letter.

10

In your view does there need to be a memorandum of understanding or is this a sufficient and practical way to continue the relationship? And be blunt?-- It's a bit of a double-barrelled answer. It's a satisfactory way to continue the relationship assuming both sides of the agreement - both sides are happy with how historically it's been done. There's, I suppose, recently been some debate about changing the level of intensity of roles and that probably, you know, involves more negotiation.

20

Can you tell us about that debate?-- Basically along the lines, I suppose, of expectation from DCS about the level that we will go to in terms of checking information that supports the flood information - the flood components of the SPP - of planning schemes.

30

And are DCS expecting DERM to-----?-- To go a lot further.

Rather than you just see it as a prima facie document and-----?-- That's right.

-----see whether it ticks a box?-- Essentially, yes. We've-----

And what box is that that it ticks?-- Well, we look at the material coming in as part of the planning scheme, see whether they've actually identified a defined flood event, what that defined flood event is, whether they've represented it in a map context in the planning scheme, whether that map has enough detail on it to be sort of useful in terms of identifying properties and what's affected, whether the other elements of the scheme address the flood constraints, like a flood development code, for example, but we don't sort of drill down below that in terms of determining the accuracy of any flood models that support that information.

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50

For SPP 1/03 to practically work should DERM be doing that?-- "No", I suppose, is the short answer. Essentially - it essentially relies on the professional expertise of the engineers that have been used by council to undertake the modelling-----

Does DERM look at that methodology and examine that methodology to see whether that is an appropriate methodology to use-----?-- Only at a fairly strategic level in terms of the cases, perhaps, that have been analysed and whether they appear to be heading in the right direction. We don't have the resources or perhaps even the expertise to actually redo the modelling, if you like, which is sort of where that starts to head.

1

So, Mr Cuerel, am I being too blunt by saying does DERM really just have a superficial look at these - this material that comes to you?-- I wouldn't - I think you are. I wouldn't call it "superficial", I'd call it a fairly strategic level of advice. It's not a - not an absolute detailed check and I don't think - I don't believe it should be, either. We shouldn't be taking away any sort of professional responsibility from the people who have done the underlying modelling.

10

To protect the State's interests should there be an agency looking at this to make sure that these flood studies are accurate and right for the circumstances of that area?-- I suppose it - "yes" but with qualifications. I suppose it depends to what extent people are going to double-check what someone else has done. Probably setting up some guidelines and some sort of fairly detailed direction as to how things should be done but whether - whether then that should be sort of rehashed by a second party, yeah, I'd say "no" to that but-----

20

Has there been any problems that you know of caused by this process of not being done?-- Not that I'm aware of, no.

30

DCS are wanting you to do it?-- They have been arguing in that direction, yes.

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DERM has-----?-- In recent times, I might add.

DERM is resisting that?-- Essentially, at the moment, yes.

Are DCS giving you reasons about why it should be done?-- No.

And in that bundle also you will find an undated letter, but - sorry, you are going to get this document now. It is also a part of RKC09. For people trying to find their way through that, you will see that in the last pages of that exhibit. This is a letter from department - DERM to Mr Bruce Grady, the Acting Chief Officer of Emergency Management Queensland?-- Yes.

10

This letter sets out that it agrees what DERM will do to support DCS-----?-- Yes.

-----and it sets that out. If we can go over the page, we see that OWSR is discussed?-- Yes.

20

And that is the Office of Water Supply Regulator?-- Well done, yes.

The Office of Water Supply Regulator has been encouraged to provide representation and participate in policy type activities?-- Yes.

And refers to statewide and national forums discussing flooding?-- Yes.

30

And possible government actions required to better manage flood risks?-- Uh-huh.

Now, the OWSR, that falls within DERM, does it?-- Yes, it does.

And it is - OWSR has an operational focus, does it?-- That's correct.

40

And because it has that operational focus, the DERM considers that it shouldn't participate in such activities?-- That's correct.

Why is that?-- Because there's, I suppose, been a senior management decision made that - well, what the letter says there, OWSR is an operational part of the department, and policy issues should be dealt with by other groups. And I think it names there one of the other groups.

50

But because - one would think that because it has operational experience, it could add valuable information and experience to these types of forums?-- I couldn't argue with that.

And do local governments participate in these types of forums in trying to develop and hone their floodplain management studies?-- I believe their either local governments, or perhaps representatives of local governments, like the LGAQ

would participate in those sort of forums.

1

So the matters that are being discussed in these types of forums, particularly do relate to SPP 1/03?-- They have spinoffs for SPP 1/03. I mean, one of the topics at the moment is a national standardised approach to flood studies, for example, which would have a spinoff for SPP 1/03.

And DERM, who has got operational experience in these matters, through to the OWSR?-- As I've previously described, to that extent, yes.

10

But DERM, as of the - well, an undated letter, but it is after 29 June 2010, regarded that it should not participate in this?-- OWSR should not participate, that's correct.

And that is not based on that it can't contribute; it is based on-----?-- It is based on the area's responsibilities, yes.

So is that just a bureaucratic carve up?-- I suppose it is a division of labour, yes.

20

Mmm. Well, OWSR can contribute to these types of studies and to these types of forums?-- Through the areas of the department that sort of formerly had that responsibility, I suppose.

But OWSR could add, in your opinion?-- Do we have the capacity to add?

30

Yes?-- Given - given the background of the existing staff in OWSR, yes.

Okay. And is there another document attached to that? It's a letter dated 2 November 2010?-- Yes, from EMQ.

This is from EMQ to - EMQ to DERM?-- Yes.

Mr Terry Wall, the Associate Director-General, dated 2 November 2010, and this picks up on that last letter that "The Office of the Water Supply Regulator, as an operational body, no longer feels it able to represent State interest at national forums"?-- That's correct.

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And it also makes it apparent that Queensland is, therefore, no longer represented on this particular body?-- I'm not sure that's totally correct. There were-----

Could you assist us, if you can, whether Queensland is represented on these bodies?-- Well, I believe - I believe that around the same time there was a proposal from our Director-General to the Director-General of Local Government Department that they take up the mantle, if you like, of representing the State at national forums on policy issues. At least take up responsibility for policy issues including representation at national forums.

50

Do you know whether that's happening?-- I believe it is.

COMMISSIONER: Which division of that department? Who in particular, do you know?-- I am not sure of the division, Madam Commissioner. I understand Michael Papageorgiou would be the contact.

MS WILSON: And is that something that's recently occurred or has it always been in existence?-- Well-----

Well, as at 2 November 2010, Bruce Grady is of the belief that Queensland is no longer represented?-- It was probably - it may be around that time, maybe just after that date, but there is an exchange between my Director-General and the Director-General of - sorry, even our Minister, and the Minister, I think it is, about a swap of responsibilities or handover of responsibilities to the Local Government Department for policy issues.

10

Mr Cuerel, if I could take you to paragraph 7 of your statement, this deals with DERM's role with respect to the planning schemes of Brisbane, Ipswich, Bundaberg and Emerald?-- Yes.

20

And you set out DERM's involvement in each of those planning schemes - in very short form?-- Yes.

When it says no - Brisbane City Plan, no record of receiving the plan for comments being provided by WMNU or OWSR to DCS on the Brisbane City Council City Plan, have you gone through your documents and you can find that - I want to make sure that this is right, how I understand it - that DCS hasn't communicated with your department in relation to this?-- That's right. That's what we found from our records, anyway, yes.

30

So there was no communication from DCS-----?-- No request from DCS to look at the Brisbane City Plan under-----

No request to DERM about the Brisbane City Plan?-- Yes.

40

The Bundaberg City Plan-----?-- Yes.

-----there has been some record of comment. In fact, you've attached some emails and correspondence to your statement?-- That's correct.

And if I can just take you to that bundle quickly? You will find it at RKC05, and that's a smaller bundle, so you might be able to find that?-- Yes.

50

Now, Bundaberg Regional Council proposed a defined flood event of the 2 per cent AEP flood, or Q50?-- That's correct.

And DERM had a look at that?-- Yes.

And that is - the defined flood event is as it stands of Q50?-- I believe so.

Okay. And that email, RKC05, sets out the reasons why that should occur?-- That's correct.

1

Now, just in some general terms, you provided some advice on this, and there is another email in your addendum statement that we found that's the reply to that?-- Yes.

In general terms - and you appreciate the reasons given by the Bundaberg City Council-----?-- Yes.

10

-----for wanting a Q50, and in summary they are extensive flood warning system, long lead times before flooding from river, the community acceptance of a historical flood, the 1942 flood?-- Yes.

Are there any other reasons that you could think of in other planning schemes where you would be looking at accepting a Q50 or a less than Q100 AEP?-- Oh, I think in my response there I nominate some of the things that should be - some of the boxes, I suppose, that I believe should be ticked before a lower than Q100 standard should be accepted, and they are things like community awareness and understanding of what risks were actually being accepted on their behalf by the council. So that generally would be the circumstances, I suppose, where perhaps a lower standard might be acceptable, where it was clear to everybody affected that that's what was happening.

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Are you referring to an email that you sent to David Haydon on 20 November 2003 which was part of annexure RKC13 in your addendum statement?-- Yes.

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I will just show it to you. You have got the document there but I will just show it to you?-- Thank you.

You provide the following comments: and it seems to be the theme from your email is for everyone to know the consequences of their decision?-- That's correct.

In summary, you don't think that you can knock back their choice "but we can ask that they know the consequences"?-- Basically, yes.

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Now, in terms of the technical detail that DERM provided in relation to assessing a Q50, we've talked about before that you don't drill down into the figures in the hydrology per se?-- No.

You just look at it and see whether that's a sensible or practical solution?-- Essentially. If we're aware of some further information that appears to be ignored in the preparation of the flood maps, for example, if we have internal information through our gauging station, that we can access through our gauging station/hydrological records, if we know there has been a flood study that looked at a wider range of issues, perhaps, than the council is presenting in their planning scheme, we'll bring that into the advice as well. But excluding all that, basically we rely on the documentation

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that's presented to us and how it appears to reflect the SPP 1/03. 1

If we can just go back now to paragraph 7, and you refer to the Ipswich planning scheme. I, again, want just to make sure that I'm understanding what you're saying. There is no record of receiving the plan for comments. So DCS hasn't - is it the case that DCS hasn't - the Department of Community Safety has not sought DERM's input into this?-- That's correct. That's what our records indicate. 10

Now, in relation to the development of SPP 1/03, we talked about that you were on the committee?-- Yes.

And so you were well aware of the contents of SPP 1/03. Now, there was an internal draft State Planning Policy for the Natural Disaster Mitigation, and that was attached to Mr Gary Mahon's statement, which is Exhibit 534. If I can take you to one attachment of that, which is GLM35?-- Thank you. 20

Perhaps while we're there, could you also provide the witness with GLM36? There was a government advisory committee workshop on the Thursday, April 2002, which we can see from GLM36, and you represented the Department of Natural Resources and Mines?-- That's correct.

So then if we could go to GLM35, and it was this document that was discussed at this meeting, was it?-- That seems to be the case. 30

Okay?-- It is a little bit hazy for me at the moment.

Okay. Well, perhaps if these documents can clear the haze, there is a "specified natural hazard prone areas" on page 11. And this is, as I see it, the workshop trying to work out what would be the best hazard area; how to define the hazard area, is this the case?-- Essentially. I suppose my recollection is that the context of all this was - there were a few things surrounding it. One was the time-frame that the SPP was being developed in----- 40

Stop there. Why is that important, the time-frame?-- Well-----

Okay?-- SPP - State Planning Policies were instruments under the Integrated Planning Act. Integrated Planning Act had been brought in I think two or three years earlier - I am not exactly sure of the time-frame - the late 90s, anyway, I believe - and local governments I think had something like eight years to produce a compliant planning scheme. The SPP project - SPP 1/03 project, I should say, got off in this respect to a bit of a late start in terms of ensuring that those planning schemes could take it into consideration. So you had planning schemes early on that were sort of well down the track of being - IPA planning schemes, I should say, that were well down the track of being developed before the SPP actually came into effect. So timing was an issue because whatever was put into the SPP had - for the SPP to have some 50

impact in that reduced time-frame had to be practical in terms of being implemented. So it couldn't take extended periods of time before you could actually - you know, studies and all the background stuff before you could actually implement the SPP. The other context was cost. I think the DCS were very cognisant of cost/impost to local government in implementing the SPP, so any requirement for extensive and potentially expensive studies were something they were sensitive to. I suppose they are the two major contexts.

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The five options that are set out on page 11 and page 12 of this document, the differences really are in setting defaults, aren't they; what is the default?-- Look, I've only had a chance to sort of reacquaint myself with this in the last 12 or so hours, I became aware of this, but my quick reading is that the main difference is the level of detail. The first option actually - it actually espouses, I suppose, a full flood risk management approach, which requires the agency, the local government or whoever, to analyse the full range of floods, come up with an understanding of the costs and benefits associated with picking any particular defined flood event, or even multiple defined flood events, and the subsequent options appear, on my rereading of this recently, to be sort of scaled-down versions of that approach.

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And if we can go to GLM36, which is the minutes of the meeting?-- That's correct.

And on page 3 of that document we can see that you outlined option 1 at the meeting?-- Yes, that's what it says.

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And was it the case was this the only option that you outlined? Was that your view, that was the option that-----?-- I wouldn't - I wouldn't disagree with the minutes. If that's what I did, that would have been what I did.

Well-----?-- As I say, looking at the options, it would appear option one was the most extensive option and all the rest were sort of reductions of that.

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The document that you worked on and which we went through previously-----?-- The draft.

-----which was the study that you did for DERM that was attached to your statement, the Draft State Mitigation Policy Discussion Paper?-- Uh-huh.

And I took you to part of that document which outlined the real problems that you had-----?-- Yes, yes.

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-----with local governments achieving a proper flood study?-- Yes, yeah.

And I asked you about was these issues raised - these issues would have been concerned to you when outlining option one and the problems that that presented?-- That's correct.

Now, are you aware what the SPP 1/03 - actually what option was used?-- The - well, the SPP in the guideline indicates a Q100, I think, as a sort of fallback position for the State Government, yes.

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The policy says that the one per cent Q100 is a generally appropriate flood event, but the local councils can implement different defined flood events that are appropriate for local conditions?-- Yes, and I think the policy also says that the local government should undertake a full flood plan management type approach.

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Which would be more in line with option one?-- Which would be more in line with option one, that's correct.

And that, in effect, recommends that a single flood event to be incorporated into the planning scheme, which seems a greater burden than some of the options that were discussed, or that were on the table?-- I'm sorry, I don't quite follow you there.

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We talked about the options that were being discussed?-- Yes.

A single flood event to be incorporated into the planning scheme is perhaps narrower than some of the options in the initial draft?-- Yes, yes.

And is that something that when starting again, if you could - with your experience now in looking at flood mapping, what would be your preferred option now?-- I think my preferred option was always the full approach. As I say, there were constraints at the time, one of them being a time-frame and the availability of resources in local governments to actually undertake the extent of studies they needed to and still come in on - with an IPA compliant planning scheme within the time-frame that the legislation required. There was something else there.

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Is it setting the bar too high or is it the bar that is required to be met?-- Sorry, which one? The Q100?

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Option one?-- No, it is the bar that should be aspired to, I suppose, and there were sort of some pragmatic considerations in terms of how to raise the game, as it stood at the time, towards that, but, you know, acknowledging that doing a full-house, if you like, version would be onerous.

Can I ask you about some other options for mapping flood areas in terms of land planning schemes and the use of land planning schemes, taking into account flood mapping-----?-- Yes.

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-----and ask for your opinions as to their usefulness. What about mapping zones of risk, that is high, medium and low, not in terms of flood hazard but in terms of AEP? You might think Q100 might be medium risk, over Q100 low risk, below - and I'm talking in very large broad concepts?-- It is - I am getting into jargon here, I apologise. There is an issue here with the term "risk", "hazard", "likelihood" and "consequence".

Flood risk is generally a result of likelihood, which is essentially what AEP is, the likelihood of a flood occurring. Flood hazard is generally the characteristics of the flood, whether you have shallow, slow-moving water, deep, fast moving water, or something in between. The consequences are usually a combination of the flood hazard and things that are impacted by the flood hazard, like people and houses and property. So when you talk about low risk, high risk and medium risk, it is usually a combination of those; it is not the AEP alone. And I know in sort of common language, "risk" and "likelihood" are often interchangeable, but in the sort of flood risk management speak, risk is actually a combination of the likelihood. So it is not just frequency of inundation, it is also consequences. So when you start talking about AEP .5 per cent being low risk and AEP .1 or 1 being high risk, that's not necessarily the case. It may be that at a 1:200 year flood, something that was quite acquiescent and mild-mannered becomes a flow path that's actually quite hazardous.

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To get this flood mapping more than one dimensional and to incorporate these factors, does that add to the expense and to the difficulty?-- Not - yes, it does, but not disproportionately, I suppose. Generally, these days - and we are talking now some ten years since the SPP was first produced - generally these days with model power and computer power, it is not that difficult to do multiple runs of multiple cases. Most of the effort is in the data collection still and sort of generating the design rainfall, et cetera.

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And in your emails to look at whether Q50 was appropriate for Bundaberg, one of the major factors you said was as long as they know the consequences. So it is about people understanding the area they live in?-- That's correct.

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This type of modelling, that is more than one dimension, creates the best understanding for people to understand the area they live in?-- That's correct, because it takes you past the planning level to the emergency response type areas, where if you set a defined flood event of 100, 150, whatever it is, there is always a bigger flood and you need to know what that's going to impact on and how you are going to manage it.

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And also is essential for planning as well?-- Yeah, well, I think the SPP envisages that critical infrastructure, for example, be placed in lower risk areas on the basis of higher - less frequent floods.

So all of this information means that better decisions could be made for residents and decision-makers as well?-- That's correct.

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And to your knowledge this would not require a significant amount of extra work?-- Not these days, no, because I think a lot of the computer models, the numerical computer models available can be run fairly quickly once they're set up. There is a lot of digital information these days that wasn't quite so common ten years ago. So, yes, these days it is not

that onerous now to run extended analysis.

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I don't know whether there is any City Plan that you are more comfortable with discussing, but say, for example, in the Brisbane area could such a model be - exist quite easily with some future work?-- A lot of - I am aware that a lot of modelling work's gone on in the Brisbane area, and Brisbane has a number of catchments and it has to be modelled on catchment basis. I imagine the Brisbane City Council is probably one of the councils that are keeping abreast of model technology and taking advantage of it as it becomes available.

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I am just wondering if you can assist, taking this concept from the hypothetical to the actual, and whether there is any area or planning scheme that you know that this could - that you know the parameters of and that this could work easily with little - with little additional work?-- I can't name one, no, but the characteristics would be someone who's got a relatively recent model set up, probably a simple scheme with maybe only one catchment. It shouldn't be too hard to sort of upgrade their analysis, if you like, to cover the full range of floods, et cetera.

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In looking at a flood map, do you see any benefit for the flood map to recognise different levels all on the one map? For example, Q20, Q50, Q100, Q200?-- Yes, I think so, yes.

Why-----?-- That's often what we recommend to DCS. I suppose for some of the reasons I've mentioned, particularly levels beyond the defined flood event, because it is an awareness exercise, in terms of people realising that just because a planning level has been chosen on whatever basis, there will still be larger floods. It is also important for Emergency Services and the local Emergency Services to have that information so they know how to respond to larger floods. It is probably also important to know what happens. As I mentioned earlier some areas can actually change their characteristic as flood levels increase, they might go from a fairly innocuous sort of just sort of wetting and drying, if you like - I know that still damages properties, but then they go from flood storage to flood conveyance, which means you get dangerous velocities going through some areas that may not at lower flood levels.

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Finally if I can take you to your second statement which addresses stormwater management issues?-- Yes.

And just quickly at page 4 of that statement, you set out your views in relation to various flood mitigation devices?-- Yes, I was asked to comment on those four devices, if you like.

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Detention basins?-- Yes.

And you set out the use of detention basins in that statement. When designing detention basins, is it taken into account that in times of flood they may themselves overtop and exacerbate flooding?-- Yeah, and that's the point I tried to make, particularly where there is multiple detention basins and the

interaction of those detention basins, and the system has to be considered not just one on its own. One of the - I suppose one of the potential problems that we have is often the detention basins are a requirement for a development, let's say. I think there is the requirement of a no worsening or no increase from predevelopment discharges to post development discharges. And if that happens in a sort of uncoordinated or piecemeal fashion, you can have these individual detention basins that work on their own, but when you get them all in concert they can have an adverse effect on a particular run-off event.

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Are detention basins designed to a standard to withstand flooding to a certain level? Are they Q200, Q100, do you know?-- They're generally designed to meet government requirement about no worsening of run-off at a particular flood level, so it might - I think it's - I can't recall, but there is a standard in terms of what point they're supposed to minimise - sorry, maintain run-off within the same range that it was predevelopment. They're also generally designed to meet whatever the local government's flood design standard is for subdivisions.

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Thank you very much, Mr Cuerel. They're all the questions I have to ask you. However, I will also tender a statement of Peter Artemieff. Mr Artemieff also addresses some of the matters that have been raised in your statement.

COMMISSIONER: Exhibit 731.

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ADMITTED AND MARKED "EXHIBIT 731"

COMMISSIONER: You will go last, Mr MacSporran?

MR MacSPORRAN: Yes, Commissioner.

COMMISSIONER: Mr Dunning?

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

COMMISSIONER: Thank you. Ms McLeod?

MS McLEOD: Yes, just one matter, thanks, Mr Cuerel. You were asked some questions about the composition of the National Flood Risk Advisory Group and taken to some correspondence from early November of last year?-- Mmm-hmm.

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Were you aware at the meeting of that group held in Brisbane in mid-November last year that three government departments were represented by Mr Michael Papageorgiou of Department of Infrastructure, Mr Chaplain, who's mentioned in the letter, of Emergency Service, and Ms Williams from DERM?-- No.

Okay. Are you aware that Mr Papageorgiou is now the primary contact for that group?-- I believe that to be the case, yes.

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So that's the current situation?-- As I believe it, yes.

Thank you.

COMMISSIONER: Mr MacSporran?

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

MS WILSON: No further questions. May-----

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COMMISSIONER: Thanks very much, Mr Cuere1. You are excused.

WITNESS EXCUSED

MS WILSON: Thank you, Madam Commissioner. I call
Richard Robins.

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RICHARD PAUL ROBINS, ON AFFIRMATION, EXAMINED:

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MS WILSON: Is your full name Richard Paul Robins?-- It is.

And you provided a statement with some exhibits including photographs to the Queensland Floods Commission of Inquiry?-- Yes, I have.

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Can I show you this document, please?-- Yes.

That's your statement?-- That is.

Madam Commissioner, I tender that statement.

COMMISSIONER: Exhibit 732.

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ADMITTED AND MARKED "EXHIBIT 732"

MS WILSON: Now, you have got a copy of that statement in front of you?-- Yes.

That is your evidence, so if I could just take you to a couple of matters that you raise in relation to that statement? You reside with your wife at unit 2, 37 Duncan Street, West End?-- That's correct.

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And your residence is a ground level, two storey townhouse?-- Yes.

And it looks directly over Riverside Drive to the Brisbane River?-- That's right.

And how far away from the Brisbane River would it be from your unit to the river?-- Probably 50 metres.

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Now, you describe in your statement that on the 13th of January the Brisbane River broke its banks?-- Yes.

And flood waters entered your unit?-- Yes.

Now, do you know what Q100 is in relation-----?-- Yes.

-----to the level of your unit?-- Q100 is I think 5.4 AHD and our unit - the living level of our unit is 5.9.

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Okay. Your level is two units. The one downstairs, is that the garage?-- There's a garage and then a living area, and then bedrooms on top, so it's in a sense three levels.

Now, during the floods your garage was inundated with water?-- That's right.

And about 43 centimetres of water-----?-- Roughly.

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-----came up into your living area?-- Into our living area, yes.

So that it was over the Q100 level?-- Yes.

Now, when you purchased your property, did you undertake any studies in relation to Q100?-- Yes, I did. I looked at the Brisbane City Council website and also got the document that was in the submission that was the print-out that you get-----

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Yes?-- -----illustrating the building heights with reference to Q100 and Q50.

Now, you refer in your statement to the concept of Q100?-- Yes.

And your recommendation is that it should be abandoned?-- My recommendation is that for me as a resident in that - living in that area, there were two problems I had with it. The first was that it was inaccurate, because this flood, the 2011 flood, was less than - supposed to be less than - roughly a metre less than the '74 flood, but in our place it was, in fact, a metre higher. So, it got up to roughly 6.4 metres. So, the Q100 for me meant nothing, because it was inaccurate.

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And-----?-- Sorry, just-----

Yes?-- Sorry, the second point about it was - is that if you're sitting in a residence and there's a flood coming, there's just no way in the world that you can understand, even though you listen to the radio and you are getting advice from a number of different sources, it means nothing if there's no reference points available for you to assess rise of the flood waters.

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You refer to the existing mapping provided by the Brisbane City Council?-- Yes.

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And it's your belief that it's inaccurate and out-of-date?-- Yes. I have since got a revised one which actually has our place below the advisable building height. So, they have revised it already.

Okay. Is there any suggestion about - you say that Q100 should be abandoned or at least significantly modified. Have you got any suggestions what could replace it?-- I think people have to understand that there are several factors, one is that floods very dynamic and they vary from time to time and from place to place. It's not the same, it's not a repeatable event, it's always different because there are always a series of different variables to go into those floods. So, for example, you'd - we ask the question why did our place flood when, in fact, this flood was less than '74 but Q100 - and it was higher than Q100 and the only conclusion we could come to - we had the unit surveyed and the - it was a new property and it, in fact, was built on at 5.9 meters,

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which it was supposed to be, so it wasn't as though the developer had made a mistake and made it lower. The only conclusion that we could come to was that between the Port Office, where the floods are measured, and our place there'd been a series of impediments through development that had, in fact, caused the water to back up and that backing up had altered the flood picture totally and that - the impact of that, as far as I can - and it's only a very sort of amateur assessment - is that that flood - the impact of things like bridges, the cultural centres, rowing sheds, all those kinds of developments - and mangroves is one example that I have given-----

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Mmm?-- All those have contributed to the backing up of flood water and changing the levels further up. Now, if you are going to have a system like the Q100 that you want to apply, it has to be constantly - these developments that you put in in the flood plain have to be constantly factored into any modelling that you might make, and it just seems to me that most of the modelling that's done is post-hoc, it's after the event, so that Brisbane City Council, I believe, has made a whole series of measurements and through the flood - over the flood and has got quite accurate flood data and that's the information that they have added now to the flood map, but my point would be that if they - if people continue building in the flood zone, then that information will also be useless unless any development in the flood zone is factored into that mapping, it's pointless.

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Thank you, Mr Robins. I have got no further questions.

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COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: Nothing thank you, Commissioner.

MS McLEOD: No questions, thank you.

COMMISSIONER: Thank you very much, Mr Robins, for your time. You are excused.

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WITNESS EXCUSED

MS WILSON: Thank you. Ms Kefford is going to take the next two witnesses.

MS KEFFORD: The next witness is Mr Matthew Morgan. I call Mr Morgan.

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MATTHEW DAWSON MORGAN, SWORN AND EXAMINED:

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MS KEFFORD: Is your full name Matthew Dawson Morgan?-- Yes.

You have provided a statement to the Queensland Floods Commission of Inquiry dated 11 September 2011. Can I ask Mr Morgan to be shown that statement? Is that a copy of your statement?-- Yes, it is.

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I tender that document.

COMMISSIONER: Exhibit 733.

ADMITTED AND MARKED "EXHIBIT 733"

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MS KEFFORD: Now, on page 1 in the fifth paragraph you make reference to another statement of yourself, dated the 5th of April 2011. Is that also a statement which you have provided to the Queensland Floods Commission of Inquiry?-- Sorry, can I have that one again?

In the statement that you were just shown in the fifth paragraph it makes reference to a statement of yourself, dated the 5th of April 2011. Is that another statement that you have also provided to the Queensland Floods Commission of Inquiry?-- Yes, I have, yes.

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Can I ask you to have a look at that document, please?-- Yes, that's-----

Is what you have just been shown a copy of the other statement that you provided-----?-- Yes, the original statement, yes.

I tender that document also.

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COMMISSIONER: 734.

ADMITTED AND MARKED "EXHIBIT 734"

MS KEFFORD: Now, you live at unit 9, 13 Bridge Street, Redbank?-- That's right, yep.

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And that's also known as Jabiru Place; is that correct?-- Correct.

You have lived at Jabiru Place for approximately six years?-- Yes.

And you are the chairperson for the body corporate of Jabiru Place?-- Yes.

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You have held that position since 2007?-- Yes.

And there are 44 units at Jabiru Place?-- Forty-two.

Forty-two units. Could I ask you to have a look at an aerial photograph, please? There's a black Nikko line around an area on the aerial photograph. Does that depict the area where Jabiru Place is located?-- Yes.

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I tender that aerial photograph.

COMMISSIONER: Exhibit 735.

ADMITTED AND MARKED "EXHIBIT 735"

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MS KEFFORD: If I can take you now to the time of the January 2011 floods, during those floods 32 of the 42 units flooded?-- That's correct.

And that included your unit?-- Yes.

And during the January 2011 floods, how long was your home inundated for?-- Oh, probably about two days, but there were - the water was receding.

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And you have provided the Commission with some photographs of the damage that was caused to your home as part of attachment B to what is now Exhibit 734. If I could take you to those and get you to explain the contents to us? I will just wait. There seems to be a difficulty with bringing the photographs up on the screen. I will just ask you a few other questions while we're waiting for the photographs. At page 4 of your statement, the first statement, Exhibit 733, you say that prior to the January 2011 floods your knowledge of the adverse impacts of the flood waters would have that - the impacts that they would have on your townhouse was extremely poor, and in the third last paragraph on page 4 of your statement you tell us that at the time you were inspecting the property before you purchased it, you spoke to the site groundsman who advised that the 1974 mine was at the swimming pool but as Wivenhoe Dam had been completed that would reduce any potential flooding by 10 metres. Where is your unit in comparison to the level of the swimming pool?-- It's about 800 to one metre higher than the swimming pool area.

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And so obviously is it fair to say, then, that you assumed, based on the advice that you were given by the groundsman, that your unit would not be affected by flooding?-- That's right.

And you also told us in your statement that in terms of your

knowledge of flooding that you had viewed site plans as chairperson of the body corporate in 2007 and that you believed them to show that the flood line would not impact on any building in Jabiru Place. Is that still your understanding-----?-- Yes.

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-----of what those plans showed?-- The plans showed a flood line and that's what it was called, it wasn't called a Q20 or Q50, 100 or anything like that, it was just called a flood line.

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And have you since then received any further information about what event that flood line was depicting?-- Yes, it was a Q20 flood line.

And you have some concerns which you express in your statement about the impact of the Ipswich Motorway upgrade and the construction works related to it on the overland flow and flooding experienced at Jabiru Place?-- Yes.

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Can you tell us-----?-- We have a-----

-----what those concerns are?-- -----secondary road built at the - right next to our tennis court so it's sort of built as a dam across our normal floodway. The road is about eight metres high, so we have gone from looking across a parkland through to the Peace Park to looking at this wall of a road that is still incomplete.

COMMISSIONER: Is this the Monash-----?-- Yes.

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-----Overpass?-- That's right.

MS KEFFORD: Now, it seems like we're going to have some difficulties in terms of pulling up the photographs, but can I just ask you a number of things so that I might understand what the photographs show?-- Okay.

In terms of the photographs you supply, is your home a two storey home?-- Yeah, it's a two level townhouse.

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And was the flooding experienced in both the ground storey and the upper storey of your home?-- I had approximately 4.4 metres of water which was about chest height upstairs.

And so obviously the photographs that you have provided would show quite extensive damage to-----?-- Yeah, kitchen, the lounge, downstairs was completely gutted, and upstairs, all three bedrooms and bathroom and toilet was all destroyed.

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COMMISSIONER: What you are looking at the attachment B to Mr Morgan's statement, is it?

MS KEFFORD: Yes, attachment B to his statement, Exhibit 734.

COMMISSIONER: Thank you.

MS KEFFORD: And within those photographs, and I believe you

have a hard copy-----?-- Yep.

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-----photograph number 70 at page 6 shows a car. Was that car still at Jabiru Place at the time of the flooding, was it?-- Yes, it was. That's outside unit 28.

So, that's not your car?-- That's - no, no, I drove my car away.

Do you know why that car - why there was difficulty in getting that car away from the site?-- The lady was at work and when she came home she was unable to get to her car or her unit, so she lost everything as well.

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So, it was simply a factor of timing of-----?-- That's right.

-----knowledge of the event?-- Yep.

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

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MR MacSPORRAN: Commissioner, just to reserve our right in respect of the Main Roads issue. There is a requirement to Main Roads that's currently being put together. We can deal with this issue that Mr Morgan's mentioned as well as an issue that the next witness, Wilkinson, mentions, so that can be, if it's convenient, addressed in that way rather than directing it to the witness.

COMMISSIONER: Yes, all right. Thank you.

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MS McLEOD: I have no questions, thank you.

COMMISSIONER: Ms Kefford, do you wish the witness to be excused?

MS KEFFORD: Might this witness be excused?

COMMISSIONER: Yes. Thanks, Mr Morgan. Thank you for your time, and you are excused.

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WITNESS EXCUSED

MS KEFFORD: The next witness is Jeaneanne Wilkinson. I call Jeaneanne Wilkinson.

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JEANEANNE WILKINSON, SWORN AND EXAMINED:

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MS KEFFORD: Is your full name Jeaneanne Wilkinson?-- Yes, it is.

And you have provided a statement to the Queensland Floods Commission of Inquiry dated the 15 of September 2011?-- That's correct, I have.

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Attachment 1 to that statement was a submission which you have also prepared and provided to the Queensland Floods Commission; is that correct?-- I did that on the behalf of Jabiru Place and that was submitted much earlier on with some statements. There are a number of attachments to the submissions that were prepared on behalf of the Jabiru Place body corporate, yes.

Can I show you a copy of those documents and, in particular, in relation to your statement, if I can - when you have a look at those documents ask you to look specifically at paragraph 16 where you refer to being informed of something in December 2011?-- That's correct, my brother told me that the - that there were - my brother told me that the committee and the residents of Jabiru Place were concerned about the construction works that were being undertaken on the land adjacent.

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Yes. Sorry, can I just ask you in terms of the date, December obviously not 2011?-- No, it's 2010, sorry.

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Can I just ask that you make that correction-----?-- Certainly, sorry.

-----by hand? And initial it, if you wouldn't mind? Otherwise that's a copy of your statement and the submission referred to in your statement and the documents?-- It is, yes.

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I tender that statement and the submission.

COMMISSIONER: Is that statement, submission and attachments to submission, is it?

MS KEFFORD: Yes.

COMMISSIONER: Thank you. 736.

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ADMITTED AND MARKED "EXHIBIT 736"

MS KEFFORD: Now, at paragraph 2 of your statement you tell us that you're the sister of Mr Michael Wilkinson who is the

owner of townhouse 3 at 13 Bridge Street, Redbank?-- That's correct. He's also the treasurer of the body corporate.

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And that's within the complex known as Jabiru Place?-- That's correct.

In January 2011 the Jabiru Place Body Corporate retained a law firm that you were working at at the time?-- That is correct, Macrossans Lawyers, and they still retain Macrossans.

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And since approximately December 2010 you have been involved with matters involving Jabiru Place by attending committee meetings and generally assisting residents with legal aspects of flooding issues experienced at Jabiru Place?-- Yes, to some extent where possible and mainly the body corporate. Obviously since I'm employed by the government now I'm no longer assisting in a legal capacity.

And as a consequence of that involvement, you are aware that units 1 to 12 were filled with water from the ground floor to halfway up the walls of the first floor?-- I am, and my brother's unit was filled with water to within about 60 centimetres from the ceiling, 40 to 60 centimetres from the ceiling. The top contents of the cupboards in the upstairs rooms were damaged, were beyond repair.

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And there were other units that were also inundated to the ceiling of the ground floor and they were units 13 to 16 and 20 to 23?-- That sounds correct, yes.

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And units 17 to 19 and 24 to 33 were also inundated to halfway up the walls of the ground floor level?-- Yes, that's correct.

Now, prior to the January 2011 floods, your brother informed you that the Jabiru Place committee and residents of that Jabiru Place were concerned about the impact of construction works on land adjacent to and compulsorily resumed by the Department of Transport and Main Roads; is that correct?-- Yes, that's correct.

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They were concerned about the impact of the construction works for the Monash Overpass?-- That's correct, they'd noticed that water was banking up and the overland drainage flows were affected adversely by the construction works and there were concerns about how that would - ongoing was going - have an ongoing impact on the liveability of the block of units or the block of townhouses.

And is the extent of concerns spelt out in detail in your statement and also in the submission that you prepared on behalf of the body corporate?-- Yes, it is.

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

COMMISSIONER: Mr Rolls?

MR ROLLS: Your Honour, the State has no questions but reserves its position in accordance with what Mr MacSporran said in relation to Mr Morgan.

COMMISSIONER: Thank you. Mr Porter?

MR PORTER: No questions, thank you.

MS McLEOD: I have no questions, thank you.

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MS KEFFORD: Thank you. Might this witness be excused?

COMMISSIONER: Thank you, Ms Wilkinson. You are excused.

WITNESS EXCUSED

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COMMISSIONER: Yes?

MS WILSON: Thank you, Commissioner. I call Karl Spaleck. I understand this witness is to be done by phone evidence.

COMMISSIONER: Will that take long? Mr Glynn, you are appearing, are you?

MR GLYNN: I am, with your Honour's leave.

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COMMISSIONER: Yes, and that's for the-----

MR GLYNN: Both for the company and for Mr Spaleck.

COMMISSIONER: Right. Thank you.

MS WILSON: It appears that phone evidence is not necessary, Madam Commissioner.

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KARL WERNER SPALECK, SWORN AND EXAMINED:

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MS WILSON: Is your full name Karl Werner Spaleck?-- That's correct.

And you're the general manager of the Century Mine owned by MMG Century Limited?-- That's correct.

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And this mine is approximately 250 kilometres northwest of Mt Isa?-- That's correct.

Now, you prepared a statement for the Commission dated the 30th of September 2011?-- That's correct.

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

Madam Commissioner, I tender that document.

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COMMISSIONER: Exhibit 737.

ADMITTED AND MARKED "EXHIBIT 737"

MS WILSON: A statement has also been prepared by Mr Rob Lawrence from the Department of Environment and Resource Management and this statement refers to matters that have been raised in Mr Spaleck's statement. I tender a copy of that statement.

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COMMISSIONER: 738.

ADMITTED AND MARKED "EXHIBIT 738"

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MS WILSON: Have you got a copy of that statement with you?-- I have got a copy of that statement as well.

Okay. So, you have got a copy of your statement and you have got a copy of Mr Lawrence's statement?-- That's correct.

Can I first deal with the flooding at Century Mine that occurred during the - that has occurred at Century Mine? It's an open cut lead and zinc mine?-- That's correct.

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And can you tell us briefly how water is used in the process of extracting lead and zinc?-- So, the processing plant is normal, conventional flotation plant where you actually use water to float the zinc particles from a slurry that you form when you crush the ore and most commonly 99 per cent of the

medium in the cells is water, and that water gets reused and also then when it's above a certain limit we will discharge that into our storage facility and then the water gets decanted in the evaporation dam, and there's also excess water due to rainfall, especially in the wet seasons, that we also contain in the evaporation dam which we pump from our sediment dams across the site.

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COMMISSIONER: Sorry, I didn't get the last bit of that, which can what from?-- The other water from the rainfall events comes through our waste rock dumps and that water we contain in sediment dams. We've got 10 of them across the site. And that water also gets pumped to the evaporation dam.

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Thank you.

MS WILSON: The extraction process, the fluid that is left from that, what sort of contamination is in that water fluid?-- There is contaminants like zinc and also bits of cadmium and-----

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COURT REPORTER: Sorry?

WITNESS: Cadmium, C-A-D-M-U-I-M.

MS WILSON: Now, the amount of rainfall you received at the mine you set out in paragraph 4 of your statement, and the mine at times can discharge water into Page Creek?-- That's correct.

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And how large is Page Creek? Are we talking a large flow of water?-- No, it's only basically flowing whenever there's - during the wet season, so also shortly after rainfall events Page Creek will flow, but in the normal dry season it's basically just a run - a dry creek throughout the processing into the bigger rivers.

Does the mine suffer at all from flooding from the creeks or is the main issue, flooding, caused by rainfall on the actual site?-- Flooding caused by rainfall on the actual site.

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Now, you talked about sediment dams and evaporation dams?-- That's correct.

Are they one and the same?-- The evaporation dam is a lot bigger than the sediment dams. Sediment dams are smaller. So in my statement I talk about work that we've done to help with our water management process, and I think on point number 16 and 17 the three main dams which are situated across the site catches the water from the south-placed waste rock dump, also the north - northern waste rock dump, and those three dams basically contain all the water that comes through the rock dumps and then capture the water that gets released from at the bottom of those rock dumps. When they - when you're basically mining you put all your waste soil on top of them and then at the end of your mining process of mine closure you actually cap those waste rock dumps, so that will then stop the inundation of water coming through that and basically that's how you resolve the issue going forward with mine closure not to have any water coming through them. But when they are open you've still got the chance of the water coming through them, you need to collect them at the bottom otherwise that water will end up in your riverways, and they've got contaminants in there like small amounts of zinc and cadmium and also there is - the sulphate levels, it's normally a magnesium sulphate which will give you a higher EC value,

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which gets measured in microSiemens and that's just an indication of the salt - saltiness of that water.

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COMMISSIONER: Sorry, what does it get measured in?-- They call it "microSiemens". That's just a unit - when they put a current through the water it means the higher the microSiemens measurement is the higher the levels of salt is in the water. So normal drinking water would contain anything between zero and 500 microSiemens. Sometimes you can go up to about 2,000 or 3,000 microSiemens and then most environmental authorities will prohibit you to release anything about a thousand microSiemens. In our case it's 800.

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MS WILSON: At page 3 of your statement, and paragraph 9D, you refer to the management of the large mine water inventory stored in the evaporation dam?-- That's correct

And all mine-affected water that is not suitable for release from site is eventually transferred to the evaporation dam for storage?-- That's correct.

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How does it get released from there?-- What we do at the moment is all the water gets to the evaporation dam. In the dry season, because it's a wide open dam, so it's got quite a large amount of surface, that helps with the evaporation of it, but if you get like a big wet seasons like the last three years the amount of water that you evaporate is a lot less than what's actually flowing into the dam. And also in the evaporation dam, because it's in a natural valley there's a lot of freshwater that also goes into the evaporation dam. So it's not just your contaminated water, it's also freshwater from rainfall that's also reporting into the evaporation dam.

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So the only way that this water can be released is through evaporation?-- Through evaporation and then we've also got the opportunity to pump that water through our pipeline, which is 304 kilometres long, to our port site. There we've got a BOD plant, which is a Basic Oxygen Demand Plant, Biochemical Oxygen Demand Plant where we can treat the water, we can remove all the contaminants and we can actually discharge that water into the river system or into - for land usage for normal irrigation purposes.

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So does it go out to this plant and then come back to the mine, the water?-- No, no, you can basically discharge that water from Karumba.

From the plant. And due to the volume of water generated by the wet seasons the water in these evaporation dams has grown significantly, as you just discussed, and therefore MMG Century has had to commence substantial unplanned work-----?-- Yes.

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-----in order to address this. What do you refer to as the unplanned work?-- We had to put in a diversion channel. So in our environmental authority it stated that by the 1st of November every year we need to be below the designed storage allowance, or we call it in short the "DSA". So that limit is

the maximum allowable limit where your water level can be in the dam and that basically compensates or a one in 100 year annual rainfall event so that you won't overtop that evaporation dam and that water will then be released into the nearby creek which is just behind the evaporation dam. So in this instance after the wet season we were - the dam were pretty full but there was still a lot of capacity in there so what we did was we put a diversion channel in to divert all possible clean water that can get into that dam and by doing that you actually - reduces the amount of water that can come into the next wet season through your water balancing models and then by doing that you actually lift the design storage allowance and that will give us then the licence to operate the mine. If you can't do that then you cannot operate.

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In terms of the wet season just gone, the 2010/2011 wet season, the mine was aware of general advice from the Bureau of Meteorology about the upcoming wet season?-- Yes, as in every other year before that as well.

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You did not receive any specific advice?-- No.

And, in any event, such advice would be of little use to mine operation - operators unless such information could be provided at least 12 months in advance. Why such a significant lead-in time?-- Because when it's being basically advised to you it's almost like living at the weather bureau. You can basically then see there's big clouds forming two weeks in advance, or maybe one week, where the bureau can predict the weather, but at that stage you can't really do anything. Like, you can't build a dam within a week, you can't build excess storage capacity, you can't do any big earthmoving works in that short period of time, so, you know, preferably you would at least have a long lead time to be able to do those type of things.

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Informal - you received some informal advice - "informal" advice from DERM officers that TEPs and/or EDs would not be granted for the purpose of achieving compliance with EAs in respect of wet season releases during the 2010/2011 wet season?-- That's correct.

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Who did you receive this informal advice from?-- From Rebecca McAuley, the office there. She's one of the ladies there, and also Dean Sharp. What they basically say is you shouldn't use a TEP to try and negotiate a non-compliance event in advance. We should actually be prepared to minimise harm as much as we can in any case, which is in compliance with our environment amendment. So it's no use for us to just apply for a TEP before an event mainly because you can't really predict anything what will happen there, so, I mean, it's almost like asking for something that you're not sure is going to happen.

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What about during an event?-- In our case, you know, it was not really necessary to ask for a TEP. What we did was with - for the diversion drain, that's where - that's the only transitional environmental plan we asked for and mainly because of the date, that is the 1st of November, to give us

that little bit of extra grace so that we can actually make sure the diversion channel is in place and we don't have to stop operations because the real wet season only starts late December, early - the next three months of the next year, so that will give us sufficient time to do that. In this case with the massive rainfall coming through on that day, on the second day as well, we just need to do everything we can to minimise harm, and that's why we took the opportunity to put the water inside the main pit and did not release everything into the Page Creek.

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And can I take you to page 8 of your statement, and in particular paragraph 44?-- That's correct.

Paragraph 42 and 43 discusses the issues that you just referred to?-- That's correct.

I'm interested in paragraph 44 where, "MMG Century believes that there is inconsistency in the application of this expectation across the Queensland jurisdiction"?-- I think it's more the issue around coal mines and us. People were releasing water into waterways and in our instance we decided not to do that.

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Is there any way that any of these - this inconsistency can be resolved?-- I guess what's been happening lately is that people are working through that. At the end of the day we need to make sure that we did not cause any environmental harm to the areas where we are mining, so it's better to be prepared beforehand than trying to resolve these matters, you know, at number 99 or at the eleventh hour.

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COMMISSIONER: But how feasible is that for other mines to do as you have done, build a diversion dam or take steps in advance?-- I think what we've done in the case is we've put the environment, and which we also do with our safety programs, we put that before production, and at the end of the day that's why we are here, that's why we need to be miners, not just to - we need to minimise harm to the environment to show the community around us that we are doing absolutely everything possible and not just trying to produce more and more and rather be in harmony with our environment and put those things in place. So we try to be as proactive as we can but it's very difficult if you have a one in 150 year event and then two years later you get another one in 200 year event.

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Do you perceive, though, that other miners don't take that approach?-- I'm not sure what they do. It's just what we see with the granting of TEPs. In some instances they say you can apply for a TEP and then when you say, "Okay, I want to apply for a TEP," there's certain conditions. It just makes it difficult to understand what you really do and don't.

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MS WILSON: So could this process be assisted by a standardisation of-----?-- Yes

-----when you could apply and the criteria that you need to

meet?-- Yes, and also the timeline in which the TEP's gets granted as well so if they can streamline that process, which I believe they've done, and that might help the industry.

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You've got Mr Lawrence's statement there?-- That's correct.

Can I take you to an Exhibit CM0103. Have you got that there? It's the environmental authority schedule?-- Oh, yeah. Got it open.

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Okay, and can you actually go it - you've got the schedule in front of you?-- Is that, "Our environmental authority"-----

Yes?-- -----"that's applicable at the Century Mine during the 2010"-----

Yes, that's it?-- Yep.

Go to the second page and take you to some of these matters that are addressed in the schedule?-- Correct.

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C1-1 on page 2, it deals the monitoring requirement for contaminated water?-- That's correct.

And that applies to all discharges made by Century Mine?-- That's correct.

On the next page we have-----?-- Gives you the limits.

Yep, and - does that relate to Page Creek?-- That's correct. Also that's the receiving water contaminant limits. That's what we measure at Page Creek at a certain location, which is the first one PSW03 underscore REC.

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So can you assist me with what that-----?-- Just on the previous page, the table underneath C1-1-----

Yes?-- -----that basically tells you where the-----

Sets out where you get the readings from?-- Where you're actually monitoring. So this coordinates where you actually have to monitor the -

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Okay?-- -----or take the samples there.

If we turn the page to C1-3. That's the end of the pipe release limits. Do You see that?-- Yes, that's the end of pipe, that's at the dam itself.

And that's excluding wet weather spillway releases?-- That's correct.

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Is there any definition of "wet weather spillway releases" to your knowledge?-- Well, the thing was wet weather spillway releases sometimes you can't measure there and the other issue is we don't actually release when it's not wet weather, so for us we take this guidance as whenever we release out of one of the sediment dams, that's when it's applicable to us.

Sorry, I didn't quite catch you. You "don't" release or you "do" release?-- No, we do not release outside wet weather.

Outside wet weather?-- Yes.

And C1-5 refers to periods of wet weather. Following wet weather-----?-- So that's when you go back - that's when you go back to this previous table, two, and that's the criteria that you have to measure your receiving waters if you release just outside the dam.

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Is there any requirement, as far as you know, that Page Creek has a certain minimum flow before discharges could be made?-- No, we haven't got that really in here but what we do is whenever you measure the Page Creek when it's - it's either a flow or a no flow and out of our learnings from previous wet seasons we know - we've got flow metres installed now on Page Creek and we basically know when we do not release water into Page Creek.

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So during large flows from rainfall could it be the case that Century Mine could release much more water from the sediment dams?-- Yes, we can, but only release from sediment dam three, so all the other sediment dams we can't release from because they are actually not licensed. So sediment dam 10 has been built after the 2008/9 wet season as a precautionary need and environmental amendment was submitted but it hasn't been approved yet so we don't take sediment 10 as a organised release point.

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Now, to comply with this environmental authority Century Mine has taken some significant steps over a number of years?-- That's correct.

And you've set that out in your statement, and we can see that at paragraph 9. 9C talks about the pumping water into the active pit?-- That's correct. We've also spent about \$21 million in the last three years.

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And Century Mine has had to undertake some infrastructure changes to cope with excess water?-- That's correct. We've also upgraded all our pumping facilities and also the pipe network. We've also improved our water balance model, so when you look at the actual rainfall and you compare that with what you actually see, water that's reporting to your sediment dams. So to make sure that the balance you've got the model is actually comparable with what happens in reality as well.

You refer to the capping of the rock dump?-- Yes, we've capped the south-west - south-west waste rock dump. That was a cost in the order of about four and a half million dollars, and we are continuing to busily revegetating that dump at the moment and currently we've still got west waste rock dump open because we are still currently using that dump and that's the next one we will start to work on that.

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The remediation works within Page Creek?-- We - after the

2008/9 event there was about 11 kilometres of Page Creek that we cleaned up, so we basically went in there with small equipment and we've cleaned up all sediment - visible sediment that's in there. We took measurements before and after.

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Your statement also deals with indications from DERM that it wishes to amend the EA, the environmental authority?-- Yeah, because after the 2008/9 event-----

Perhaps if I can just - I don't really want to go through-----?-- Yeah. What happens is you do - you need to do an environmental evaluation and then in accordance to that negotiation starts again to amend the environmental authority.

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What I am interested in, are you aware whether these - any new conditions that is being considered deal with flooding?-- I don't - I'm not aware of anything in there that deals with flooding in such or massive rainfall events, it's more around - again around the end of the receiving water limits and changing those numbers then.

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Is there anything that you would like to see that would deal with flooding that could be included in it?-- Yes, that would be good because also we've designed our sediment dams and our pumping infrastructure in accordance to the proposed hazardous dam guidelines. So although those guidelines hasn't been approved yet we've already looked at it. In there they ask you to look at one in 20 year annual rainfall event and we've been to a little bit bigger than that and did a one in 25 year event, and we've actually got the proof now in the 2009/10 rainfall event, which was a one in 20 year, we actually managed to maintain the water, and in 10/11 we were tracking quite well up until that certain 72 hour event which basically just ensured that everything-----

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Are there any conditions, though, in the EA that needs to be particularised in relation to flooding?-- Yes, I think so. We need to look at that.

And if you could just tell me what they are?-- What we can do in a flooding event, what we deem as environmental harm and how can we minimise that and get an agreement between ourselves and DERM and get the golden pathway which is suitable for both of us, so what we do at the moment is we've got five years of data where we look at the studies and that's basically a report that's been generated by JCU which tells us what is the state of the health of Page Creek and the river system downstream and is the impact of mining there as well. So we've got a big data set at the moment and I think last year's report came back as basically the best one ever since the start of those studies.

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

COMMISSIONER: Mr MacSporran.

MR MacSPORRAN: Thank you, Commissioner. Mr Spaleck, you're currently, as you've told us, in the process of negotiating with DERM to set conditions on your environmental authority; is that so?-- On the new one, that's correct.

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The new one?-- Yes.

And that arises out of a background where the company has been in breach of it EA?-- That's correct. In 2008/9 wet season.

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Then there's an evaluation done, and environmental evaluation-----?-- That's correct.

-----the process starts over to negotiate new conditions?-- That's correct.

And the breach in 08/09 resulted again from an unusual rainfall event in the wet season?-- That's correct.

But led to a significant discharge by way of overflow from the dam, storage dams into the creek-----?-- That's correct.

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-----system, Page Creek system?-- That's correct.

And the company, to its credit, fully cooperated with the - with DERM-----?-- That's correct.

-----during the course of the investigation of that, firstly? The company was prosecuted?-- That's correct.

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And ultimately the company pleaded guilty in the Mount Isa Magistrates Court, was it, in March 2010?-- That's correct.

Now, that event was a serious event of contamination of the creek system, wasn't it?-- That's correct, that's-----

There were two offences; were there not? The first of which was unlawfully causing serious environmental harm contrary to section 437 sub (2)-----?-- That's correct.

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-----of the Act? And contravening a condition of environmental authority contrary to section 430 sub (3)?-- That's correct.

And that discharge occurred over a period of about 10 weeks between the end of December 2008 and the 1st of April 2009?-- That's correct. I can show you by the graph as well, you can see that.

That shows the size of the discharge, does it?-- The blue line over there shows the size of the discharge. I can give you a copy of this as well.

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Yes. Now, as I've indicated to you, and you've confirmed, that occurred because of the extraordinary nature of the rainfall events around that time? You are nodding. You have to answer so that that it can be taken down?-- Yes.

And your water management system at the mine, Century Mine, deals with a series of storage areas, doesn't it?-- That's correct.

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You transfer contaminated water between various storage facilities on site?-- We basically transfer it from the sediment dams-----

Yes?-- -----to the evaporation dam-----

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Yes?-- -----and we also can transfer it into the pit.

Yes, but what you don't have there as part of your water management system is a controlled pumping system to discharge water at various times into the environment in a controlled way?-- We actually got a valve that you can open with a pipe and that's something that you can control. You can open and close the valve as you wish to.

That hasn't been done in the past, has it?-- Previous years - it might have been done previous years but lately what we're doing is we try not to put any water into the river system.

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But-----?-- Are you talking specifically 08/09?

Yes, we'll start with there. At that stage you weren't doing that, were you? You weren't releasing water into a controlled way into the environment?-- When I say "controlled way", we will open the pipeline and you can open and close it but when the dam actually overtopped, so when it goes over the spillway, you cannot control that flow.

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No. So the idea, in an ideal world, what you would do is release the water in a controlled way to make space in the storage facility to take account of a large rainfall event without overtopping the dam?-- The dams aren't designed for these big rainfall events. They are actually only designed for one in 25 year event. So the problem we had is when you get like a one in 150 year event the dam fills up so quickly that you can't really discharge the water in a controlled way.

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But you weren't releasing any in a controlled way back in 08/09, were you-----?-- No-----

-----relying entirely on the storage facility itself?-- That's correct.

Yes. You could have under your EA, as it existed in 2008 and nine, it permitted controlled releases; did it not?-- Yes, we tried to-----

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But you didn't use them?-- No, we released some water out of the pipe at sediment three but there wasn't enough - the pipe isn't big enough and if you release too much water then you're going to have an impact on your receiving waters. So what happened there was when the flow of Page Creek comes down, the dam was still overflowing and that's why it went on for 12 weeks, as you can see in this graph.

Yes?-- Subsequently we have changed our-----

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Yes, I understand. You've - what you have to do, of course, when the overflow event occurs, is you need to report it DERM, which you did?-- That's correct, which we did.

And then you do an assessment of where the contaminant has gone in the environment?-- That's correct.

And it's monitored? And it was discovered, was it not, that there was approximately 18 kilometres of Page Creek that was - appeared to be contaminated?-- Yes, which of the 11 kilometres which was the more serious part which we cleaned up, yes.

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Yes. And-----?-- So what happens there is the water will basically - you will discharge into Page Creek. Page Creek the flow will stop and then that water will sit there and evaporate there and the salt stayed behind-----

Yes?-- -----that's what happens.

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And testing of the creek at this stage, that's back in 08/09, following this discharge, revealed that there was 79,990 kilograms of zinc in Page Creek?-- I can't comment on that number, yes.

To be fair to the company, it's not suggested that that entire amount of zinc discovered in the creek was the result of this overflowing of your dam storage-----?-- Correct.

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-----but it was clearly part of it?-- Correct, because of the natural occurrence of zinc in that ecosystem as well, so there is a fair bit of background in there and then obviously what would be left over there from any previous discharge events would have been in there.

Now, it's also the case, is it not, that prior to the event we're talking about in 08/09, your company MMG had discovered that its water management systems were deficient as early as '04 and '05?-- I'm not aware of that.

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Well, I'm suggesting to you that when the company was sentenced in Mount Isa the Magistrate made remarks about-----?-- I remember that.

Yes. And you remember now, do you, that the company admitted, quite properly, that it had discovered back as far as 2004 and 2005 that its water management system that deals with these contaminants was not up to scratch? It was deficient?-- That might be the case.

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And so the company had not done anything to rectify that difficulty because at that stage, rightly or wrongly, the company considered that through its financial position it had other priorities than fixing the water management system?-- I think we built sediment three. Sediment 10 was-----

COURT REPORTER: Sorry?

WITNESS: Three was built.

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MR MacSPORRAN: I think "built". Did you say "built"?-- And sediment 10 was in design phase, which we then built in 2009.

And, in fact, what the Magistrate said was this, I suggest to you: "MMG chose to defer implementation of improvements given the financial pressures it was experiencing during the Global Financial Crisis and given that the existing water management system had adequately coped with prior wet seasons MMG does not dispute that there was a failure of the water management systems in 2004 and 2005"?-- That's correct.

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All right. So the company thought it had enough of these systems in place to cope with the usual events but it clearly couldn't cope with the extraordinary events that happened in 08/09 and '10 and '11?-- That's correct.

So you've taken steps to do some remediation of the Page Creek area as well as to improve the water management systems of the company?-- That's correct.

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But you do now use, do you, a controlled pumping system as well as your normal storage systems?-- That's correct, that's what we implemented. It's a controlled water management model across the site, so we've got a series of pumps, a series of piping infrastructure across the site and we try to pump most water into the pit and also the rest of it into the evaporation dam, and prior to the wet season there's a certain checklist we need to go through to ensure that all dams are zero, nothing in it, empty, and all the pumps are tried and tested, refurbished, and you need to have the correct pump in the correct location because in certain areas you have to pump with a head and certain areas it's just a flat surface where you pump overland, and you must make - definitely need to ensure that that whole pumping infrastructure complies with your water modelling balance and then you can tie both things in and then you can basically make sure your - when it's start to rain you've got certain trigger levels and everyone needs to know exactly what to do that circumstances-----

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Yes?-- -----because of the GM or some of the managers on site, that the guy on the floor knows what to do, which button to press, and no-one doing anything other than what they are supposed to do.

So you would say learned significantly from the breaches that were brought to attention back in early 2010?-- Yes, we've even - that's 2008/9. We've even learned that from 2009/10 as well. So that's when we decided to increase the volume of sediment 3, 8 and 10. So we have almost doubled the size of 2008. If you look at the difference between the two rainfall events, the one in '08/'09 was about 1,040 millimetres of rain, the one we had in '10/'11 was 1,120 millimetres of rain, and you can see the discharge event that we're talking of in the 15th of March-----

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2011?-- -----'11 was just touching the line there.

Yes?-- So basically what I'm saying is this whole area underneath this graph, that's what \$21 million buys you.

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It also indicates you need to plan well in advance for extraordinary events like the ones that have occurred in the last few years, is that so?-- Yeah, that's correct. And the problem with that is if you had a crystal ball you could have been better prepared maybe, but what you can do is you can do the best for what the money can buy you and then you can't go and build dams because Wivenhoe, or anything else other than that-----

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You might need it bigger than Wivenhoe perhaps?-- But it is difficult. There comes a stage where you can only go that big.

In any event, on this occasion back in 2008/2009, as you acknowledge, the company pleaded guilty in March of 2010?-- That's correct.

It was fined \$130,000?-- Plus expenses.

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Plus expenses. And you believe currently - or the company seems to believe, according to your statement, that DERM is too tough in imposing stringent conditions to protect the environment?-- It is about negotiating these conditions.

Yes?-- So I think we need to be fair to each other saying, you know, the way we negotiate, we need to be careful not - for DERM not to be too proscriptive.

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Yes?-- And we also need to look at the ecosystem and, you know, what is the level of environmental harm we cause as well.

Yes?-- We need to remember as well it is a zinc mine and zinc is one of the most natural occurred minerals on earth as well. So at what level do we breach the authority levels and limits.

It is a balancing exercise?-- Yes. I cannot sign off on saying that I know I am going to be in breach of. That's almost holding a knife against my neck.

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Yes?-- So it is all about negotiating things. And we also need to prove to DERM as well that we do not cause environmental harm, and then the actions we take is actually to minimise everything we can.

But you'd be the first to admit, I suppose, in light of this background, that DERM might need to see you prove yourself given the background of these breaches we're talking about, to see whether you are incapable of preventing environmental harm?-- Yes. That's why we tried to work in accordance of ISO 14001 of our water management system and our water management plans to show the due diligence. That's why we're basically an open book with them. When this event occurred in '10/'11, we had DERM out there the very next day after this event-----

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Yes?-- -----showing them around and asking them to help us as well. We worked together, you know, towards a greater solution.

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Yes, work together and cooperate, and at the end of the day come to an acceptable solution to protect the environment but promote the economic viability of your mine?-- I agree with that.

Yes. Thank you.

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COMMISSIONER: Mr Dunning?

MR DUNNING: I don't know that I've got leave but in any event no questions.

COMMISSIONER: You might have had some warm sentiment to express.

MS McLEOD: No questions, thank you.

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COMMISSIONER: Mr Glynn?

MR GLYNN: No thank you, your Honour.

MS WILSON: May the witness be excused, Madam Commissioner?

COMMISSIONER: Yes, thanks Mr Spaleck, you are excused.

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WITNESS EXCUSED

MR DUNNING: Commissioner, can I raise another matter? I understand there are no further witnesses, and I appreciate the time.

COMMISSIONER: Is that right? Have we finished?

MS WILSON: That is the case.

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MR DUNNING: Commissioner, I make application for you to convene a directions hearing tomorrow morning before the Commission starts. We wish to make an application in relation to the appropriate directions to deal with the expert evidence, particularly that surrounding Mr Babister's most recent report.

COMMISSIONER: I thought you already had received your outlined - I thought that had already been sent to the counsel?

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MR DUNNING: It had, and we corresponded and indicated the concerns we have in relation to it, and it is that upon which I'd like the hearing, Commissioner.

COMMISSIONER: Well, I'm not sure why because there has been a procedure set down if you have some issues with it, why don't you put them into writing. Why do we need-----

MR DUNNING: We've done that, and we've exhausted that avenue, it seems. I can pass you the correspondence, if you would like to have a look at it.

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COMMISSIONER: All right.

MR DUNNING: What I'm passing to you, Commissioner, is a letter from Ms Moynihan of the Commission at 4 October, our response of this morning, and the Commission's response of this afternoon.

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COMMISSIONER: All right. I think I won't make these an exhibit, Mr Dunning, for the moment-----

MR DUNNING: Certainly.

COMMISSIONER: -----because I imagine there are matters that are still under discussion, and it probably isn't necessary that they be part of the Inquiry's records at this stage. If you want to tender them provisionally in some way, perhaps you can do that, but I won't formally make them an exhibit to be published on the website.

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MR DUNNING: Very good, Commissioner.

COMMISSIONER: So at the moment we're debating about whether you have a directions hearing.

MR DUNNING: Yes, that's all we want, is to have a directions

hearing before you, ventilate these issues that we consider to be significant issues, and have appropriate directions made.

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COMMISSIONER: I just need to get the sequence of this correspondence.

MR DUNNING: Certainly, the 4 October letter from the Commission is the first one, the Clayton Utz letter is the second one, and the 5 October Commission letter is the third.

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COMMISSIONER: What is it exactly in your letter of 5th of October that needs a directions hearing?

MR DUNNING: Commissioner, it is those matters that are listed under the words "in particular". I could really summarise them for you briefly, if you want me to?

COMMISSIONER: Well, I will just get myself oriented. Now, you've got Ms Moynihan's letter saying if you want to elaborate or advance any further reasons, do so in writing. Why can't you do that?

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MR DUNNING: Well, we can, Commissioner, but there are aspects - perhaps I could take you to some of Ms Moynihan's letter. I must confess when I read it, I wasn't sure whether it was serious or ironic. Like, for example, to suggest as it does in the second paragraph that there will be ample time, I must confess I found a surprising thing to say.

We can rehearse the matters further in writing, Commissioner, but we set out to, in our letter of this morning, limit ourselves to only those things that we considered critical and without which a fair hearing in respect of our client wouldn't ensue.

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COMMISSIONER: You're getting peer reviews on 14 October, according to this timetable, and it is envisaged that the evidence will be heard on the 26th. That doesn't seem too constrained, I must say.

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MR DUNNING: But, Commissioner, it is not, in our respectful submission, a game. If the peer reviews exist and we're being asked to prepare this issue on short notice, and view this to the backdrop, in our respectful submission, of the fact that in our respectful submission the proper course would have been to have told us that Mr Babister had been tasked with this, we could then have started our own expert looking at it. Rather, we got a couple of weeks' notice on something that's a big issue. And it is not just a big issue for my client as a corporate organisation, but it is a big issue for our ratepayers and our residents.

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COMMISSIONER: I think that's the idea of getting everybody together, to try and reach some consensus about where to go next, really.

MR DUNNING: Well-----

COMMISSIONER: But I think the point of you not getting the peer reviews earlier is that any further reports actually will be done entirely independently without regard to those peer reviews.

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MR DUNNING: But it simply means that in terms of us addressing ourselves to the issue, we won't have the advantage of reading what the peer review has to say.

COMMISSIONER: But why is it an advantage - you will have it 12 days before the hearing. I don't see why it is an advantage in terms of getting any further report that you want to.

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MR DUNNING: Because at the moment, Commissioner, we are looking at Mr Babister's report, and preparing what response as we're intending to bring in relation to it, but it appears there is other relevant information to this that's going to be given to us on the 14th, which in our respectful submission really presents itself as a somewhat arbitrary date.

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COMMISSIONER: But these are reviews. These are not fresh reports. You do understand that?

MR DUNNING: I do.

COMMISSIONER: These are other people having a look at Mr Babister's report and saying, "We think this and we think that."

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You are being invited to produce reports saying, "We think this and we think that." It is preferable if you don't just jump on the bandwagon and adopt everything that the existing peer review report say, and the best way of doing that, I should have thought, was for your experts to make their comments quite independently of anybody else's.

MR DUNNING: It wasn't our intention to jump on the bandwagon, Commissioner, quite the opposite. It was our intention, and is our intention, that once we receive the peer review to review it as carefully as we're going to have time to be able to do, and critically analyse it in the same way we're endeavouring to critically analyse Mr Babister's report.

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COMMISSIONER: You will be criticising and analysing an analysis and a criticism. Do you appreciate that?

MR DUNNING: I do, Commissioner, yes.

COMMISSIONER: I am not sure that that's such a fruitful exercise, really. It would be more to the point to analyse and criticise Mr Babister's report, I should have thought.

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MR DUNNING: And that, I accept, is the main point of inquiry, but we're being asked to be prepared to deal with what is a very important issue. As I say, it is not just my client's own interests at stake here, but it is the residents and ratepayers who if they come within and affect the existing

Q100, and what Mr Babister - and at this stage Mr Babister alone asserts - will have real impact on the - I would prefer not to articulate them, but I think you can obviously enough see the consequences for individual ratepayers and residents. All-----

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COMMISSIONER: I think the whole point of having what we like to call a hot tub, is to get a divergence of views rather than to arrive at one concluded view about anything, just to see what the spectrum of views is. You seem to be a bit alarmed about Mr Babister, but it is not as if he's likely to carry greater weight than any other expert in this forum.

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MR DUNNING: Commissioner, the only thing I am alarmed about is having proper opportunity to test the propositions that are put against me, and we're not complaining about the hot tub. I am not suggesting that I think it is the most efficient way to do it, respectfully, but we're not complaining about the hot tub. All we're complaining about are matters that relate to our ability to be properly prepared when this issue is to be ventilated before the Commission.

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COMMISSIONER: It might be, Mr Callaghan, if you have made your points - and we're still just arguing about whether you have a directions hearing, I gather, at the moment?

MR DUNNING: Well, Commissioner, the peer review point is probably the least - we accept it is important, but the requirement that we deliver our questions for cross-examination in draft in advance of the hearing is probably the single most critical matter, and the timing. But the time is one you can deal with on the day, but we think the suggestion that we limit it to a day, when you look at the course of the expert evidence in the past-----

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COMMISSIONER: I am sorry, just say that again. I am not sure I heard you correctly.

MR DUNNING: The idea of limiting the cross-examination of the experts to one day-----

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COMMISSIONER: Well, yeah, it may be that it has to go over. And we'll just have to see how that plays.

MR DUNNING: If that's the attitude taken to it, then that concern is allayed; if it is not going to be a rigid one day whether we're finished or not?

COMMISSIONER: I can't see that.

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MR DUNNING: Well, that's not, respectfully, what one might glean from the correspondence.

COMMISSIONER: I am sure the aspiration is to finish it in a day.

MR DUNNING: We don't want to do it any longer than it has got to be done either, but we're respectfully mindful of what's

happened. Well, that really leaves us then with this notion that we should reduce our question - we, not the Commission - that we should reduce our questions in draft in advance of the cross-examination.

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Now, that's really to render the ability to have an effectual cross-examination virtually to naught.

COMMISSIONER: Again, I think the idea is to try and identify what the expert opinions are, and whether there are areas of convergence and areas of divergence.

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So the adversarial approach might not really be the appropriate one for that kind of result. I think that's the general idea.

Perhaps I better stop talking and ask Mr Callaghan what he wants to say about the idea of having a directions hearing, first of all, I suppose.

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MR DUNNING: Thank you.

MR CALLAGHAN: Well, I don't see what purpose would be served of it. The timetable has been issued. We perceive value in the process and propose to continue, subject to any ruling, that you, Madam Commissioner, might make, and we will proceed if only with the three experts that we've identified and on the basis of the directions as drafted.

If the sole concern is that - or if the major concern is that parties be provided to indicate the nature of cross-examination before it occurs, then that is, I'd suggest, a method which is not without precedent and not without value in circumstances where the whole purpose is to - the whole point of this proceeding is precisely because it is so important. We don't want things left to the last minute. We don't want anyone to be ambushed with questions which might require detailed consideration. We want the process to be meaningful and that's one way of ensuring that it is.

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The rest of the concerns have been addressed in correspondence and I don't, with respect, see the value of a directions hearing, that it would achieve anything other than a reiteration of that which has been said in writing or articulated this afternoon.

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COMMISSIONER: Mr Dunning, it does seem to me with the cross-examination question that there is a lot to be said for having it out upfront what the questions are going to be, because you can certainly put a witness on the spot and sometimes get them confused and affect the value of their evidence by asking them things they are not expecting.

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But it isn't a particularly constructive approach and I think that's what the Commission wants to achieve on this, to actually find out the considered opinions of this group.

MR DUNNING: Commissioner, may I make this submission with the

utmost respect? As a barrister your Honour was an entirely effectual cross-examiner-----

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COMMISSIONER: Flattery is great. Don't stop there.

MR DUNNING: I may not. Your Honour was a very effectual cross-examiner. Your Honour is well placed, as, may I respectfully submit, a retired Police Commissioner and very experienced engineer, to identify on the one hand cross-examination that is simply good quality text book cross-examination that confuses a witness and doesn't really add much to the insight into whether what the expert says is right.

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On the other hand, there is cross-examination that does properly test whether what a witness says is right that is not about technique and is about substance, and the effect of that is substantially lost if you are required to prevent your questions in draft.

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What our learned friend submitted to your Honour is different to what's contained in the correspondence. The correspondence requires the draft questions in advance. Now, that's a complete novelty. It would render the cross-examination nugatory, in our respectful submission. The identification of areas is one thing but to be asked to deliver in draft your questions for cross-examination-----

COMMISSIONER: I think the word "draft" probably implies that you are not really stuck with those words. It is to isolate the areas, rather than literally require you to ask that very question. I think it is aiming at a bit of precision in what it is you want to address, and I will ask Mr Callaghan about that in a minute.

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But these are expert witnesses. So it is a bit difficult to see that provision of questions in advance should make a difference in their giving considered answers. It shouldn't make any difference to the conclusion they arrive at accept to give them the opportunity to give considered answers. But bear with me and I will just ask Mr Callaghan.

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How draft are these draft questions that are contemplated? What's-----

MR CALLAGHAN: Well, the precise - they are just that. The precise form of words may vary but the import of the area about which the question - or to which the question is directed should be contained in the draft.

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COMMISSIONER: I am wondering if there is a better way of wording that, because I must say when I was at the bar, as Mr Dunning reminds me, I probably would have found it a bit offensive to actually have to give a list of questions.

On the other hand, I imagine what is not wanted is just a general reference to a topic with no specifics about just what aspect of it is to be addressed.

MR CALLAGHAN: I might be wrong but it is not without - I didn't think it was without precedent, and in areas where there is a special concern that cross-examination be meaningful, and I thought that there was a reference in the - one of the provisions relating to the cross-examination of child witnesses which placed an obligation on counsel to do such a thing at a committal proceeding.

So it is not - the concern that we do things the way they have always been done is not one that I would suggest we can entertain.

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COMMISSIONER: I am not worried about that. I am more concerned about whether there is some way of being a bit more specific about what's wanted in terms of cross-examination topics, and it may be that it should be expressed as a requirement that the parties provide the list of topics with specificity for cross-examination rather than draft questions, and you might have to leave it up to me if I think that things haven't been clearly identified in the first place as being something that questions are to be asked about.

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But the whole point, Mr Dunning, is that everybody knows where this is going and everybody has a chance to think about it and deal with it.

MR DUNNING: On that topic, Commissioner, we have no issue. In fact, you will observe from my earlier submission that, frankly, there were things that could have been done which would have better promoted that before now. We have no difficulty with that.

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The issues we raised do seem to largely be addressed in our - I don't want to use the expression our favour, but the concerns we have do seem to have been addressed, principally the non-provision of draft questions and also the issue of the limitation of the hearing to a day.

COMMISSIONER: Mmm. It requires some good faith on the draft - on the topics for cross-examination, that people don't just give some broad-brush answer and say, "Oh, well, that really covered everything." What's indicated needs to give a clear idea of what it is that's going to be addressed to these witnesses. If we can perhaps leave it on that basis, perhaps this can be rearticulated and sent to the parties.

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As to the other things, as I've indicated, I don't really see there is a difficulty about the peer reviews. Was there anything else?

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MR DUNNING: The hearing - the length of hearing.

COMMISSIONER: If that has to go over, it goes over. So that's that. But we should try and avoid it and keep it tight.

MR DUNNING: Yes, and I don't understand that there was any criticism of the cross-examination of the experts last time as either being inefficient or ineffectual.

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COMMISSIONER: Well, I could have made it, I must say, because it seemed to me there was a lot of cross-examination that was really just dedicated to putting the perspective of various parties out there in the media, but let's not revisit old times.

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MR DUNNING: Certainly.

COMMISSIONER: This is supposed to be, as I keep saying, a constructive exercise in getting the experts, trying to see what's the best way of working out a good way for the future for flood lines.

MR DUNNING: We appreciate all of that, but in the end if the wrong decision is made it is not constructive.

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COMMISSIONER: Yes, but it may just be a decision about approach rather than anything very conclusive, but we will have to see how all this pans out.

Mr Callaghan, how are you faring with that?

MR CALLAGHAN: The only thing I'd perhaps add, and perhaps I will reflect on it, but foreshadow is that on that date, the 20th of October, we might revise this process and parties should perhaps leave open the possibility of a directions hearing on that date if the - we might insert a time by which the topics be provided being some time on the first half of the day, and if it's perceived that the requirement hasn't satisfied our needs, then we might have to convene in the second half of the day in order to seek directions on that.

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COMMISSIONER: All right. So, if the good faith doesn't come through, we have another directions hearing.

Mr Dunning, I think you have effectively got a directions hearing now, so you might just leave it at that, I think.

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MR DUNNING: Certainly, Commissioner, and in light of that is it appropriate that we do take up the intimation in the letter to correspond with the Commission at least on this topic of what announcement or intimation is going to be made of topics of cross-examination?

COMMISSIONER: Well-----

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MR DUNNING: Because as matters stand - I didn't see it fruitful to go through it. As matters stand, the correspondance is quite different to where we have arrived at.

COMMISSIONER: Well, the proposed topics remains, draft questions not, but we will see if something can be got to you that makes it clear exactly what's wanted.

MR DUNNING: Certainly, Commissioner. Thank you.

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COMMISSIONER: All right. Thank you.

MR MacSPORRAN: Commissioner, can I make a brief submission about the same topic? We wrote a letter today as well.

COMMISSIONER: I don't think I have seen that.

MR MacSPORRAN: No, you may not have.

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COMMISSIONER: Are you tendering it? What do you want me to do with these? I am a little hesitant, as I say, to put them on the public record at this stage. Do you want me to make them an exhibit for identification which will be a novelty for us?

MR MacSPORRAN: That would cover it.

COMMISSIONER: I will put them altogether. I will make them Exhibit A for identification. If anybody remembers further on in the proceedings, you are welcome to tender them.

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MARKED "A" FOR IDENTIFICATION

MR MacSPORRAN: Yes, thank you. You will see that our letter is the first in line. We received a copy of the reply to Mr Dunning's client.

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COMMISSIONER: Sorry, you received what?

MR MacSPORRAN: A reply to Mr Dunning's client. It was sent to all the parties apparently, and we have got that. We haven't yet, unless it's happened recently, given a reply to our letter directly. Our letter raises similar kinds of issues and I won't go over those again. The main issue that we are still concerned about is the question of the deadline of this Friday, the 7th, "to advise the Commission in writing as to whether they intend to participate in the calling of concurrent expert evidence." May participate by obtaining an expert report", and so on, and the requirement to nominate an expert report to testify on the 26th. Now, bearing in mind we only received notification of the report itself on the 21st of September and annexure C to it on the 28th, or the 27th whatever I think it was, and only yesterday that this protocol was to be brought in-----

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COMMISSIONER: But I'd suspect you probably had somebody looking at that report.

MR MacSPORRAN: It's still a very short timeframe, with respect, Commissioner.

COMMISSIONER: Well, you don't have to do it, Mr MacSporran,

you don't have to participate.

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MR MacSPORRAN: No, we're keen to assist and it's a very important issue, they're complex issues and we are doing what we can, but we may not be a position to nominate on Friday is all I'm saying.

COMMISSIONER: I just find it pretty startling that having had Mr Babister's report for some time you wouldn't already have had somebody looking at it.

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MR MacSPORRAN: I am not sure how long Mr Babister had to assess the issues and write his report, but we have only had it since the 21st and it's a very short timeframe, with respect, to have anyone look at those issues and form a concluded, sensible view as to whether it's a matter that can involve expert evidence from our side.

COMMISSIONER: Well, I don't propose to disturb that timeline.

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MR MacSPORRAN: Thank you.

COMMISSIONER: All right. 10 o'clock tomorrow. Thank you.

THE COMMISSION ADJOURNED AT 4.58 P.M. TILL 10.00 A.M. THE FOLLOWING DAY

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