

# Transcript of Proceedings

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THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

MR PHILLIP CUMMINS, Deputy Commissioner

MR P CALLAGHAN SC, Counsel Assisting

MS E WILSON, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2011

QUEENSLAND FLOODS COMMISSION OF INQUIRY

BRISBANE

..DATE 27/09/2011

..DAY 37

THE COMMISSION RESUMED AT 10.02 A.M.

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COMMISSIONER: Yes, Ms Mellifont?

MS MELLIFONT: Good morning, this morning I appear with Mr O'Brien, initials A I. The first witness is Cameron Pearson, and this relates to the Mirvac development at Tennyson, known as Tennyson Reach, which comprises the State Tennis Centre and three residential apartment buildings: Softstone, Lushington and Farringford. Exhibit 569, which is already before the Commission, shows the location of the site.

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The Tennyson Reach site once housed the decommissioned Tennyson Power Station. During the 1974 floods, the site suffered extensive inundation. Later today, the Commission will see images of the 1974 inundation of the site.

In 2003, the Queensland Government identified the Tennyson Power Station site as the preferred location for a new tennis centre complex. The government was to work in conjunction with developers from the private sector to deliver a world-class facility.

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In June 2005, Mirvac was selected as the preferred developer by the State Government following a two-stage competitive bid process. In accordance with the proposed timeline, the State Tennis Centre officially opened on 2nd of January 2009. The first three buildings of the associated residential development opened soon after, with the first residents moving into Softstone and Lushington in late May 2009.

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During the floods of this year, the Tennyson Reach development was inundated to a height of approximately 9.05 metres AHD. The flood waters caused extensive damage to the basements and ground floor apartments of Softstone and Lushington. The commission has seen Exhibit 571, which depicts the site as inundated in the January 2011 floods. Both of the residential towers of Softstone and Lushington were built to a floor level of 8.4 metres in accordance with the Brisbane City Council's requirement that all habitable floor levels at the site be 500 millimetres above the Q100 line.

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The Commission has already heard from Ms Julie Savage, an owner of one of the apartments in that regard, and later today the Commission will hear from Mr David Dunworth, a lessee of one of the apartments and his wife also signed a contract for the purchase of another apartment. Mr Dunworth will describe the direction of the flood waters on that site.

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Following the January floods, a decision was made not to continue with the plans to build the remaining three residential buildings, instead seeking to dispose of the remaining portion of undeveloped land. In June 2011, it was announced that Council had purchased the land for a reported sum of \$12 million.

As I've said, the first witness to be called today is Mr Cameron Pearson, who is the Chief Executive Officer of Tennis Queensland. I call Cameron Pearson.

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CAMERON RUSSELL PEARSON, SWORN AND EXAMINED:

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

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State your full name, please?-- Cameron Russell Pearson.

And since 1 July 2010, have you been the Chief Executive Officer of Tennis Queensland?-- Yes, I have.

And the Tournament Director of the Brisbane International?-- That's correct.

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You have provided to this Commission a Statutory Declaration dated the 2nd of September 2011 with various annexures to the Commission?-- Yes.

I'll show you a copy of that statutory declaration. Is that the statutory declaration you have provided to the Commission?-- Yes, it is.

And is the contents - are the contents of that declaration true and correct to the best of your knowledge?-- To the best of my knowledge, yes.

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And was that declaration provided in response to a notice issued by the Commissioner on the 22nd of August 2011?-- Yes, it was.

I tender that Statutory Declaration and annexures.

COMMISSIONER: Exhibit 628.

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ADMITTED AND MARKED "EXHIBIT 628"

MS MELLIFONT: Is it correct that Tennis Queensland is the lessee of the State Tennis Centre from Stadiums Queensland?-- That's correct.

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And Tennis Queensland has occupied the State Tennis Centre since the 1st of December 2008?-- Yes.

If I can take you, please, to the second photograph of Annexure D, which is Exhibit 571. Have you got that coming up on your screen?-- I have.

As best as you can, can you just describe to us the various

aspects of the tennis centre as depicted in the photograph?-- Ah, yeah, to the east, you have two grass Courts followed by four clay Courts; the main centre, which is a five and a half thousand seat facility with administration buildings, change room facilities, a pro shop, gymnasium and other areas required for the venue, and to the west there is Plexicushion courts plus two covered courts which can be used in adverse weather.

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And further to the east of the grass courts, what's that access road?-- Sorry, that's a carpark, purely for the tennis centre.

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All right. Can I now please show you the first photo from Annexure D. This is an aerial photograph of the site taken during the January 2011 floods?-- Yes, it is.

All right. Can you tell the Commission in what ways the centre was inundated during those floods?-- Yes, the water came in again from the east. The lowest part of the carpark was the first section that was inundated and then water made its way across the grass and the clay where we had some - the flood gates were in, which is part of our Flood Emergency Response Plan, and then the water made its way over the flood gates into other areas of the centre.

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Right. Can you give us a description, as close as you can, about where the flood gates were?-- The flood gates are - from that photo, to the west of the clay courts, which are inundated, where the main building starts.

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Do we have the pointer, please?

COMMISSIONER: The pointer hasn't been a great success of late, I have to say, but you can try it. Alternatively, we could ask Mr Pearson just to point it out on the photo.

MS MELLIFONT: Yes. I'll just hand you up a hard copy of the photograph.

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COMMISSIONER: Well, he can go up, perhaps, and just indicate on that, if that suits everybody?

MS MELLIFONT: Yes, if you could you go up to there and point out where the flood gates are, thank you?-- The flood gates are located just inside the buildings, the two rooms - multipurpose rooms that are located at the ground floor in there.

COMMISSIONER: Anything else you wanted pointed out?

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MS MELLIFONT: No, that's sufficient for the time being. Thank you.

COMMISSIONER: Thanks, Mr Pearson.

MS MELLIFONT: So, the centre court was inundated?-- Yes, it was.

The carpark?-- Yes.

The four clay courts?-- Yes.

The two grass courts?-- Yes.

The multipurpose room?-- Yes. Both of them.

The - sorry?-- Two multipurpose rooms.

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Both of them?-- Yes.

Temporary storage rooms?-- Once the water went over the flood gates, yes.

The facility maintenance office and workshop?-- Correct.

The player locker rooms?-- Yes.

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The gymnasium?-- Yes.

And the cleaner's storeroom?-- Everything on Level 1, correct.

And was everything on Level 1 inundated to approximately four metres of water?-- As an approximate guide, yes.

Were seven of the Plexicushion courts covered in whole or in part by approximately 200 millimetres of water?-- Yes, that's correct. That photo is probably taken slightly before the peak, because the courts there to the north received just a fraction more water than what you can see from that photo.

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Right. And so, additionally, were nine of the Plexicushion courts partially covered by water?-- Yes, which are the northern courts there.

What damage was caused by the inundation?-- What damage, as in-----

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How was the property damaged? There was inundation obviously, so what needed to be repaired?-- The clay courts needed to be completely replaced, the grass courts, the maintenance shed there to the south, everything on Level 1 needs to be repaired. The water went through the - I guess to - through the ceiling. All of the courts to the west only required cleaning, not replacement, and centre court only requires cleaning, not replacement.

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Right. So, the tennis centre closed at approximately noon on 11 January 2011?-- That's correct.

And were you there at that time?-- No, I wasn't. I was in Sydney.

So, in terms of the description of the water coming from the east, that's information which has been-----?-- It was

provided to me-----

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Conveyed to you?-- -----by my team that I was talking to all day on that day.

Thank you. When was the tennis centre able to reopen?-- It was partially reopened - can I just have a look at my statement on that?

Yes?-- It was partially reopened for community use on the 7th of February. So, we were able to reopen the community part of the facility - that's all of the courts to the west - and reopen the pro shop and the administration building, which is all on Level 2, which is the podium level.

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And has the centre been able to be entirely reopened now?-- No, it hasn't.

All right. So, what still is left to do?-- The clay and the grass courts are now complete. The clay courts are being reinstated in the next week and a half, two weeks, and the rectification works or the rebuild of Level 1 will be done by the 30th of November - is the timeline I've been given.

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Of this year?-- Of this year.

Annexure B to your statement is a Flood Emergency Response Plan. Can you tell me how - can you tell me why that Flood Emergency Response Plan was prepared? Was it in response to a particular request from someone?-- I can't. I wasn't around at the time as to why it was prepared.

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Is it your understanding that this was prepared in 2009?-- That's my understanding, yes.

All right. But in so far as the triggers for it, you can't assist?-- I can't. I know that it was prepared by Stadiums Queensland - sorry, it was requested by Stadiums Queensland to Marsh, the insurers.

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And to your knowledge, was that response plan followed during the 2011 floods?-- To my knowledge it was, yes.

And so far as you're able to say, did it work well, or were there some areas of improvements that you could recommend?-- By and large, it worked well.

By and large?-- We were able to follow it to a point - we only had about seven or eight hours, as opposed to the 48 hours it refers to, so it was really just a condensed version of the plan, but it was followed.

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Right. So, with earlier notification, you may have been able to follow the plan more exactly?-- With earlier notification, all we would have been able to do is to move more equipment to a higher level.

Okay.

COMMISSIONER: How significant would that have been? What kind of equipment are you talking about?-- Mostly gymnasium equipment, some tennis nets and some of the equipment that was in the facility shed.

How much would that have been worth roughly? Any idea?-- Probably, at a guess, 50 to \$80,000.

MS MELLIFONT: Have you had any information conveyed to you about the practicality or level of difficulty in placing the flood barriers?-- No. 10

Do you know as to whether there were any difficulties?-- No, there wasn't. The team - I was on the phone with them when they were installing them and it went according to plan.

At some point in time, though, the water came over the flood barriers?-- That's my understanding. 20

Okay?-- That's what I was told.

And that's when certain parts of the centre became inundated, after the water came over the flood barriers?-- My understanding is that there was - centre court was also inundated through stormwater drains.

Coming from what direction, are you able to say?-- No, I'm not. I don't know. 30

Who was on the ground, so far as you're aware, as to personal observations as to where the flood waters came from?-- At the time?

Yes?-- Nobody, because the centre was closed. We'd followed the plan and closed the centre and everyone was sent home, purely, one, to ensure there was no danger to them, but also to ensure that they were able to get home, because the team relayed to me that there was reports that roads were starting to be closed and there was concern that people couldn't get home, so they were sent home earlier - so, at the time the water inundated centre court, I'm pretty confident it was overnight. It was after everyone had left the centre. 40

All right?-- Sorry, it was definitely after everyone had left the centre.

And at the time Tennyson-Memorial Drive was inundated, do you know if anybody was at the centre then?-- I'm not sure. I don't know. I don't know when Tennyson-Memorial was inundated. 50

Now, in respect of King Arthur Terrace, do you know why it was closed at the Fairfield Drive end?-- Because water was across the road.

And do you have any knowledge as to whether King Arthur Terrace was inundated and to what level?-- I wasn't there,

but my team told me that it was cut, but I don't know at what time.

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COMMISSIONER: Who was your second in charge? Who was there?-- The facilities development manager, he was there, along with one other long-serving staff member. They were the last two to leave the site.

Who are they?-- Names?

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Yes?-- Michael Blomer, he's the facilities development manager, and Greg Lewis.

Thank you.

MS MELLIFONT: Sorry, Michael?-- Blomer - B-L-O-M-E-R.

Thank you. Are you able to provide any indication of the costs incurred in remediating the clay and grass courts?-- Not off the top of my head, no.

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Is that information within Tennis Queensland's purview or within Stadiums Queensland?-- Stadiums would certainly have it. I would suggest that I would have it as well. It would be in the vicinity of 200 to \$250,000.

Can I just take you to your Statutory Declaration, please?-- Yes.

As we've heard, you became the CEO on the 1st of July 2010?-- Yes.

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And in answering the requirements issue by the Commission, it relates to some periods of time prior to your appointment to that position?-- Yes.

You'd agree with that. And in so far as you sought to answer the requirements for those preceding periods, did you undertake inquiries and look at records?-- I did. I undertook inquiries with the two previous CEOs and the immediate Past President.

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And do those inquiries reveal that, some time ago, Tennis Queensland identified a number of locations as a potential site for a new State Tennis Centre?-- In so far as exactly what you said then, yes, but nothing further. There were a number of sites that were identified years ago that Tennis Queensland were looking for a site for a State Tennis Centre.

And Tennyson was one of those locations?-- That's my understanding, yes.

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All right. And is it your understanding that approximately four locations were suggested to State Government as potential places for the State Tennis Centre?-- There was a number. I don't think the number was four. All I was told was there were a number of different sites.



All right. So, in so far as paragraph 3 is concerned, the information in there comes wholly from information provided to you in the course of your inquiries?-- Yes.

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Rather than records?-- Yes.

COMMISSIONER: Why are there not records, I'm sorry? I might have missed something here?-- Sorry?

Why is this not a matter of record?-- It could well be a matter of records. We searched some of the records. We'd already spoken with a couple of our - the two previous CEOs and the immediate Past President, and that information was provided by them.

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All right. But your search of the records didn't disclose negotiations-----?-- There were some things, but nothing specific. There was discussion of different sites, but I'd have to - I don't have that documentation with me as to what those sites were.

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All right.

MS MELLIFONT: Can I show you, please, a document which is attached as Exhibit 6 to the statement of Mr Peisker. You can tell me whether this is one of the records to which you had access to?-- Yes. No, I saw this for the first time last night.

Right, the document having been forwarded to your legal representative?-- That's right, yes.

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So, in terms of actual documentation which records Tennis Queensland's involvement in making suggestions to the State Government-----?-- Yes.

-----about where to locate a particular tennis centre, you've not seen anything?-- Not this one. There was a document that made a number of suggestions - it certainly wasn't this document - that talked about a number of locations, but very generically. There's nothing - after reading this, which had dot points attached to each location, it certainly wasn't anything like this.

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The document that you have referred to is still within the possession of Tennis Queensland?-- That's right.

It can be provided?-- Yes, absolutely.

Can I take you, please, to paragraph 7 of your statutory declaration?-- Yes.

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COMMISSIONER: What's to happen about this document, Ms Mellifont. Do you want it returned or tendered?

MS MELLIFONT: I'll have it returned. It will be tendered in due course.

COMMISSIONER: All right. Thank you.

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MS MELLIFONT: Now, in paragraph 7, you state, "As far as I'm aware and as far as I've been informed, no investigation was instigated by Tennis Queensland prior to the construction of this State Tennis Centre." That's as to flood risk, I take it?-- Yes, it is.

And you state, "There is no reason why Tennis Queensland would have undertaken such further investigation." Can I ask why?-- Because we were working with - I was of the understanding we were working with the State Government and the information - all the technical information would come from other parties, not Tennis Queensland, as to flood risk.

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Can I take you to paragraph 11 of your statement, please? It says that Tennis Queensland is aware that the grass and clay courts were below the Q100 line. When did Tennis Queensland become aware of that?-- I don't know.

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After the floods of January 2011, or before?-- No, certainly before - way before the floods.

All right. And do your inquiries reveal that that knowledge was in place as part of the decision-making process as to where to put those grass and clay courts?-- That's my understanding, yes.

Now, in respect of paragraph 12, you state that Tennis Queensland is aware that the Plexicushion courts - which are the blue external courts - were built about the Q100 level. When did Tennis Queensland become aware of that?-- That they were built above the Q100? My understanding is through the building of the centre.

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So, as part-----?-- I wasn't told exactly when, but my understanding is as part of the development, they were aware what was above and what was below the Q100 level.

All right. So, is it your understanding that as part of the development plan, the Plexicushion courts were deliberately put above the Q100?-- That's my understanding, yes.

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All right. And-----?-- Because of the cost of rebuild if they were ever damaged.

What is Plexicushion?-- It's an acrylic hard court which has cushion in it. So, it's like a concrete hard court, however it was a layer of cushion for comfort.

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Okay. And you state that, "I am advised by Mr Ashley Cooper that the site of those courts was filled to bring the level of those courts above the Q100 line." Who is Mr Cooper?-- Mr Ashley Cooper is the immediate Past President of Tennis Queensland.

COMMISSIONER: He's a former tennis great, isn't he?-- He is.

Mmm. Not a tennis follower, I gather?

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MS MELLIFONT: Apparently not. And I take it that his source of knowledge was based on information given to him by somebody else that there was fill, or do you not know?-- That I don't know. You're talking about whether it was - whether the Plexicushion courts were put above the Q100 level?

I'm talking about how Mr Cooper knew that the site of the courts were filled to bring the level of the courts above the Q100. Do you know what the source of his information was?-- No, I don't. I'm sorry.

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In respect of paragraph 13, you've written that, "Tennis Queensland is aware that the centre court was below the Q100 line."?-- Yes.

Again, at what point in time was Tennis Queensland aware of that?-- My understanding is through the proposal to build a site, Tennis Queensland were a part of a committee that, I guess, gave tennis advice on the building of the centre, and my understanding is through those committee meetings, that they would have been advised of what was above and what was below Q100.

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And when you speak of the precautions in place for the centre court in the design to prevent water entering the court-----?-- Yes.

-----are the precautions you speak of the installation of flood gates?-- Yes.

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Anything else?-- No, the flood gates.

In paragraph 14 you referred to the Flood Emergency Response Plan in October of '09 and you state that the report was prepared to the requirements of Tennis Queensland in conjunction with Stadiums Queensland and it was based upon information provided and obtained through consultation during 2009. Consultation between who?-- That I don't know. I'd have to - I'm not sure.

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Is that something with inquiry you could find out?-- Yes, I could.

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COMMISSIONER: Who was running things then?-- Sorry, who was?

Who was in your position then?-- In October 2009 it would have been Tom Larner.

Sorry, what was his last name?-- Tom Larner, L-A-R-N-E-R.

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Thank you.

MS MELLIFONT: He's one of the previous chief executive officers?-- He was - yeah, it was himself or Steve Ayles who was the CEO before Tom.

A-Y-L-E-S?-- That's correct.

At paragraph 15 you state that, "The flood emergency response plan was developed but there was also a flood management policy adopted by Tennis Queensland." Do you know what the trigger was for preparation of the flood management policy?-- In - my understanding speaking to Tom was to have a simplified version that was attached to the FERP to ensure that it was an easy one page to read, that-----

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So that was something done specifically by Tennis Queensland for Tennis Queensland staff?-- That's my understanding, yes.

Who did you get that understand from?-- From Tom Larner.

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At paragraph 16 you state, "The Brisbane International Tournament has no separate flood management plans or policy."?-- Yes.

And then you say, "As the tournament, as would be expected, relies upon the stadium's plans and policies in this regard." What do you mean by that?-- When events utilise facilities and they hire them out, they generally take their management plans and emergency plans along with the - which is part of the hire agreement, so the venue would control any sort of emergency, not the event, it's the venue's responsibility.

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So Stadiums Queensland?-- Well, through Tennis Queensland because Tennis Queensland leases the facility from Stadiums Queensland. The Brisbane International is a tournament that's owned by Tennis Australia, which is a separate company to Tennis Queensland.

So practically how does it happen?-- In terms of - so, the venue is managed by Tennis Queensland, the event, the Brisbane International, is owned and managed by Tennis Australia, and both parties work closely in all facets of the event. However, they are separate businesses.

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Do they all liaise with a view to making sure that there is a flood management plan in place for when the tournament is held here?-- The venue - the venue - sorry, the event would be -

is aware of the emergency plans, the flood plans that are in place for the event, yes.

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In your view, do there need to be stricter policies or procedures in place for a tournament like the Brisbane International tournament than currently exist, or can you suggest recommendations?-- I would suggest that we need to have an attachment to the FERP that has an overlay of what we have for the Brisbane International and that that information's taken into account into the FERP. So, effectively an event - the FERP is the main plan, we have an attachment to that that specifically talks about the tournament.

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And by FERP you are talking about Flood Emergency Response Plan?-- Yes, sorry.

And in so far as doing that, that is constructing the overlay, who would suggest should be responsible for doing that?-- Overall responsibility needs to rest with me as the tournament director.

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You would do that in consultation with-----?-- With the venue.

COMMISSIONER: Just so I can get a better understanding, you have the Australian Open series in January?-- That's right.

Would you just be relying on the Flood Emergency Response Plan, is it?-- For this coming January?

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Mmm?-- No, we will add an attachment to that that directly it relates to the event in January.

So, that if we saw a summer again like last summer, you have something planned for how you would deal with that-----?-- Well-----

-----actual tournament?-- What was planned - what was dealt with in January - the tournament had finished, we were in bump-out when the flood hit. Most - most of the venue had been cleared, there were only a couple of marquees and some equipment in the car park that was still on site. If the flood had hit five days earlier it would have been quite different.

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But you're contemplating that for next January?-- Yes. In fact, we will have something for next January.

MS MELLIFONT: Is there a timeframe by which that will be in place?-- There's no time plan - frame set, except that we will make sure it's in place for the tournament and all parties would be aware of it.

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And is there any intention to run drills or practises?-- Along with most things we do, yes.

Can I take you to paragraph 21 of your statement?-- Yes.

You speak about Tennyson Memorial Drive was underwater, which meant that the centre was effectively cut-off completely from road access for approximately 24 to 48 hours. Is that subsequent to the stopping of the rain?-- I wasn't in Brisbane at the time so I don't know when it was and wasn't raining. That was the information that my team conveyed to me, that there was a period of between 24 and 48 hours that both ends of - of King Arthur Terrace were cut off and it was - it was - would have - and my understanding is it was at the height of the floods.

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I will take you to paragraph 27, please. You say that, "As part of the remediation the flood gates have been reviewed with a view to addressing the issue of mitigation of future floods." Can you give some further detail about that, please?-- Yes. More so about the height of the flood gates.

So, who has undertaken the review?-- The - Stadiums Queensland with the venue, which is Tennis Queensland.

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At whose request?-- Oh, I think that was just - it wasn't - it was just a general discussion that it was something if the Q100 level moved, we would need to move the flood gates with them.

Right. And what-----?-- The level of the flood gates I mean.

What if the Q100 doesn't move, are you still looking at reviewing them?-- That would be a decision that we'd make in consultation with Stadiums Queensland.

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Right.

COMMISSIONER: Where are you getting your advice from? I mean you must have some professional input?-- Through Stadiums Queensland. I mean, as the venue owner, we take direction from them.

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So have they got some contractors in to have a look or-----?-- I would - I would assume so, yes, and I don't know, though, I don't know who.

MS MELLIFONT: Who at Stadiums Queensland do you speak to about these things?-- Their general manager of asset management, David Spencer.

So, can I just clarify, when you say the flood gates have been reviewed with a view to addressing the issue of mitigation and future floods, is it better expressed that some consideration will be given to increasing the size of the flood gates if Q100 is altered so as to reflect a higher level?-- That's my understanding of the discussions that we have had, yes.

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And is there any timeframe in respect of that review?-- Not - not that I know of today.

Now, at paragraph 29 you say, "The grass and clay courts are likely to be reopened in late September or early October."?-- Yes.

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I am not sure if you said this already, but how are they going?-- The grass courts are as good as finished, the clay courts will be - will be ready in early October.

All right. So-----?-- The reason for the delay with that is more about the type of clay that we were going to choose, so we have gone for a European base, so that's just a timing issue more than anything.

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All right. Paragraph 30, please, you say, "That once the remediation work is complete, I do not see any long-term impact on the site." Do you mean long-term impact from the January '11 floods?-- Yes.

But in terms more generally about the site, if we see future floods of that or higher levels there can be the obvious impact of further inundation on the site; you accept that?-- Yes, I would, yes.

20

And apart from the review of the flood gates, do you know whether anything is planned or being looked at with a view to further or increased flood mitigation?-- Not as I sit here today, no. I could obviously find that information out but I'm not sure as I sit here today.

And who or where would you inquire of that?-- Stadiums Queensland.

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Now, I appreciate you weren't there at the time, but I will ask you about the sump pumps. Do you know whether they operated during the floods?-- I'm sorry, I don't.

Okay. Who would know that?-- I would expect that information could be gleaned from Stadiums Queensland.

And do you know whether the State Tennis Centre have measures to provide auxiliary power to the pumps in the event of loss of power during the flood events?-- Sorry, can you repeat that?

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Do you know whether the centre has measures for auxiliary power to the pumps?-- No, I don't.

In the event of loss of power? Don't know?-- No, I don't know as I sit here, no.

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So, again, Stadiums Queensland would know that?-- Yes.

Nothing further, thank you.

COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: Thank you, Commissioner. Mr Pearson, one of the difficulties you had, as you have told us, in giving your statement is that you only took over the role of CEO from 1 July 2010?-- Yes, that's right.

So, your information is based upon, as you have told us, speaking to two former CEOs and an immediate past president?-- Yes, that's correct.

10

But you haven't had access to any records?-- We have had access to records. The information that I have in our records didn't provide anything new that I didn't already get from the two previous CEOs-----

Okay?-- -----or the immediate past president.

All right. You were shown a document which was designated as attached 6 to a statement of a Timothy Peisker?-- Yes.

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Did you actually read the statement of Mr Peisker?-- I did, yes.

And, Mr Peisker, you would have understood, is the executive director of the Infrastructure Planning and Development Branch of the Department of Communities?-- That's correct.

And he gave in your statement, you would have seen, a detailed chronology of the background to how the Tennis Centre came to be developed?-- Yes.

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Can I take you just very quickly to some of those details? It starts back in - as far back as 1999, does it not?-- From what - I read in his report, yes.

"Tennis Queensland and other agencies, including the State, convened a tennis facilities working group to consider the future location of a Tennis Centre."?-- That's what I read in his statement, yes.

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And seven sites were identified, which didn't include the Tennyson Power Station site initially. Is that your understanding of how the-----?-- It's - I - again, I have only read what I have seen in his statement. I haven't seen any records.

Okay. Well, the sites were - can I just very briefly take you to these - the sites identified were these initially Albion Park, Ballymore, Doomben, ANZ Stadium, Brisbane Entertainment Centre, Dunlop Park Corinda, and the Chelmer Reserve. They were the seven sites initially identified?-- Right.

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That was in 1999 and in 2002 on the 11th of June 2002 Tennis Queensland submitted a proposal to the State for the development of a new State tennis headquarters. That's about the right timing of things as you understand it?-- Again, only what I have seen in Mr Peisker's statement.



"Tennis Queensland were seeking assistance with the allocation of a four to five hectare site and capital contribution of about \$5 million towards the development." Tennis Queensland investigated a range of potential sites, including again Boondall, Sleeman Centre, ANZ Stadium, the former Milton Tennis Centre, Boggo Road Gaol, the RNA Showgrounds and ultimately the Tennyson Power Station site?-- And I saw that in the document that was attached and I did read through that, yes.

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COMMISSIONER: Mr MacSporran, I am sure this can all be got on the record.

MR MacSPORRAN: Yes.

COMMISSIONER: I am not sure if this person is being called. I just don't know there's a lot of percentage in asking Mr Pearson if-----

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MR MacSPORRAN: No, I accept that, Commissioner, I just wanted to make it clear that all of this information is available and it is with the Commission. Mr Peisker, I assume, is going to be called at some point.

MS MELLIFONT: He is, yes.

MR MacSPORRAN: And he deals with all of these issues, and more particularly the question of the information about the flooding of the training courts and the centre court.

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COMMISSIONER: All right.

MR MacSPORRAN: Which this gentlemen doesn't seem to have the information to hand.

COMMISSIONER: We have got all that to look forward to.

MR MacSPORRAN: Yes. I won't trouble you with taking it through him.

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COMMISSIONER: Thank you. Mr Porter?

MR PORTER: No questions.

MS McLEOD: No questions, thank you.

MS MELLIFONT: Might be Pearson be excused, please?

COMMISSIONER: Yes, thanks, Mr Pearson. You are excused?-- Thank you.

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WITNESS EXCUSED

MS MELLIFONT: The next witness to be call asked  
Cassandra Sun. Ms Sun is a town planner with the  
Brisbane City Council. Her evidence touches on the  
Festival Towers development in the Brisbane CBD, and the  
Commission has received a submission from a lay witness who  
made observations of flooding of the basement and raises the  
terms of possible causes of that flooding through electrical  
conduit.

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I call Cassandra Sun.

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CASSANDRA SUN, SWORN AND EXAMINED:

MS MELLIFONT: Is your full name Cassandra Sun?-- Correct.

Are you the regional manager of the Development Assessment  
Central team at the Brisbane City Council?-- Yes.

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And do you hold a Bachelor of Regional and Town Planning with  
honours from the University of Queensland?-- Yes.

Were you employed by the Brisbane City Council on and from the  
1st of April 2001?-- Yes.

And for most of that time, that has been with the Development  
Assessment Central team?-- Yes.

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And in that time, you have held the positions of senior urban  
planner, principal urban planner, and your current role is  
that of regional manager?-- Correct.

Have you made a statement for these proceedings dated the 14th  
of September 2011?-- Yes.

Was that in response to a requirement from the Commissioner  
issued on the 9th of September 2011 in respect of a  
residential building at 108 Albert Street, Brisbane, known as  
Festival Towers?-- Yes.

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I ask you to have a look at this statement, please? Is that  
your statement?-- Yes, it is.

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

I tender that statement.

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COMMISSIONER: Exhibit 629.

ADMITTED AND MARKED "EXHIBIT 629"

MS MELLIFONT: It's correct to say that the statement addresses the development approval of Festival Towers at Albert Street in the City?-- Yes.

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You personally weren't involved in the assessment of the development application for the building?-- That's correct.

But you provided this statement in your capacity as regional manager of the central team to assist the Commission with its inquiries?-- That's correct.

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Now, can I just ask you to assume that the basement levels of Festival Towers were flooded during the January 2011 floods?-- Mmm-hmm.

Firstly, can I ask you are you aware of that to your - from direct knowledge or from council records?-- No, I'm not. I'm advised from council records and I believe council's access to mapping done by DERM, Department of Environment Resource management, there was some partial flooding.

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There was some partial flooding?-- Yes.

Of the basement?-- Of - surface flooding. I am not aware personally that the basement flooded.

All right. Now, the main focus of your statement is about whether Brisbane City Council gave consideration to the potential inundation of Festival Towers due to water flowing through Energex conduit pipes?-- Yes.

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Do you agree with that?-- Yes.

Now, at paragraph 12 of your statement, and I will take you to that, you mention that it's unlikely that there was consideration by the council of the potential for inundation at basement level through adjacent Energex conduit pipes. Why is that the case?-- It's not council standard practice to assess that matter, adjacent Energex conduits pits, when assessing developments in the CBD and - with basements.

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Do you know why not?-- Particularly because it's an adjacent site and I believe it's my understanding that the work that Energex does is not something that's assessable under City Plan.

All right. So, is it your understanding that Brisbane City Council doesn't have jurisdiction, as it were, to the condition of placement of electricity substations and associated structures?-- That's my understanding.

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And nor does it have jurisdiction, as it were, to direct Energex about how to position their conduit pits or how to place their pipes?-- That's my understanding.

COMMISSIONER: But could you impose it as a condition of the development approval that the developer sought of the sealing of pipes?-- Council currently attaches a condition in regard

to basements that's post - new basements post January 2011 in regard to making basements substantially impermeable, so, yes, it can. However, Energex can subsequently come and do works to a basement and then the meeting of that condition has become invalidated.

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Yes, okay. That makes sense.

MS MELLIFONT: Can I take you to Exhibit 2 to your statement, which is the development approval, and it's condition 41? Right. So, the condition in the DA relevant to the supply of underground electricity is condition 41 and it refers to council's guidelines for the provision of underground electricity which provides some comment in relation to the installation of underground electricity, but it's in relation to standards for design and installation and in that respect it says, "All electricity distribution and reticulation design and installation must comply with appropriate policies and standard working practices of Energex."-- That's correct.

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So, if the Energex policies and practices aren't sufficient to provide flood immunity, you'd agree that the condition doesn't operate to provide flood immunity from the supply of underground electricity?-- Yes, I believe the intent of this condition is to merely ensure that electricity service is provided in underground capacity and the subdivision - Subdivision Development Guidelines refer to the Energex standards do state that.

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So, is it fair to say that essentially the method of installation, sealing, waterproofing, tends to be a matter between a utility provider and the developer?-- That's correct.

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And what can council do, if anything, if a utility provider installs infrastructure in a place and in a way which would be contrary to the council's desires for flood immunity in a development?-- I believe there's little they can do if it's subsequent to completion of development and them carrying out their development in accordance with all their conditions.

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What about before that?-- Before that, I suppose any council could come to an understanding with a utility provider that their standards and practices would not then impinge on this condition set.

So, a memorandum of understanding, is that what you're-----?-- Perhaps, but I am not sure of, you know, particular details of documents they could enter in to.

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Do you know whether any such documents exist now, any such documents reflecting an understanding as between council and utilities?-- I don't believe there is.

All right?-- But I don't really know.

Do you think it would be a good idea?-- It could be but, once again, given that council is limited in what it can do under

City Plan and the Sustainable Planning Act I am not sure of the mechanisms of how it would work.

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Right. Can I ask you, please - does the council currently have some new draft basement conditions for new development?-- That's correct, since - post January 2011 there was a basement condition which existed pre-January 2011, however it was not particular detailed, regarding new basements in areas that could be inundated. Post January that condition's become much more detailed and it's a condition that is attached to new developments with basement in areas that may become inundated.

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And do you - it's probably obvious - but do you know what triggered the preparation of the new draft conditions?-- I believe it was the January event.

Do you know whose responsible for the preparation of the new basement conditions?-- Not specifically, but it was a number of officers in the council.

20

Within which division or divisions?-- It might have been Development Assessment and Water Resources, but I am not sure of the particulars.

Now, it's called a DART, DART draft conditions; is that correct?-- Yes.

What does DART mean?-- DART stands for Development and Regulatory Tracking System, I believe. It's council's computer system that we use that holds all our standard conditions and how we attach conditions in an approval package.

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All right. So, is this DART Basement Condition going to become part of one of the council codes?-- No. The conditions aren't to my understanding part of codes, they're in a package - a package of standards that we can attach when we approve development applications.

Do you know whether there's any proposal as part of City Plan to require that consideration be given to the new DART Basement Conditions?-- I don't know.

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Do you think it should?-- I don't know if codes can regulate that matter, given it may be more of a building matter. I know they may be able to regulate flooding but I don't know for sure.

Do you think as a town planner that consideration ought to be given to imposing these new DART Basement Conditions for flood prone properties?-- Yes, and they are now.

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Can I show you those, please? So, is that a copy of the draft DART Basement Conditions?-- Yes.

Do you know when it's going to come into final form?-- No, I do not.

Do you know who's responsible for bringing it into final form?-- I do not.

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And can I just take you to a couple of examples of new draft conditions? (iv), "All stormwater connections are to be fully sealed ensuring no possibility of backflow into basements." Was that proposed condition part of the scheme prior to the January '11 floods?-- I'm unsure of that, whether it was in the condition prior to January 2011.

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Just to (viii) where a, "Watertight fully tanked basement is required, the structure is suitably designed by RPEQ to resist hydrostatic pressures and buoyancy forces as a result of peak flood levels.", can we have that in English?-- Where a basement is watertight, a proposal that no water can get in at all, that is fully tanked, and RPEQ, Registered Practising Engineer Queensland, is needed to ensure it's designed appropriately so that water - when the ground around it gets so wet the whole thing doesn't pop out of the ground.

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And was that condition part of the old regime?-- I don't believe it was.

All right. I tender that document, please.

COMMISSIONER: Exhibit 630"

ADMITTED AND MARKED "EXHIBIT 630"

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COMMISSIONER: What's it called exactly?

MS MELLIFONT: It is called Brisbane City Council Draft DART Basement Condition.

COMMISSIONER: Thank you.

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MS MELLIFONT: The document's undated. Do you know when it came into existence?-- Some time soon after January 2011. I am not sure of the exact date.

Thank you. Can I take you, please, to Exhibit 538? Now, this is a recent publication of the Queensland Reconstruction Authority and it's headed, "Planning for Stronger, More Resilient Electrical Infrastructure." Can I take you, please, to page 9 of that document, and you will see under the heading, "Land Use Planning.", at dot point 4, "One of the key considerations is to ensure better protection of minor electrical infrastructure in future events by enforcing a level of immunity in private developments; that is, through the development assessment process." Do you have any comments

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in respect of that recommendation?-- It's - with regard to that condition, the DART standing condition, I believe that matter is now taken into account. That condition requires that minor electrical infrastructure is - does have flood immunity.

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All right. So in so far as the Brisbane City Council's response to the floods, that appears to be consistent with that particular recommendation by QRA?-- Yes.

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Do you see any challenges in terms of ensuring compliance with imposition of those types of conditions in development approvals?-- If - not too much difficulty. Not too many challenges.

All right. Well, do you see any problems?-- Only if developers do not meet their development conditions or approved plans. So we have approved electrical infrastructure above a certain level and it has immunity and it's built in a different way but there are enforcement procedures to rectify that.

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All right. So if the developers don't do the right thing by the plans there are enforcement procedures in place currently by which the Brisbane City Council can take action?-- Correct.

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Do you know if the Brisbane City Council has taken action in respect of a failure to comply with such conditions?-- I don't believe we have given the relative newness of this condition and the January flood event.

And which section of Council is responsible for inspecting for compliance and then enforcing compliance where issues arise?-- Compliance and Regulatory Services.

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Just moving off that document for the minute. Now, Festival Towers was a bit different to many of the other buildings that have come within the attention of the Commission in that the essential services were not located in the basement but, rather, they were on the ground floor. Are you familiar with that feature of the design of the building?-- No.

All right. So are you able to comment at all about how it came to be that the essential services were placed on the ground floor?-- No.

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And do you know whether or not Brisbane City Council had any specific involvement, for example, in suggesting that it be on the ground floor?-- I don't believe it did.

Can I take you back to that document, please, Exhibit 538, and on the same page, under the heading "Building and Design", the QRA recommends in new high-rise buildings "raised electrical equipment where possible to improve resilience and provide greater protection". Do you have any comment with respect to that particular recommendation?-- In the standard condition that was offered earlier that matter is addressed now, in that condition.

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Do you think anything further is needed?-- I don't believe there is.



You will see in that dot point there's a reference to "where possible". Are you aware of anything beyond financial constraints which might negatively impact on the ability to do this?-- It might be space at ground floor level versus space in basements. That's the only thing I can think of, really.

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What about the weight?-- The weight of electrical equipment?

And essential infrastructure?-- I don't think - I think structurally somebody could sort that issue out, but I'm not a builder so I wouldn't really know.

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All right, thank you. I have no further questions, thank you.

COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: Nothing, thank you.

COMMISSIONER: Ms McLeod, do you have any questions?

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MR MacSPORRAN: No questions, thank you, Commissioner

COMMISSIONER: Mr Dunning.

MR DUNNING: Thank you, Commissioner. Miss Sun, just two very brief matters I wanted to raise with you and that relates to the document - sorry, Commissioner, I just have a little trouble hearing. Is 630 the last exhibit?

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COMMISSIONER: Yes, that's the draft condition.

MR DUNNING: The draft conditions, yes. Miss Sun, I just wanted to ask you a little bit about those draft conditions. When you use the expression "draft" are you using it in the sense of they're not final or are you using it in the sense they're a precedent or pro forma document, the terms of which are adapted to a particular approval?-- It - the second.

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All right, thank you. So they've already been used-----?-- That's correct.

Okay, thank you. And I can take you to particular passages of it if you want me to, but is it the case that the Temporary Local Planning Instrument 01/11 in fact specifically adverted to a power to regulate basements to attend to this issue?-- It gave us a certain level of confidence that we could use this condition which has that level of detail in it regards basements.

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Which had not prior - previously existed?-- That's correct.

Okay. Thanks, Miss Sun. Thank you, Commissioner.

COMMISSIONER: Can I just ask you this: do town planners from different councils talk? Would you know what other councils do about this?-- They don't talk a lot but post the January

event we did contact others. I think, though, for the Brisbane CBD we have a lot more instances of basements that may be subject to inundation so we didn't have a lot of other people's examples to go by.

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And do you know if any other councils are implementing a similar set of conditions?-- I don't know about that.

Thank you very much.

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MS MELLIFONT: Just one further question. So the description of the DART basement guidelines is better described as "precedent basement guidelines"?-- It's a condition which we attach and the nature of the word "draft", I suppose, is that it doesn't have the word "final" on it, which they don't generally, but we can modify that condition for each development on a case by case basis.

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And so what system is in place to make sure that somebody who is assessing the application turns their mind to that document when they're considering the assessment?-- If a basement is in an area that's subject to inundation then that condition should be considered and attached as part of Council practice.

All right. But where does it say that? Where does it say you need to look at that?-- I believe the TLPI gives us some assistance in that regard to look at that condition.

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Is there a checklist for these types of things, things you should look at?-- There isn't a checklist as such.

Should there be?-- There could be but in - being a town planner in development assessment at Council it's part of your standard practice in assessing such an application.

COMMISSIONER: If you're a town planner starting on the job first day where do you get your information from about what you should be doing? Is it the-----?-- The City Plan and more senior planners.

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MS MELLIFONT: So there's no training manual as such, if I could put it in those terms, by which a new town planner is able to make sure that when they've assessed a development they've looked at all the relevant aspects of the plan and the codes and guidelines and procedures and policies?-- There are standard operating procedures but practice in assessment of a application, a new town planner is always required to consult a more senior town planner in finalising an application. It would be scrutinised by someone at a more senior level.

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What if everybody forgets to look at something?-- If everyone forgets it could be missed.

Any suggestions about how to remedy that?-- Standard operating procedure.

Which covers everything?-- Yes.

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All right. Thank you. No further questions. Might this witness be excused?

COMMISSIONER: Thanks very much, Miss Sun, you're excused.

WITNESS EXCUSED

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MS MELLIFONT: If I could call-----

COMMISSIONER: Now, do you want to take the morning break now or would you rather do it after the next witness?

MS MELLIFONT: After the next witness, if that's okay.

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COMMISSIONER: Sure.

MS MELLIFONT: The next witness is David Anthony Dunworth, who, as I have mentioned earlier this morning, leased one of the apartments at Mirvac and his wife contracted for the purchase of one. I call David Anthony Dunworth.

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DAVID ANTHONY DUNWORTH, SWORN AND EXAMINED:

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

Is your full name David Anthony Dunworth?-- That's correct.

And you are a licensed real estate agent and until recently a registered valuer?-- Correct.

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In early 2007 - sorry. Have you prepared a statement for this Commission?-- Yes, I have.

And I'll ask you to be shown a copy of that statement, which was signed on the 20th of September 2011. It's a three-page, 13 paragraph statement with annexures. Is that your statement?-- That's my statement, yes.

And is the information within it true and correct to the best of your knowledge?-- Sorry?

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Is the information within it true and correct to the best of your knowledge?-- Yes, it is.

Right. I tender that statement.

COMMISSIONER: Exhibit 631.

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ADMITTED AND MARKED "EXHIBIT 631"

MS MELLIFONT: In early 2001 did you first - was that when you first became aware of a multistorey apartment complex being proposed for Tennyson next to the Brisbane River?-- 2001?

Seven?-- 2007, yes.

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All right. And at that time did you visit the sales office which advertised the project to be developed by Mirvac in conjunction with the State Government?-- Yes, I was advised of the project by a - through an acquaintance of mine in Mirvac that the project was coming through and he gave us some notice, early notice, and so we arranged an appointment and visited the site.

Now, ultimately did your wife sign - did your wife and you sign a lease for apartment 3101 at Tennyson Reach?-- Yes, we did.

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And was that in November 2009?-- That's right.

Which building was apartment 3101 in?-- 3101 was in Softstone.

All right. And so if you are facing the river from the road the Softstone building is the one to the far right?-- On the right, yes.

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All right. And immediately to its left is Lushington?-- That's correct.

And did you rent that apartment after you had sold a house at Chelmer?-- Yes, we did.

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And was it intended for that accommodation to be transitional until the contract which your wife had signed with Mirvac was finalised?-- Yes, she had a contract on 3301, which was also in Softstone.

On what floor?-- Level one, which is - they call it level one, it's the ground floor.

All right. And is 3101 on what level?-- On the ground floor also.

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And was the apartment 3301 positioned on the north-eastern side of Softstone?-- That's correct.

And what about 3101?-- 3101 was two along to the west.

Okay. Were you at the Tennyson Reach development on the date of 12 January 2011?-- Yes, I was.

Did you observe that it became, that is the development site became flooded?-- Yes, I did.

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And about what time was that?-- That the apartments flooded or the basements flooded or the road - well, the basements flooded about 20 hours before-----

Right. Well, let's take it in sequence. When - what flooded first and when?-- The apartments flooded. The last trip I could get out of the basements to get furniture, everything out of storage, was probably about 8 o'clock on the night before, and the road was cutoff early on the 12th, and then the apartments, the actual water penetrated the apartments at approximately 3 o'clock on the 12th.

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Okay?-- 3 p.m.

So the basement flooded first?-- Yes.

And where did the water come from?-- Well, our furniture and effects and everything was in basement two and the water was actually coming down from basement one.

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And did you see where the water first entered the development site?-- No, I didn't.

All right. From what direction did the floodwaters first come? Was it from the King Arthur Terrace side or the river side?-- Into the apartments?

Into the site?-- Well, the water was swirling around the eastern end of the building at the 3301 and that - the road was probably flooded by early on the 12th, so we first realised that the site - that the apartments were probably going to flood at midnight on the 11th because we could see the water rising very rapidly. So the apartments were cutoff by that morning, the basements were already flooded and the apartments flooded in the afternoon, and, to my observation, the water actually penetrated into 3101 from the roadside before it came across the balcony.

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Okay. I'll show you, please, an RPOne map where you have marked with an arrow?-- Yes.

There's a black arrow that we see written onto that RPOne map. Is that something you've marked on there?-- Yes, it is.

And what does the direction of that arrow indicate?-- Well, that's where the water first penetrated, to my observation, into the complex. So it came in from the roadside marginally before it penetrated over the balconies. So that's to show that the water came from the King Arthur Terrace side into the buildings before it came from the river.

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And when you say "marginally before", are you able to give some estimate of time?-- Well, I would - it would only be a short time, might be 10, 15 minutes, because we were in 3101 and we were helping our neighbour in 3102, who was an elderly gentleman, so we were helping him move his equipment as well, and I walked from 3101 into 3102 and the water actually came in the front door and ran into 3101 first and then when I walked into 3102 I could see the water within a few minutes was starting to bubble across the balcony.

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Right. Thank you. I tender that map, please.

COMMISSIONER: Exhibit 632.

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ADMITTED AND MARKED "EXHIBIT of 632"

MS MELLIFONT: So your family and you moved as much of your property as possible to an upper level apartment?-- Yes, we'd - we moved as much furniture as we could up the stairwells but that precluded anything that was bulky because people weren't in - by the time that we realised it was in trouble there was - people couldn't get in. My son-in-law came in at - early on the 12th but he couldn't drive in he had to wade in then and when he left at about midday he probably just about had to swim out. So we were moving as much as we could but we couldn't move bulky furniture-----

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All right?-- -----so there was a spare apartment above that Mirvac allowed us to - and the other neighbours, to store furniture in, so we put all our effects and lighter pieces of

furniture in that and then the rest we just stored on top of tables and such things in the - in the 3101.

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All right. And so when was it that you first became aware that you were in trouble, as it were? Was that the 11th?-- Yes, because I - we'd been - we went and had a lie down about 11.30 on the 11th-----

a.m. or p.m.?-- p.m., and I was looking at the water coming up over the path and there was a - there was a fence with wire runners in it and when I went to bed and I woke up about an hour and a half later it had actually risen about two or three levels up the fence, so I thought at this rate we're in trouble, whereas up to then I thought Wivenhoe would take care of everything.

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What was the division between the runners, roughly?-- Oh, I'd say probably 20 centimetres.

And you say that you were moving property to the upper level basement through the staircase?-- Yes.

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Were the lifts working?-- No. Well, the - all the systems had gone out and the lifts were out from the - from earlier that evening on the 11th, 'cause I drove my truck out - oh, well, I had a four-wheel drive and I was taking as much out of the basement as I could and I think the last time I was able to get out of there was at about 8 o'clock on the 11th.

All right. So some-----?-- But the lifts weren't working then.

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So the lifts weren't working-----?-- No.

-----by the 8 p.m. on the 11th of January?-- Yeah. It could have been earlier.

Okay. Now, did the water come to a level of about .6 metres within your own - within your apartment?-- Yes, it did.

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Both of them? That is the leased-----?-- Yes.

-----apartment and the other one?-- Yes, both apartments.

And did that result in destruction and damage of buildings, fixture, furniture and other personal items you had?-- Yes, it did.

Within your apartments?-- Yeah.

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And was property also destroyed in the basements?-- Yes. Well, the basements were - we weren't able to get back into the basement until the 29th, that was the first day we were able to get back in, and so, you know, furniture and - we assumed that the basements were going to be dry till 8.4 metres because that's what we were advised so we didn't treat it with the amount of urgency we probably should have. So furniture was destroyed, paintings, memorabilia, photo

albums, all those sort of things.

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And how far was the basement inundated?-- Oh, completely. Both basements were completely inundated.

And how long were you required to vacate the apartment for until repairs had been finished?-- Well, we never moved back but the people who did move back into - I'm not sure of the level two and above apartments, they were before the ground floor, but the ground floor was about mid June. So they took, you know, approximately four months, five months.

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You spoke earlier about difficulty that your son or son-in-law had in gaining access to the property?-- Mmm.

How long was the access road cutoff for before the units started flooding?-- Oh, probably - this is only a guesstimate. I would say that they - probably the last cars were going out about half past 7 and then the police cutoff access anyway.

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Half past 7 when?-- On the morning of the 12th.

All right. Can I take you to some photographs which are annexed to your affidavit? They are Exhibit 2 to your affidavit, B-----?-- Yes.

-----Exhibit B. I'll very briefly take you through these. Which apartment is that?-- That's 3301.

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And how long after the flood was that photograph taken?-- I believe that was taken on the 19th.

Next photograph, please?-- 3301.

And again the timing of the photograph about the same?-- Well, I took these photographs either on the 18th or 19th. I took them with a - my camera - my phone, so they do have a date on them. It's not here but I believe that was on the 19th.

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All right. And the level to which the walls have been removed I take it exceeded the level of inundation?-- Yes, it did, they were - they cut the Gyprock out basically 'cause the water would have penetrated right up to the ceiling.

Next photograph, please. All right. Can I take you also, please to - Exhibit 4 to your statement is a 1974 photo taken from the BOM website?-- That's right.

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Showing the area at that point in time. And that's already in the material so that doesn't need to be tendered. And can I take you finally, please, to Exhibit E to your statement?-- Yes.

Now, is this a document which was prepared for you by JF & P Urban Consultants-----?-- Yeah-----



-----which-----?-- -----that photo was taken originally for another matter that we were involved - my wife was involved in, and was taken on the 10th of the 2nd, but after the floods I wanted basically to get a gauge of where all the height lines were, so I asked them to superimpose the Q100, the Q100 plus 500 millimetres plus, and then the 1974 flood level. They wouldn't superimpose the 1893 because they weren't sure of the datum, but I just scaled off. It was approximately 2.85, they say, above the '74 flood level. I know those - that, you know, Wivenhoe and Somerset have been built since then but that was just an estimate of where the 1893 flood level was.

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All right. So you accept that this document is an estimate of some visual representations of the various flood levels?-- That's right.

Finally, Mr Dunworth, when you and your wife were considering entering into a contract for the purchase of one of the apartments what flood searches did you do, if any?-- No, we didn't. I checked with - no, we didn't do any flood searches. Probably there were two reasons. Probably the first reason was that there was a bit of pressure on, either you do the deal or you walk away, but I think the main reason was that - well, you'd had a material change of use from a derelict power station to a development that was going to encompass a major piece of Queensland Government infrastructure in the Brisbane International Tennis Centre, you had a significant Australian development company who were looking to develop 385 luxury apartments, and you had the Brisbane City Council ticking off, so basically I assumed, and probably most people did, that, you know, the most stringent conditions were imposed. But after the flooding I decided that I should do a bit of research 'cause I - you know, I just never believed this was going to flood and - so my research, if I'd known what I found out, we may have considered - may not have made that decision because I don't think many people would have realised that these 385 apartments were being built within the river corridor, that this is located in what they call "precinct two", "river precinct two", which requires a minimum setback of 10 - of 20 metres from the - the high water mark. This has relaxations down to six metres. That I don't think many people knew that the flood level '74 was 10.8 and the minimum height level for the habitable level here was 8.4, so there was a difference of 2.8 metres, and that actually Softstone encroaches into the flood path of the river and is built right in the spot where the overland flow comes in. So I think if I'd known all those things, I'm not saying we would have made a different decision but I certainly would have considered it. It just seems strange to me that when you buy something like this you get disclosure statements, you get body corporate management statements, you get perspectives, you get landscape plans, you get a specification, you get elevations, but nowhere do you find you get anything to tell you that this unit is 2.4 metres below the '74 flood level. I don't know whether that would have affected people or not but it does seem a little bit strange that - and I'm not relating it just to this, that would be the same case with all apartments, but

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it seems odd that that information is available and you don't get it. Now, in hindsight I should have checked those things out but I didn't.

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I have no further questions, thank you.

COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: I have nothing, thank you, Commissioner.

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COMMISSIONER: Mr Dunning. Mr Porter?

MR PORTER: No questions.

COMMISSIONER: Miss McLeod?

MS McLEOD: No questions, thank you.

MS MELLIFONT: Might Mr Dunworth be excused, please?

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COMMISSIONER: Yes, thanks for your time, Mr Dunworth, you're excused.

WITNESS EXCUSED

MS MELLIFONT: Is that a convenient time for the break?

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COMMISSIONER: Yes, we will take the morning break and come back at a quarter to.

MS MELLIFONT: Thank you.

THE COMMISSION ADJOURNED AT 11.27 A.M.

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THE COMMISSION RESUMED AT 11.45 A.M.

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MS MELLIFONT: The next witness is Rory John Kelly who is a regional manager of the Development Assessment South, Brisbane City Council. I call Rory John Kelly.

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RORY JOHN KELLY, SWORN AND EXAMINED:

MS MELLIFONT: Good morning, Mr Kelly. You're full name, please?-- Rory John Kelly.

You're going to need to speak up for us this morning?-- Sorry.

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And are you a town planner?-- Yes.

With the Brisbane City Council?-- Yes.

Do you hold a Graduate Diploma in Urban and Regional Planning from QUT?-- Yes.

And have you been employed by the Brisbane City Council since May 1987?-- Yes.

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And did you start your work there as a planning officer?-- Yes.

For almost all of the time since then, have you worked in the Development Assessment South planning team?-- All but a period of time when I was up in City Planning.

When you were?-- In City Planning, sorry.

Right. So, you had about 18 months in City Planning?-- Yes.

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And seven months in the Development Assessment North section?-- Yes - the Development - yes.

Sorry - yes. Now, in respect of the timing of the Tennyson Reach development, were you a principal planner in the Development Assessment South planning team?-- Yes.

And in that role, does that mean you were a senior planning officer with responsibility for ensuring the timely processing of about 350 development applications being assessed by DA South at any one time?-- Yes.

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Did you have around 20 planners reporting to you?-- Over the period of the initial application, yes.

Over the period of the initial application?-- Oh, well, there's been a number of applications at Tennyson.

All right. So, which period are you speaking of?-- Well, the initial period, there was about 20. It might have increased over the period, up until the most recent approval over that site, but it's about 20.

So, in the initial period, you are speaking about the early 2000s?-- When it was initially approved, yes.

Now, the town planners who would report to you - just speaking about the general practice within the Council - town planners reporting to you would assist you in assessing development applications?-- I would assist them in assessing development applications as part of the Assessment Team South, yes.

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And sometimes they would refer technical or complex planning issues to you for your consideration?-- Yes.

You would also have direct involvement in development applications with significant community interest or complex issues requiring strategic or policy direction?-- They're the ones I tended to get more involved with, yes.

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All right. Now, the Development Assessment Branch is the branch responsible for all aspects of assessment of DA applications?-- Under the - yes.

That is, DA - development applications - lodged under the relevant State Planning Legislation?-- And we also have a RiskSMART component which is partly done by private consultants but DA ends up signing them off. Development Assessment ends up signing them off as well.

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All right. I'm really having trouble hearing you, Mr Kelly?-- Sorry. I'm just - sorry.

Yeah, the mike - that's probably not going to amplify, so we'll just need you to-----

COMMISSIONER: It does have some effect, I think.

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MS MELLIFONT: It does?

COMMISSIONER: I seem to have noticed it if you lean forward a little bit?-- Yes, I think I have to lean forward. Yes, sorry.

MS MELLIFONT: Thank you. So, if we can just come back a second-----?-- Sure.

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You said that you have a RiskSMART component to your job?-- No, there is - in the Development Assessment Branch, there is a component which is referred to as RiskSMART.

What is that?-- Okay, RiskSMART is where - where the minor applications or the applications having lower risk are prepared by private consultants that are certified to lodge those type of applications and those applications are then

processed into our system and approved within five working days generally.

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Okay. Now, is the DA Branch also responsible for making recommendations as to the approval or otherwise of development applications and the conditions upon - the conditions which should be imposed on such approval?-- Yes.

And are those applications assessed against the Brisbane City Plan?-- Yes, and related documents.

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Being?-- Well, the State Planning Policies, the codes, the supporting information, like the subdivision development guidelines. There might be some other documents that are referred to when we're talking about pollution matters. So, generally, it is the City Plan and any other relevant document that's applicable.

All right. So, the City Plan and any of the documents that have been produced under it, correct?-- Mmm.

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Is that a "yes"?-- Yes.

Okay?-- Sorry.

The Sustainable Planning Act, the State Planning Policies and any other State legislation or regulation relevant to planning?-- Yes.

Okay. Now, the role of the Development Assessment Branch is different from the City Planning Branch; is that correct?-- Yes.

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Because the City Planning Branch has responsibility for developing policy-----?-- Yes.

-----as to development and providing development policy advice to the DA Branch?-- Correct, yes.

Now, your branch has five multidisciplinary teams?-- Yes.

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And those teams include planners, engineers, ecologists and architects?-- Yes.

As well as a technical specialist team consisting of officers specialising in disciplines such as hydraulics, traffic and ecology?-- Correct, yes.

So, a DA file is usually managed by a planner?-- A high level application or a planning application is generally managed by one of the assessment managers, who is a planner, yes.

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And the assessing manager can have access to the expertise of the other inhouse professionals?-- As required, yes.

And they can also have access to specialist groups in other parts of Council for advice?-- Yes, if it's required to go outside the DA branch, yes.

And if they do so, they still retain the discretion to accept or reject the advice from these other parts of Council?--  
Yes.

Now, Development Assessment South Branch is a regional team?--  
Yes.

And it covers developments to the west of the South-East Freeway and the south of the Brisbane River?-- Generally, that's the area, yes.

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Okay. Now, you have been issued with six requirements from the Commission within the province of the DA South Branch?-- Yes.

Now, I'll go through those and we want to tender your statements, because you've produced seven statements altogether, haven't you?-- Correct, yes.

All right. Starting with a requirement - sorry, statement produced in response to a requirement dated the 16th of August 2011 with respect to the Tennyson Reach Development. This has been titled your first statement. It is dated the 31st of August 2011. It is 122 paragraphs with three volumes of exhibits. Is that your first statement there?-- Yes.

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All right. I tender the statement and the exhibits.

COMMISSIONER: Exhibit 633.

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ADMITTED AND MARKED "EXHIBIT 633"

MS MELLIFONT: You have also provided a supplementary statement with respect to the Tennyson Reach Development; is that correct?-- Yes.

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And this is your second statement. It is dated 8 September 2011. It is 36 paragraphs with two volumes of exhibits. Do you have before you your second statement?-- Yes.

I tender that.

COMMISSIONER: Exhibit 634.

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ADMITTED AND MARKED "EXHIBIT 634"

MS MELLIFONT: Together with the exhibits. Can I show you, please, your third statement, which is in response to a requirement dated the 9th of September 2011 with respect to a development at 42 Ferry Road, West End. It is dated the 19th

of September 2011, 24 paragraphs, with one volume of exhibits.  
Is that your third statement you have before you?-- Yes.

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I tender that.

COMMISSIONER: Exhibit 635.

ADMITTED AND MARKED "EXHIBIT 635"

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MS MELLIFONT: Can I indicate to the Commission that the evidence touching on the Tennyson Reach development and the West End development, so far as it relates to Mr Kelly, will be the subject of evidence this coming Monday when Mr Kelly will be recalled. Today the evidence will be with respect to the other four requirements, or as many as we get through, and with the balance also to be dealt with on Monday.

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COMMISSIONER: Thank you.

MS MELLIFONT: So, the next statement is your fourth statement - this is in response to a requirement dated the 8th of September 2011, with respect to the Dulux powder coating factory at 1477 Ipswich Road, Rocklea. Your fourth statement is dated the 19th of September 2011, 16 paragraphs, along with five exhibits in a slim bundle. Is that your fourth statement there?-- Yes.

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I tender that.

COMMISSIONER: Exhibit 636.

ADMITTED AND MARKED "EXHIBIT 636"

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MS MELLIFONT: Your fifth statement is in response to a requirement dated the 8th of September 2011 with respect to the Caltex service station at 61 Ashover Road, Rocklea. It is dated the 19th of September 2011, 17 paragraphs with four exhibits in a slim bundle. Is that your fifth statement there?-- Yes.

I tender that.

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COMMISSIONER: Exhibit 637.

ADMITTED AND MARKED "EXHIBIT 637"

MS MELLIFONT: Your sixth statement is in response to a requirement dated the 8th of September 2011 and it is with respect to three bundles, 6 Long Street, East Graceville. It is dated the 21st of September 2011, 37 paragraphs with one volume of exhibits. Do you have your sixth statement there?-- Yes.

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I tender that statement and exhibits.

COMMISSIONER: 638.

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ADMITTED AND MARKED "EXHIBIT 638"

MS MELLIFONT: Finally, your seventh statement is in response to a requirement dated 8 September with respect to the Yeronga Aged Care Facility at Cansdale Street, Yeronga. It is dated the 21st of September 2011, 45 paragraphs in length with three volumes of exhibits. Is that your seventh statement there - four volumes, I'm sorry?-- Four volumes, yes. Yes.

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I tender the statement with four volumes of exhibits.

COMMISSIONER: Exhibit 639.

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ADMITTED AND MARKED "EXHIBIT 639"

MS MELLIFONT: Can Mr Kelly please have his fourth statement? This relates to the Dulux powder coating factory at 1477 Ipswich Road, Rocklea. Can I start, Mr Kelly, by showing you a Floodwise Property Report in respect of that property? We can see from that Floodwise Property Report that the height of the inundation in January 2011 was 9.2 metres. Is that your understanding of the level to which it was inundated at that time?-- Yes.

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All right. I tender that Floodwise Property Report, please.

COMMISSIONER: Exhibit 640.

ADMITTED AND MARKED "EXHIBIT 640"

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MS MELLIFONT: Now, that site - that is, the Dulux factory site - is subject to flooding from three different sources, namely the Oxley Creek, the Stable Swamp Creek and the Brisbane River; is that correct?-- Yes.



Can I start with some general propositions about hazardous material? Would you accept that storing hazardous material on flood-prone land is a matter which the Council should take into account when making planning decisions regarding the site?-- Yes.

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Perhaps to state the obvious, it's an issue - the issue is for the potential for those materials to have an adverse impact on the environment if they are not properly contained?-- Yes.

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Particularly so if they become mixed with flood waters?-- Yes.

There's the potential issue that when there are residential areas nearby, which also suffer inundation, that there's a risk that contaminants will be released into flood waters that affect those residences?-- Yes, there is a potential, yes.

Turning specifically to the characteristics of this site at 1477 Ipswich Road, now, I just want to show you some images which have been printed from PD Online. Now, if I can draw your attention, please, to the yellow cross in the middle of this first map. Can you see the yellow cross?-- Yep.

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And do you accept that indicates the location of the Dulux powder coating factory?-- Yes.

Now, this image that we see is a contour map, correct?-- Yes.

And would you agree with me that the main contour line circling the yellow cross has the number "7" written on it and intermittently also the number "7" - "6", rather?-- Sorry, the number "7" circles the main building with the "Rocklea", yes.

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Yes. Now, does that indicate that the RL of the factory is approximately seven metres AHD?-- The ground level is approximately seven metres AHD.

Can I show you, please, the second of the PD Online print-outs?-----

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COMMISSIONER: Do you need that first one tendered, or is it already in somehow?

MS MELLIFONT: Ah, no, can I tender that, please?

COMMISSIONER: All right. That will be Exhibit 641.

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ADMITTED AND MARKED "EXHIBIT 641"

MS MELLIFONT: Now, this second map generally indicates the areas of classification of this part of Rocklea; you would accept that?-- Zoning map, yes, or a dairy designation, yes.

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Yes, all right. Now, the purple shading together with the small "GI" written just below the yellow cross shading indicates that this area is classified as general industry?-- Yes.

And if I can draw your attention, please, to the dark pink sections of the land in the top right-hand corner of the image? They indicate that the zoning for those areas is low/medium density residential?-- Yes.

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And then the lighter shaded pink areas on the right-hand edge of the map underneath the dark purple, that indicates low density residential areas?-- Yes.

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Just for completion, below the dark pink shade you will see a bright yellow colour. Does that indicate a community use area?-- Community use area, yes, CU4.

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Right. What do we mean by "community use area"?-- Community use area will mean that the 4 would indicate have to have a look at the City Plan to equate that community use to a particular location. I think 4 might be education establishment, so it might be a school, but I'd have to check on the City Plan.

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Now, just below that again there is a deeper yellow colour. Does that indicate a sport and recreation area?-- Yes.

Still on that same map, on the left-hand side of the map there is an area of lined dark blue. Is that a waterway corridor?-- Yes, it's likely to be a waterway corridor.

A waterway corridor as defined under the City Plan?-- A waterway corridor as identified, yes, in the City Plan.

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Now, the lighter blue which snakes its way through this map, that depicts the central waterway line known as the Stable Swamp Creek?-- The eastwest blue line? Down here?

As we're looking at the map, from the top to the bottom?-- Yes, I believe it to be Stable Swamp Creek.

Now, as a general proposition, types of uses encouraging general industry area are uses which generally present greater issues with contaminants that uses encouraged in light industry area; do you agree with that?-- Yes.

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Now, given that, and the potential for flooding of this particular area, do you regard the general industry zoning as an appropriate one for this site?-- It's an historical zoning, it would depend on the land uses and how they mediate against flood. So, a lot of general industries zoned land is on areas that aren't prime residential land and historically it's been along a major corridor, so certain industrial uses are appropriate in that location.

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All right. Let's talk about current times. If you were starting from scratch, would you zone this as general industry, given that the site has potential for flooding from those three particular sources?-- If you did no remediation works associated with the land and the area - changing the area designation to it, probably not all of it, not the area that's clearly within the waterway corridor. Some of the higher land up near Franklin Street, north of your Rocklea - your red square might be appropriate.

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What about the area where this Dulux site is?-- Based on - it would depend on how much mediation you needed to get - to do to bring it up to an industrial standard.

Can you give me a sense of the remediation that would be necessary to bring it to that standard?-- If you could fill

that site to a certain level, provided you didn't have an impact on the regime of the creeks and waterways around there or the flooding of other properties elsewhere in that catchment.

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So, run-off?-- Well, no, not run-off, it's more the - during a flood event, a prescribed flood event, that a level of amenity could be maintained on that site without impacting on adjoining properties up and downstream of the river - of the Stable Swamp Creek or Oxley Creek. Then it might be appropriate for some industrial uses.

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Right. What about industrial uses which involve the storage of hazardous materials?-- Normally in that instance we ask for a risk assessment and it's how they're going to manage it and it whether they can manage it during a flood event or they can, so it's a risk issue. So, if it's - if they're able to - depending on what the risk is, if it can't be managed in a flood event, no, that wouldn't be appropriate on that site, but a car sales yard might be or a truck depot might be.

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What are you looking to in making that qualitative conclusion as to whether the risk is appropriate?-- It's the - with regard to looking at the risk, we're looking at a number of factors, the issue in relation to people's lives, the issue in relation to-----

Safety?-- Safety, yeah, is number one priority, getting - making sure that we don't trap people in area and they get inundated because of the frequency or time it takes to flood the property.

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So, you need to make sure there are appropriate access routes which can be traversed during time of flood?-- Access is part of it, yes.

What's the rest of it?-- Well, it's also the warning times, you know, if you have got enough time, a long enough time for the water when it's coming up, you can make a risk assessment on that. The other part of it would be whether that can be managed on site reasonably.

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Do you know whether council is looking at this particular site in terms of whether it should remain as general industry zone?-- No. I am aware-----

You don't know or they aren't - they're-----?-- I don't know if council is looking at it specifically, council is currently preparing the next City Plan and it will be, no doubt, reviewing all land uses, as it does, as part of that process.

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Given the storage of hazardous materials on this site, do you think that this site should be reviewed in terms of its zoning? I am not saying necessarily change, I'm saying - I'm asking do you think it should be subject to review?-- I think it's going to be subject to review because of its location to waterway corridor and - but as far as the storage of the chemicals, it's more a manner in which it's carried out and

not necessarily the zoning-----

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Okay. So, you?-- The use is carried out on the site. The use is carried out on the site, not necessarily the land use that - because we're talking about in this particular site a use that's been established for some 50 years.

So, you would be looking to whether, for example, there was adequate bunding in place for containment?-- Yep.

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And how that-----?-- Or the practice.

-----hazardous material is stored?-- Exactly.

Are these factors - sorry, you spoke of risk assessment. Are the factors relevant to the risk assessment spelt out anywhere in the City Plan?-- Yes, in the Subdivision Development Guidelines, which refer to the Australian standard for risk assessment.

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Thank you. I tender that document, please.

COMMISSIONER: This is the zoning map?

MS MELLIFONT: Yes, it is.

COMMISSIONER: 642.

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ADMITTED AND MARKED "EXHIBIT 642"

MS MELLIFONT: I now want to show you a map which has been taken from the Environmental Impact Statement for the Rocklea plant extension dated 24th of April 1998. Now, you can see that the map depicts the Dulux factory site in relation to a flood regulation line. What is a flood regulation line?-- A flood regulation an older term that we used to use. It's based on a mathematical or a mathematical - I understand it's based on a mathematical assumption about the level of water at - during a Q100 flood event. We don't use the term "flood regulation line", we haven't been using it for some time, it's just flood inundation line.

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Flood inundation line. Is that the Q100?-- It can be. It depends on the water body it's attached to. I'd have to ask some - a specialist whether that represented it or not.

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I see. In terms of current terminology for flood inundation line?-- Yes.

You don't know whether the current flood inundation line is the same as that depicted here of the flood regulation line?-- It - I think we took it off the map some time ago. This must be an older document. Yeah, it's pre-City Plan, I think it's drawn, so in the City Plan they changed the definition - the

terminology.

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But insofar as the current flood inundation line for this property, do you know whether it, in effect, replicates what was the flood regulation line?-- I'd have to do a search. Sorry, no.

Do you know whether the flood regulation line as we see it relates on to the Stable Swamp Creek?-- Not without doing an assessment or asking someone to provide that advice, no, sorry.

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All right?-- Because - sorry, I will just qualify that, because you indicated - well, I have indicated that it was subject to three different types of flooding.

Yes?-- So, it will take - I think it normally would take the highest flooding for event, so it's likely to be the Brisbane River, because the Brisbane River - up that creek, but I'd have to check.

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All right. So, in terms of determining the highest source of flooding, it's likely to be the Brisbane River?-- I'd have to check that. I just - based on the rate - the flood studies done in both those local creeks.

All right. Can I tender that map, please?

COMMISSIONER: Exhibit 643.

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ADMITTED AND MARKED "EXHIBIT 643"

MS MELLIFONT: Now, in respect of the developments on this particular site, it's correct, isn't it, that you weren't involved in the assessment of the original development application which authorised the use of this land?-- Definitely, yes.

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So, what you have done in terms of providing information to the Commission about this site is to conduct a review of the relevant council files?-- Yes.

Now, prior to the January 2011 flood event, the defined flood level for the land was RL 8 metres AHD. I take you to paragraph 3 of your statement?-- Yeah. That's over 14 - 1477 Ipswich Road, the site that - the map that you had included two sites 1477 and 15 something Ipswich Road.

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Yes?-- I just looked at 1477 Ipswich Road, which is the top part of that property that you had identified in red just previously.

All right. I will confine my questions to 1477. And do council records indicate that 1477 was subject to surface

flooding impacts during the January '11 flood?-- Yes.

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Having conducted a review of the council records, were you unable to find an approval which authorised use of the subject land for the Dulux powder coating factory?-- I was unable to find the file, we just found a record on a file indicating the approval had been granted in '57.

So, the approval was found but not the documents in advance of that?-- No.

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Is that correct?-- Yes.

Are you able to make any observation in terms of the sufficiency of how the records were kept in respect of this particular development history?-- All I know that is in 1974 council lost a lot of records in the flood because of where they were stored at the time. So, going back more than 50 years tends to be more difficult to find files, and DA files are only kept for a certain period of time-----

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How long?-- -----before they're destroyed. I think it's about 50 years. So, it's likely that those files may have been destroyed as part of the normal process of keeping records.

Okay. So, what we do know is that there was an approval on the subject land for paint and varnish manufacturing on 14th of June 1956?-- 50?

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'56?-- '6, yes.

And we know that the council files do indicate that there were some subsequent approvals issued in relation to extensions of that use on the land but that none of those approvals appear to relate to a powder coating factory?-- Yep - yes.

Okay. There is an ERA issued under the Environmental Protection Act so far as your inquiries revealed; is that right?-- Yes.

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So in paragraph 15 of your statement you state that, "On the 23rd of May 1997 an environmental authority was issued under that Act.", for ERA 10 paint manufacturing?-- Yes.

Were you able to find that on the file?-- There's a separate file created for ERAs.

Were you able to find those on the council records?-- I believe so, yes, and it's attached.

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Now, can I take you, please, to paragraph 13? You state that council records indicate as derived from flood studies carried out that the land is affected by flooding from the Brisbane River, the Oxley Creek and the Stable Swamp Creek, and you state, "The proximity of the subject land from each flood source is only partially relevant in determining the highest source of flooding." Can you explain that sentence,

please?-- What I'm saying there is that the Brisbane River is one type of flooding, it's a slower event and it might be higher, the Oxley Creek is another source of flooding so the flooding from Oxley Creek might be in its - part of its catchment and it comes down and then the outflux comes back up and inputs on it, or you might get very localised flooding from Stable Swamp Creek with a cloud dump somewhere in the Stable Swamp Creek catchment. Oxley Creek is not in flood, Brisbane River is not in flood, but because Stable Swamp Creek is in flood, part of this site will be impacted by flooding.

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Okay?-- So it's not - sorry, it's not just one single source that we would go to and then it might be overland flow as well too affecting the site, which is not - which is another form of flooding.

And in respect of this particular site, is it known to flood from overland flow?-- There's no - it's not mapped but there might be some overland flow down the road that might have an impact on it, but it's not on the site.

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Are you speculating about that or is that-----?-- Well, we don't map - council only maps overland flow up to a certain depth - over a certain depth. Under a certain depth we still look at it, look at the land flow just to make sure and check it out, but it's - council records indicate that it's these three sources of flooding that affect this site.

Has overland flow been checked out by council for this site?-- I checked it out, yes.

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Okay?-- It's not mapped on our overland flow but that doesn't discount it when we come to assess an application.

So, there's no particular record of overland flow, but it may still happen; is that a fair summary?-- Yes, yes.

Is that a complete summary of the knowledge with respect to overland flow?-- On this site, yes.

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Yes. So, do I understand it to be that you will take into account it might flood from the Brisbane River, might flood from Oxley Creek, might flood from Stable Swamp, but how do you determine the highest source of flooding?-- Each of those river sources or creek studies have flood studies on them and I was able to ascertain, talking to one of our hydraulic engineers, what the level of flooding was when they modelled flooding in those three systems.

And is the highest source of flooding the Brisbane River?-- I believe so, yes.

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Is there a report prepared by a hydrologist somewhere on this issue?-- There's the - I believe he used the 2003 flood study for the river, the other two have individual studies, I don't know what dates they are.

So, who was that hydrologist you spoke to?-- Mr Andrew Blake.



Andrew Blake within council?-- Yes.

Was the information to you conveyed verbally or was there a written report?-- I made notes and we went through his - his sort of calculations and he interpreted them for me and told me what the levels were at Q100, Q50, Q20, Q10.

Okay. In the last sentence in paragraph 13 you state, "All sources of flooding are relevant at the time the development application is lodged to ensure no adverse impacts upstream or downstream of the site occur." So-----?-- Sorry, yep.

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When you have a planner looking at a development application for a site like this with multiple sources of flooding, how do they take those features into account in making decisions which are intended to prevent adverse impacts up or downstream?-- Part of the planning process in council, within the teams, it's not a planner just solely making the decision or doing the investigation. Because it's a multidisciplinary team, a planning application on this site will be referred to an engineer, it might be referred to some of the other specialists. The engineer has reference to TST or the specialist people, so they would look at flooding, the planner might look at flooding as well too based on the information we have in our computer systems, and from that querying the engineer or querying the specialists as well, so it's not just the planner would be making that determination. Also part of the acceptance of an application on the site is that we have a process where we go through where senior officers look at it, they might make notes. We call this our daily team meeting. They might record that it's impacted by flooding because we have a number of sources where we can get that access from electronically at our daily team meeting, and then the file is then allocated to an engineer, to a planner who's appropriate and can do that type of work or is skilled enough to take on the particular job, it might go to a pollution officer as well on this particular site, and collectively they come back with their reports, and the planner then puts that together and completes their assessment against the City Plan.

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All right. I am interested to know whether there is a checklist or a template which is available to planners looking at these development applications which they can cross off to make sure they have taken into account all relevant considerations as regards flood risk. Is there such a thing?-- The checklist in some respects is the daily team - the DTM or the daily team meeting list of issues that have been identified by senior planners, and that would be largely based on experience.

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But that depends upon the particular planner, whether they are at the junior or senior level picking it up and raising it as an issue?-- If it's not picked up at DTM, the planner still does an assessment against the City Plan. The level of information that Brisbane City Council has for a planner to look at would be very hard with the mapping that you have seen there, that shows waterway corridor, with the properties

online that we have, to miss flooding on a particular site, and not at least alert an engineer to have a look at it and see if there was an issue, and then the engineer has their Codes that they look at which includes flooding as part of their standard assessment of the application.

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Accepting that it would be difficult to miss, I accept that. If you have got something next to a waterway corridor presumably you are going to have to think about flooding, but humans being humans, they fail from time to time to look at everything they need to look at. What I'm asking about is is there the potential for a checklist or a template to make sure that in the assessment process the planner can go through and say, "I have now looked at all the relevant considerations, all of the relevant provisions in the City Plan, all of the relevant provisions in the State legislation, regulations, all of the provisions that have been promulgated under the City Plan, all of the guidelines, all of the Codes, all of those things and I can tick them all off and I have done all of those things.", is there room for that in council?-- Yes.

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What do you think of that as an idea?-- That assumes that the planner or - has had time to go through the multiple pages of checklists as part of the process. Council does have - sorry, as part of the RiskSMART tool they do have a checklist there that they fill online and it identifies flooding and the flood applications get taken out of RiskSMART and put back into the teams, so there is a checklist that you referred to, and that RiskSMART tool can be used within the teams, it's an electronic process, but it wouldn't be as comprehensive as you have indicated, it would indicate - it indicate areas of risk in relation to the assessment and then they're followed. With the more detail I found that you have in checklists, the less likely people are to get to the last page which might be the most important as part of processing the application.

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Well, then, how does council ensure that everything is looked at that needs to be looked at?-- Because the - through the multidisciplinary team we have had engineers look at applications, we have had the planner, we have had senior planners and principal planners may have looked at applications - the same application during the process. It's not one person doing the - does their work, gives to it the delegate and no-one else checks it.

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So, it entirely relies upon the skills and the experience and the perception of those within the team?-- Of a multidisciplinary team, yes.

Right. Okay. Now, in respect specifically to this property in 1998 a development permit was granted for a material change of use on the site for the purposes of constructing a hazardous industry and dangerous goods store; do you agree with that?-- I'm not too sure if that approval is actually on the adjoining site or the subject site. There's a site to the south where they put their dangerous goods store, and you can see it on the aerial that you produced, that's on a different site, that's not on 1477 Ipswich Road.

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All right. Just give me one second. From your review of the file, did you see records indicating that that site was, in fact, extended for the purposes of the dangerous goods store?-- Well, I did, but I can confined myself to what was in the statement of 1477.

Very well. Now, what I would like to do, please, is to show you the Decision Notice and the approval conditions package for a material change of use on the site. The lodgement date for this application was the 6th of May 1998. So, this document will come up. Can I indicate to you that this document comes from the council's DA file which has been produced to the Commission, and the first document we have up here is the Decision Notice in respect of the material change of use on the site. You will see that the site is described as 1477 through 1515 Ipswich Road, Rocklea?-- Yes.

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Right. Have you seen this document before?-- I may have - I have seen it - I have seen a lot of documents on this site in relation to preparing my statement.

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Right. Can you have a look at it and tell me whether you agree there is an approval for the erection of a hazardous industry and dangerous goods store?-- It indicates in the description further down that is for a hazardous industry dangerous goods store, albeit that we're limited when we prepare these how much text we can do, but I'd need to see the plans attached to this before I could probably fully comment on whether it's just an awning that they have changed.

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"It's just a"?-- An awning to a dangerous goods store or whether it's actually the dangerous goods store that's to the south on the adjoining site. 1

All right. So page 23, please. Why don't I take you to it and we'll see how we go with this and if you need to have more of a look at the documents during a break we can do that. But we've got up there page 23 of the approval package relevant to the extension, and can you have a look, please, at condition 23A? It is a little difficult to read, but it requires "proposed buildings to have an immunity of flood waters from Oxley Creek in a Q100 storm event. Alternatively the finished floor level of the proposed buildings is to be at a minimum level of 7.17 AHD"?-- Mmm. 10

Now, if you look across to the opposing column you'll see that the Q100 level for the Brisbane River is 8 metres AHD. That reflects, obviously, what we've taken you to earlier in your statement. Now, what I'd like to ask you is if Council were looking at this today, do you think that a clause like 23A would be imposed?-- It depends on the circumstance. If it was an extension to an existing building and they couldn't put the building higher because the ground level was there and they were only doing an extension to the building it would be not workable so we would go back to - if 17.17 was a level that the building was designed at----- 20

7.17?-- -----7.17 but it would be attached to a risk assessment plan to work out whether it's acceptable, depending on where this is on the site and where it is in relation to the flood event and whether it's attached to a building as to whether that building approval should be granted. 30

Right. So can you explain the process that would apply now?-- Well, the process that would apply now is that because it's impacted particularly by Stable Swamp Creek on the site and that Stable Swamp Creek and Oxley Creek can come up a lot quicker than the Brisbane River, there would be some form of hydraulic report attached to that application under City Plan. This was under the town plan so it's a different document altogether----- 40

Yes?-- -----and there would be a - no doubt there might have been a hydraulic report attached to this document, but there would be a hydraulic report with the latest information and that would go through and part of that would be a risk assessment under the subdivision guidelines.

And as part of that risk assessment would you look to see what conditions might be opposed if the request was approved or you might-----?-- Well----- 50

-----decline the request?-- Well, it depends on whether that request can be managed on the site. Reasonably managed on the site. So - and whether there's enough time for them to lift the stock above the flood level or the Q100 or a - you know, get the stock out. It - there's a number of variables that we would take into consideration but that would be assessed in

the hydraulic report, one would think.

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And in current times is it unusual for - or usual for floor levels in industrial developments to be determined by a source of flooding lower than Q100?-- Yes.

It is what, it is "usual" or "unusual"?-- No, they - it's - each site is looked at on its own merits in relation to the flood hydrology regime affecting that site and we have a look at it. We have a look at it, whether there's a risk issue there, and make a call on that.

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All right. So they can come under the Q100 provided it gets through the risk assessment process?-- And provided there's not areas there that - like offices we would normally put up higher, where people are actually located, but warehouses might be lower than that, the actual warehouse storage area might be lower.

Now, in considering applications in current times which relate in part to the storage of hazardous material, would you agree it would be a priority to ensure that these materials are prevented from escaping in the event of flood? That's a very important consideration? You agree with that?-- I agree with that, and it would have been the same thing back then too, I think.

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Right. And in regards to that wouldn't it be prudent to ensure that buildings which contained such dangerous substances are built above the highest flood level available?-- Once again it comes back down to how long they've got to clear the - move the stock. If it was just Brisbane River flooding then you generally have more than 24 hours to three days, depending on the time. It would depend on how much and where they could store it, if they could store it on the site. But that's definitely a consideration for us but it comes down to the individual user of the site.

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Relying on things like how long it would take for the materials to be moved, has the danger associated with it, that that depends on whether people can have access to the site and whether there are people around to do that; you'd agree?-- Yes.

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And if you have, for example, a site which has problems with access in a flood, which prevents people getting there to move the goods, then there's a real problem, isn't there?-- Yeah, and that's taken into the risk assessment. If it's not - it would have to be a 24-hour operation or they'd have to indicate to us that they had someone on the site 24 hours that was capable of doing that.

50

But even so, even if it is a 24-hour operation and you're faced with a property which might be prevented from external access and so it closes down and you have staff going home, wouldn't it be better to have measures in place which don't rely upon human intervention?-- Yes, but that would be part

of our consideration, whether we'd approve that in the risk assessment.

1

And are there guidelines which relate to those particular factors currently in place for hazardous material-type applications?-- Well, the risk assessment would take in the particular use. It's not necessarily specific to that that I'm aware of but there might be some out there. The Australian Standard would take into account what you're dealing with as part of the risk, so it would be different for chemical storage as it might be for storage of fruit, for example.

10

All right. So, once again, no particular template or checklist but rather-----?-- Standard-----

-----it relies upon skills, experience and perception of those dealing with the application?-- No, and the applicant engaging the right consultants and doing the right modelling as part of their assessment. We don't write the assessment, we don't submit the risk assessment, that's done by private consultants, and there's only a few, basically, people in Brisbane who are able to do that for this sort of use.

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Okay, but it's more than just engaging the right person, isn't it, it's about Council being satisfied that the risk-----?-- Yeah.

-----assessment report as produced sufficiently meets all relevant considerations?-- And deals with all risk factors that can potentially be envisaged-----

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Yes?-- -----during assessment of the application.

Yes, and so that's what I'm asking about, I suppose. How do we know that a planner will be able to tick off on all the relevant risk factors if they're not contained somewhere in one identifiable document?-- Because these - this type of risk assessment is not just done by a planner, it's done by the whole team, or people who are specialised, that's that technical specialist area, that have the specialist knowledge in those areas to look at as part of the review of the planner and the other engineers in the team so-----

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You'd agree that a template or checklist could apply to a person or to a team? It's not something that is precluded merely by virtue of the fact that you have a multidisciplinary team and many people looking at an application?-- Only that a template would have to be so robust and such a large document to take all aspects into consideration as part of it.

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Is there a problem with that robust approach?-- Not - no, but all I'm saying is that you might have a different type of use, then you'd need another checklist for that, and another checklist for - whereas the way we currently do it, you deal with the key issues in relation to assessment of that and adapt depending on what the particular use is.

Right. Can I tender, please, that decision notice and approval conditions package?

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COMMISSIONER: Exhibit 644.

ADMITTED AND MARKED "EXHIBIT 644"

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MS MELLIFONT: I'll take you now, please, to a copy of the hydrology report. Again this is an historical document. It was part of the environmental impact statement dated the 24th of April 1998, and I want to draw your attention to table one, which appears at the bottom of the first page. Now, do you agree that this table depicts - or records the highest recorded flood levels at that time from each of the Stable Swamp Creek, Oxley Creek and Brisbane River sources?-- It quotes the 1974 flood level, so that's pre Wivenhoe, but I couldn't tell you whether the other numbers are without checking the relevant details with a hydraulic engineer, sorry.

20

All right. Well, at least what it does is purport to set out the figures?-- Yeah.

All right. Can I take you then to the following page and I want you to go, please, to the last three paragraphs, and just take a moment to read those to yourself. Just let me know when you've read it?-- Yep.

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All right. We've already touched on this topic in some part but what we can glean from this document is that the report accepted a Q100 event from the Brisbane River result in one to 1.2 metres of water over the factory floor area?-- Mmm-hmm.

You agree with that?-- Yep.

And, as I've said, the floor level of the building was set at 7.17, which is lower than the Q100 level?-- Yep.

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And you see here that the solution posed to that problem was simply to move stock to a higher level if a flood is predicted?-- As an accepted scenario of the client, yes.

Yes. Now, perhaps you've already answered this, but if this kind of solution was proposed by an applicant in these current times, is the process that Council now adopts one of undertaking that risk assessment process?-- Yes. This is based on old standards.

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"This is based on"?-- Older standards. The new standards, they - that would be a risk assessment attached to this.

All right. I'll tender that document.

COMMISSIONER: That's Exhibit 645.

MS MELLIFONT: I just want to ask you about some observations made by another witness, the Commission has heard from, Mr John Womersley, from the Department of Environment and Resource Management. Now, I think you've briefly seen a copy of his statement but I'll have a copy shown to you. What I'm going to take you to, please, is paragraphs 31 and 32 on page 5 of that statement. And I'm going to ask you to read those to yourself and then answer whether that information accords with your knowledge of the Brisbane City Council's responsibility for environmental - environmentally-relevant activities. Have you had a chance to read those two paragraphs?-- Yes, I've had a quick look at it, yes

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All right. Now, does that accord with your knowledge of BCC responsibility for ERAs?-- Some of them I'm familiar with that have been lodged or - through the assessment team.  
I-----

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Which are they?-- Oh, we had a surface coating up to a hundred tonnes of material, I've been involved with or known of an application for that. Chemical storage, concrete batching, motor vehicle workshop, brazing, blasting and plastic product manufacturing, but I'm not too sure if some of these don't have thresholds that then put them into the State Government, and other instances where these have been referred - or I'm aware of them because there's a - Council doesn't look at these if there's a State Government ERA that they look after, they'll look after these as well, so you only have one agency to go to for an ERA, you don't go to Council and the State Government, so only where Council is wholly the referral agency do we see these.

30

Right. Okay. I might come back to that in a moment. I'd like you, though, to please look at paragraphs 46 through 58 and just give yourself a chance to read through those. They set out the requirements for assessing an application for a development approval of an ERA. I want to know whether BCC follow a similar process?-- For a new ERA or for an existing extension to the industry that's an ERA?

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I'd like you to address both, please?-- When an application for an extension to an industry is lodged, particularly a new industry, and there's an ERA attached, the ERA is done as a - it's a combined application, for example. Those ERAs - the ERA component is put on its own file and assessed by a pollution officer who is familiar with the processing for that. It's not done by an assessment manager. At the same time that pollution officer's also assessing the industrial development to ensure that the ERA is appropriate and it doesn't trigger a higher level of assessment in the City Plan and that it's meeting the relevant requirements of the City Plan for that activity to be carried out.

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In so far as your knowledge and experience with how councils treat ERAs, can you suggest any improvements to those processes?-- No, sorry, I don't do the assessment ERAs so I can't give you a specific on that.

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All right. So who within Council would be the best person to ask the ERA process?-- One of our pollution officers or our senior pollution officer that sits in TST would probably be a more appropriate person.

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"That sits" within?-- The technical support team, the specialist team that we referred to previously.

Thank you. May I take you specifically to paragraph 59? Mr Womersley there states that, "while there may be elements of standard criteria," and the standard criteria are set out in 50A, "that could relate to land that is subject to flooding there are no specific requirements". Does that accord with your understanding?-- Yes.

20

Do you think there ought to be standard criteria that are set out to apply to flooding?-- For certain ERAs, yes.

Yes. Which ones?-- Oh, well, storage of flammable, combustible liquids to ensure that the bund or the area where the vents are, you know, they vent out, are high above the flood level, and so the water doesn't go back in there and expel it, I suppose, would be the simple one.

Right?-- There might be motor vehicle repair where they store their oils, that they're stored above flood level. We get them on the DA but we might not get them through the ERA process if they came separate.

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All right. So there are a couple of examples-----?-- Yes.

-----just off the top of your head about standard criteria that might apply?-- Yes.

Okay. Can I ask you, please, to turn to paragraph 74 of that statement, where Mr Womersley observes that the Environmental Protection Act gives the "administering authority limited direction as to how or whether it should assess development applications for Chapter 4 ERAs that are proposed to be undertaken on land that is subject to flooding". Do you agree with Mr Womersley's opinion on that subject?-- Yes, that's a view that's been expressed to me by my pollution officer.

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Has he or have you formed a view as to how you might better be given guidance on the topic?-- She, yes - no, she hasn't, no. I - I look at it on a case by case basis and in some instances where they are combined we try to do it in a planning - through the planning - planning application as we know the ERAs can - is being assessed at the same time.

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Okay-----?-- So we do it through the planning application-----

Yes?-- -----because the ERA doesn't give them much room to move, which is in accordance with his statement at 74.

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All right. So you find the other process more amenable to-----?-- It's got more ability to do reasonable relevant requirements for a planning application than the ERA people or people assessing the ERAs have.

Right, thank you. Now, the particular approval for this land we've been speaking of was given prior to State Planning Policy 1/03 coming into being. Are you aware that State Planning Policy 1/03 specifically refers to the storage of hazardous materials?-- I'm aware that's contained within there but I couldn't - I haven't had to use it frequently.

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All right. Well, I'll just show you a copy, please. I'll just in a moment - I'll take you to the specific provision in the policy, but can I ask you this: in current practices when assessing applications relating to the storage of hazardous materials does Council take into account SPP 1/03?-- Where the application - if the application was a code application and the development complied with all the acceptable solutions I don't think we get to the State Planning Policy, from my memory, but if it's an impact application, particularly if it's impact-inappropriate, which is the highest level of assessment in the City Plan, I think we go back to the State planning policies and it would be assessed against that.

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Okay. Now, in so far as impact assessment under the City Plan, are you able to point to a particular part of the City Plan which reflects outcome one at page 6 of the planning policy, which I've just handed up?-- Outcome one, page 6. Sorry.

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I'll get it up on the screen. It's the outcome in the box there?-- An - under section 3 of the City Plan for an impact-inappropriate application, or an application that requires the highest level of assessment, that is specifically hazardous - hazards are specifically mentioned in that part of the City Plan and that would incorporate this.

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All right, can I take-----?-- I think it's on page 6 of the City Plan.

Thank you?-- Dot point at top right corner-----

Okay?-- -----you'll see it.

All right. Can I also, please, take you to outcome four, which appears at page 18 of that document? Now - page 18?-- Appendix or annex four?

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Annexure four, page 18. That's the one, thank you. Outcome four is in the table headed "A4.2" under the heading "Flood". And can you tell me how or if the City Plan reflects that outcome, please?-- Part of that's - would be a consideration of the risk assessment that's carried out. Public safety is the key - one of the key criteria that we look at.

All right. So - now, are you speaking about the hazard and the risk assessment planning scheme policy?-- Sorry, I thought you were identifying the comment, "public safety and the environment are not adversely affected," is that the comment that you asked me to - or have I commented on the wrong one?

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Yes. Yeah, sorry, in response to my last question you said that you do a risk assessment. Can I just clarify that. If - again it's a risk assessment if it's required for impact assessment but if it's code assessment and the acceptable criteria are ticked off there's no risk assessment, have I got that right?-- No, there would be other parts of the City Plan. I couldn't quote them to you without going through the document and specifically finding the references to it.

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All right-----?-- They come to mind, anyway.

They what?-- They come to mind. I can remember the impact-inappropriate-----

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Yes?-- -----but as far as code I'd have to go through the City Plan codes and pick up where - how that was identified.

All right. Very well, thank you. Might that be a convenient time to stop, thank you? Might Mr Kelly be excused until Monday, please?

COMMISSIONER: Yes. Mr Kelly, you're excused till Monday.

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WITNESS EXCUSED

COMMISSIONER: We will adjourn until 2.30.

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

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THE COMMISSION RESUMED AT 2.30 P.M.

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COMMISSIONER: Mr Ure, you're back?

MR URE: Yes, sorry, I appear on behalf of the Local Government Association of Queensland for the Goondiwindi Regional Council.

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COMMISSIONER: Yes, thanks. Yes, Mr Callaghan?

MR CALLAGHAN: I understand we have Mr Scheu on the phone ready to take an oath.

GRAHAM SCHEU, ON AFFIRMATION, EXAMINED VIA TELEPHONE LINK:

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COMMISSIONER: Yes, Mr Callaghan?

MR CALLAGHAN: It's Peter Callaghan, Counsel Assisting, speaking. You can hear me okay?-- I can, thank you.

Can you tell the Commission your full name, please?-- Graham Scheu, Mayor, Goondiwindi Regional Council.

And, Mr Scheu, you gave evidence previously on the 3rd of May; do you recall that?-- I do, yes.

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For our purposes, that's at page 1,197 of the transcript. And you recall that you had been present on that 3rd of May when Mr Stewart, the CEO of the Goondiwindi Regional Council, gave evidence also?-- Yes, I do.

And you both spoke in your evidence about difficulties experienced in Goondiwindi by reason of your proximity to the border; do you recall saying that?-- Yes, we spoke about a number of different problems we had with cross-border issues.

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You did. I think you described your region as a long, skinny council area with some 522 kilometres of border region; is that right?-- That's right.

There's a lot of river and a lot of border that you have to contend with?-- That's right.

And you spoke then about difficulties in particular with emergency services, that type of thing. Today we're addressing different topics, specifically those associated with flood risk management, and, to that end, is it the case that you've prepared a further statement?-- Which I answered in reply to the extra-----

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Sorry, would you mind just repeating that?-- I returned a second reply which asked more questions in relation to levee

banks and cross-border issues in that regard.

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And that was dated the 12th of September 2011; is that right?-- I think so. I just don't - I have a copy but I haven't got the date - date in front of me, but I think it would be about that time.

All right. I tender a copy of that response to requirement.

COMMISSIONER: Exhibit 646.

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ADMITTED AND MARKED "EXHIBIT 646"

MR CALLAGHAN: Just by way of introduction to your evidence today Mr Scheu, can you tell us - and I'm particularly interested at the moment in the topic of levee banks - can you tell us how - historically, at least - the construction of levee banks has been monitored?-- You're talking about on the Queensland side?

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Yes?-- Well, historically this dates back to the early '80s, I'd say, or something like that, when construction commenced here. Back in those days it was done by application under a local law. It was a permit system involved. An application fee was lodged and there was quite a stringent process. I must confess, I wasn't involved in the Council at that time, so I can't give you accurate details, but I do know it was quite an accurate process that was involved and a time-consuming and costly process.

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And did that change?-- It hasn't changed to this stage. However, the development has reduced somewhat as the valley nears capacity.

All right. Well, in paragraph 6-----?-- Capacity of development I'm talking about, which - that applies to the old or Waggamba Shire area - I'm not referring to what was involved or included as the Inglewood Shire Council, which includes the Dumaresq and the Brook, and nor does it apply to the town levee bank. It was exempt from anything like that because that was developed in 1956, I believe, '57, something like that.

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All right. Can I take you to paragraph 6 or point 6 of the statement we've just tendered where you tell us that Council has recently resolved to prepare a local law controlling levee bank development across the region. Can you tell us a bit more about that?-- That would just be a continuation of the existing local law. What has happened here, through the course of amalgamation - we've got three councils that have merged into one - this local law was previously only applicable to the Waggamba Shire Council and now we've adopted this and it's in the midst of the process of going through ratification for being included into our local laws.

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And you go on to make the point that the plan is to bring regulation of levee banks into the definition of operational works for the purposes of a new planning scheme; is that right?-- I don't know about regulation. That would be for new applications. The existing levee banks would still be under the old system and they'd only just be monitored in that regard. But the thought is, as the town plan nears completion, our operational works would take the application processes for those levee banks.

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I think you probably answered my next question, which was what effect, if any, there would be as a result of these changes on any existing levees?-- Well, yeah, as I said at the start of this, the development of levee banks is near-on capacity, and one of the reasons that we investigated this possibility was that we don't believe there'll be major developments in the future, mainly due to this Murray-Darling system that won't allow for any more expansion of the irrigation industry.

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I see. I'm looking at paragraph 7 of the new statement and you make a recommendation to the Commission there about the need to seek specific advice in formulating any opinion as to the most preferable method of regulating levee banks. We'd be interested to hear anything else that you have to say in that regard in terms of what you're recommending to the Commission?-- Look, just in that regard, as I explained about the limited future, we were - that's why we developed it this way, and we just believe that it's lived its race through the permit system and through the local law, so we see that this is the easiest way to monitor it from hereon in with the limited number of applications in respect of it.

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All right. We might go back to paragraph 5 where you say that - you first make the point that levee bank regulation is best managed by the State, as is the practice in New South Wales; is that right?-- New South Wales is fully regulated by the State, that's correct. In Queensland, I believe it's only this particular Council and one other that does it through a local law system.

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And that raises the question as to the nature of the liaison that there is now with New South Wales on this topic?-- Right. Well, again, as I said, I wasn't here in the 80s, but what I do believe from conversation with the New South Wales authorities, they have at least an annual gathering where they would compare notes. There was certainly no formal obligation or anything like that, but they did used to gather, but, again, I stress the fact that with the development near capacity, that has fallen by the wayside because of the - just the - a lack of new applications as such.

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All right. Mr Scheu, we've already had some evidence in these hearings about the flood maps which have been produced by the Queensland Reconstruction Authority. You're aware of the maps that I'm talking about?-- Yeah, yeah, we've - I must admit I didn't get onto them the first week they came out, but we've had a look at them in the recent times.

Have you had a look at them on the website or have you been provided with hard copies, or what's the story?-- No, we've got the website that we've had a look at and I've also got the hard copies and the notes that are attached to them there now.

Right. So, the hard copies have some information on them that is not available on the website; is that right?-- I think it's available on the website as far as I know.

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So, the hard copies that you have seen, they appear identical to the maps that appear on the website?-- We haven't received posted hard copies. I did receive some E-mailed hard copies, which are the same ones that are actually just taken from the website, I believe.

I see. I follow. Well, tell me this: how did you go about interpreting those maps or that map of Goondiwindi when you saw it?-- Well, firstly - the first thing I did wrong was look at the maps first and didn't read the instructions, so that was the first problem I did have, but when I noted through them, obviously the maps are designed there to assist Council in their assessment of flood plain areas, and I guess, you know, it's lacking quite a bit of detail and I would think at the moment the reason it is lacking that detail is because we haven't had any input into that mapping yet. I think you'd be aware that this Council has done quite a bit of flood study work, primarily involved with the local law and the application process that was in place for the former Waggamba Shire, but also the town council combined with the Waggamba Shire. We've had reports by Cardno in 2006/7, I think - I stand corrected on that - but around about that time. There's been extensive flood studies done here. We've lived in a continual flood plain area for a long, long time and flooding is - until the last eight or 10 years - has just been a regular part of life. We've also participated in the Inland Towns Project, which is providing digital mapping. We haven't got that at this stage. So, we have gone to some extent - and I understand from LGAQ that they are conducting some road trips around with the QRA to each and every council so that we can have our own input into it. I think that once you'll find we have that input into it, it will make a lot, lot more sense for this local area.

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And that would be the input of the work that you've already done and are still doing; is that right?-- The past and ongoing, yes.

Yes?-- This inland towns project is still a little bit off, but it is something that commenced with Federal Government funding that was available and they have done quite extensive work in the Shire, but there's more to come, and I believe once we get that, we will obviously be given the opportunity to put - have that input into the maps.

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Yes?-- And then I think it will make a lot, lot more sense to people.

What - well, against that background of the work that you've done and are doing, what use would you make of the QRA map itself as a map?-- As it stands?

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Yes?-- Well, currently, as I said, until we get the input into it and get more detail, we probably wouldn't use it that much just at the moment because we've got probably superior information, but with the addition of our information and our input into this, it will make a big difference.

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All right. Are you aware of any inquiries from members of the public about these maps?-- We've only had one phone call, I believe, to this office, that I'm aware of. You know, there's been a little bit of talk about it, but we've only had one inquiry, and that inquiry was just to find out what was going to happen and, again, relating just to the details. It's pointed out, quite blatantly, that this is an interim report. It's stage 2, I think, of a six stage series, or something like that. So - but the only calls we've had - and I wasn't speaking to the person myself - it was only relating - somebody had rung up and asked a little bit about the flood area and I think it was relating out to the Brigalow Creek area.

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Have you issued any instructions as to what should be told to members of the public who might inquire about the maps of you?-- No, we haven't got any specific instructions. Those inquiries would be directed to the Director of Engineering Services in our department that handles all the flood and the inquiries and has quite an extensive knowledge in the existing information that we have.

30

When you looked at the maps, did you form any view as to the manner in which the catchment was depicted? I understand a large part of your catchment is in New South Wales; is that right?-- It is, yes, but we follow the - as you said right at the start of this, we're a long, long skinny catchment, and all our water actually comes from New South Wales. As far as the flood situation goes we don't have any flooding from the other areas, with the exception of the Gwydir River, which is in the western part of our Shire and that comes down from the Dalby region, but primarily the main flooding comes from the Tenterfield and Inverell - and there's three main river systems down there. You can follow it down the map and it has got quite a distinctive area on either side of the Dumaresq, which is, for want of a better word, a canyon-style event where the water comes rushing down at great knots. The McIntyre Brook comes from the Inglewood side which was spared of any flooding on this particular occasion, and the McIntyre River comes from Inverell, and they all meet up down above Yetman there, and that becomes the McIntyre River. So, yes, it is an extensive area, and then it opens up into a major flood plain just east of Goondiwindi, probably 15 or 20Ks east of Goondiwindi, and it opens up into a major flood plain on the New South Wales where most of the water escapes.

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And are you satisfied with the way that's depicted on the flood maps in question?-- Yes. Now that I understand the



mapping I did. I had a concern initially that there was an overlaid section there which I thought, when I first read it - as I said, before I went through the instructions properly - I thought it depicted that it was high and dry, which was far from the case. Now that I see how they've done it, I would imagine - and I'm presuming that the yellow areas or the possible/probable flood area as such - depending on the type of flood - which of those three rivers and how much comes up - obviously in this particular flood not the whole of that area was covered, but again I see that it's not related to the last flood - what had happened in the past.

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So, do you understand that the yellow area gives some indication as to the probability or possibility of flooding?-- Well, as I said, I think they class it as a possible flood plain area. What we've got to do is take into account a lot of local knowledge in so much as which of those rivers are - if those three rivers are flooding at once, well, you can obviously assume or assess that the majority - a large part of that area is going to be inundated with water, but to what degree and what height and depth and all that sort of thing, that would just depend on the BOM and your flood heights and all that sort of thing.

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Yes, thank you. I have no further questions. Can I just ask you to hang on for a moment?-- Thank you.

COMMISSIONER: Mr MacSporran?

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MR MacSPORRAN: Thank you, Commissioner. Mr Scheu, my name is MacSporran. I appear for the State?-- Sorry, I just missed your name, sorry?

MacSporran?-- Yes. How are you going?

Not too bad, thank you. I take it that your Council is in the process of bringing in a new planning scheme; is that so?-- We have commenced it. We're probably halfway down the track. It is a long, hard process.

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Yes, yes, there's a lot of work involved?-- Yes, there's a lot of work involved. Predominantly it's involved in so much as we are bringing three councils together. You have got to bear in mind that previously we had one small council which was just a Goondiwindi Town Council and then we had two different rural types of Shire areas and then we've all come to one and just getting the land types and the minimum line sizes, et cetera, et cetera, et cetera - it has been quite a bit of work, but I think we've made extensive progress on it and I think we're making good headway.

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Yes. Now, the levee banks in your area are the first line of defence against the flooding, aren't they?-- You're talking about the urban levee bank around Goondiwindi?

Yes?-- Or the rural levee banks-----

The urban levee bank, firstly?-- The urban levee bank protects only Goondiwindi and I think it's 27 and a half kilometres long, which goes right around the whole - the majority of the town. The northern side of the town is open to the Brigalow Creek and I think it probably protects - probably all bar 10 or a dozen residences, or something like that.

Yes. And if the levee bank is breached, in essence, all of those residences flood; is that so?-- Not all of them, no.

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A large proportion?-- A large majority would be, but not all of them. There are still some in high areas, but it's got a pretty good record since 1956.

Yes. And the last series of floods, how did the levee bank fair then? It held out the water?-- It held out the water, yes. We had a - you know, not a great deal of breathing space, but we did have - this was a record flood - it was the highest flood that had ever been recorded in the McIntyre River - 10.65, and-----

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And how-----?-- Sorry?

How close to breaching the levee bank was it on that occasion?-- Oh-----

It was very close, was it not?-- -----probably three to four inches probably in places, you know, something like that. You know, we did some works on the way through as it was going, but the big thing to remember in view of this is that - in the previous questioning - that we've got a very open flood plain on the New South Wales side, and for that last bit of water required to come and breach the levee bank, I think that - and I'm not an expert in this field - but I believe our modelling shows that we required the amount of water that was actually in the river at the time - it would have required that amount of water again to be lifted up to take it over the levee bank at this stage, barring breaches or accidents or things like that.

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And-----?-- But we - we try to monitor that all the time. We spend time - we had it manned the whole time - the whole time during the flood, 24 hours a day, and - just as precautionary measures, and we do have to do some works in places, but - and, no - and we were quite confident that with our modelling that everything was going to be safe.

In any event, when you are looking at this new planning scheme, one of the matters you'd need to take into account was the possibility of the breaching of this levee bank, wouldn't you?-- Well, I would have thought that the records from 1956 through to here might sort of speak for itself, so - you know, I don't know - I think we would rely on that being the case.

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And-----?-- And we've loss got a lot of area within the town that is still - in the old town, as I call it - which is well

and truly behind the levee bank. This levee bank - I think when it was designed, I think it was something like 11 and a half kilometres in length, and it is now 27 and a half kilometres. I think a lot of people get misconstrued by the idea that this levee bank in some places - we have had plenty of Ministers come out here and inspect it - in some places this levee bank is only six or eight inches high. It starts off at the airport on the eastern side about eight inches high, and it's highest point is probably about a metre and a half or two metres, or something like that. It is not as though it is an 11 metre wall around the town which is holding it up, and it has been quite well constructed - not close to the river face itself. It actually stays back. So, there's a lot of good planning has gone into the design of this and I would say it was something that was designed by the engineer and the Council at that time, something well in advance of its capabilities at that time of its life.

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Yes. Mr Scheu, the work of the Queensland Reconstruction Authority has only come to your attention recently, is that so?-- The work of the sorry?

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The Queensland Reconstruction Authority has only come to your attention recently?-- Oh, no, they came out and visited here, oh, three months ago or something like that.

But their product that they've made available has only become known to you recently?-- Oh, the mapping, you mean, sorry?

Yes?-- Oh, the mapping, yes. I think it's only been out about a week or 10 days or something.

30

Yes. And is it fair to say that you haven't yet had an opportunity to totally familiarise yourself with the work that they've done in that area?-- Certainly not fully. I understand that - from the LGAQ - as I said, that these road trips - we're going to participate and that we'll have ample input into it-----

Yes?-- -----so, I guess, you know, until we have that input, that's where we would see it stand at the moment, and we'll wait until that-----

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Yes?-- -----until we have our input, because, you know, I can see what they're trying to achieve. You know, it is obviously an interim mapping report, but, as I stated earlier, I think we've got some more information that will be invaluable to the cause here, and I would rather wait until we have our input to see exactly what happens - just to see what our - the future is for this for us. One thing I do know is that it's good to see the State commence this, because this is going to be one hell of a costly process if it is going to be left up to local government and we're already struggling enough with costs as it is.

50

Yes. I take it, though, you'd welcome the opportunity to speak further with the Reconstruction Authority about this plan/scheme of yours?-- It is my understanding from - in

conversation with Greg Hoffman, who is handling the flood works for the LGAQ, that he is organising a road trip. We don't have that date yet, but it is my understanding that every Council is to be visited and to share the input, because we're - as the attached documents show, we are only at stage 2 of a six stage process.

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And you'd welcome that opportunity?-- It's imperative, I think. It would be foolish for us not to have this valuable information, particularly the likes of this digital reporting stuff, which, as I stressed, we haven't got yet, but we need to obtain that and to add that into our cart, as well as this other report by the QRA - as I say, Major General Slater called out and saw us straight after the area here, and I know it appears finished from that position here now, but I do know that he had quite some concerns about the whole of the state, and he said he will be back - well, maybe he won't be back, but I'm sure the QRA will be back - and Greg Hoffman has reiterated to us that that will be the case - that we will get a visit and have a chance to put our input into this process.

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Thank you, Mr Scheu.

COMMISSIONER: Mr Dunning?

MR DUNNING: No questions, thank you, Commissioner.

MR URE: I have nothing, thank you.

MS O'GORMAN: No questions, thank you.

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COMMISSIONER: Mr Callaghan?

MR CALLAGHAN: May Mr Scheu be excused?

COMMISSIONER: Thanks very much, Mr Scheu. You're excused. We can end the connection now?-- Okey-dokey. Thank you for your time.

Thank you.

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WITNESS EXCUSED

MR CALLAGHAN: I understand the next witness is to be called via an international telephone hook-up. I'm not sure whether we have to adjourn for that to be done.

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COMMISSIONER: We'll wait. If there's any hitch, I'll adjourn.

ROBERT DALE CLEMENTS, ON AFFIRMATION, EXAMINED, VIA TELEPHONE LINK:

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MS MELLIFONT: Mr Clements, my name is Ms Mellifont. I am one of the Counsel Assisting the Commission. Can you hear me?-- Yes, I can hear you okay.

All right. Can you state your full name, please?-- Robert Dale Clements.

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And are you currently residing in Singapore?-- That's correct.

Do you have a property at 312 Long Street East, Graceville?-- Yes, I do.

And did you have that property in January of this year?-- Yes, I did.

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To your knowledge, was that property inundated by the flood waters in January 2011?-- Yes, it was.

And did you hold an insurance policy over that property?-- Yes, I did.

Who was that with?-- Allianz Insurance Australia.

Was that in respect of home and contents?-- Correct.

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Was your claim - did you make a claim with Allianz under that policy?-- Yes, we did.

Was it accepted or rejected?-- It was rejected.

I will come back to the question of insurance later?-- Mmm-hmm.

But can I ask you some more questions about your particular property?-- Yes.

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Have you owned that property since March of 2005?-- Yes, that's correct.

And were you living there in January of 2011?-- That's incorrect.

Who was living there at that time?-- My mother-in-law.

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And that's while you were overseas?-- Correct.

And in January 2011 was your house furnished with contents?-- Yes, it was.

And were there also pets living at the property, although they weren't present at the time of the flood?-- Yes, that's correct.

Now, is your house a single storey dwelling?-- Yes, it is.

1

Is it raised slightly off the ground?-- Yes, it is.

How far did the water come up?-- The water came up to the eaves of the house, so just - just below the actual roof itself.

And did that result in the total loss of the house and contents?-- Yes, it did.

10

With the exception of some small items?-- Correct, there was some - some furniture that we were able to salvage.

Now, have you in the some photographs that were taken after the floods?-- Yes, and I have provided them to you.

To Mr Zangari, I think?-- Yes.

Do you have that with you, those-----?-- Yes, I do, yep.

20

All right. Now-----

COMMISSIONER: Did you want to tender a statement?

MS MELLIFONT: I will be tendering it shortly.

COMMISSIONER: All right.

MS MELLIFONT: Can I take you, please, to the - to that bundle of photographs, and do you have the first photograph there? Does that depict the outside of your house?-- Yes, it does.

30

Can you give us a sense of where the river is?-- The river is approximately 250 metres down the street.

All right. And as we're looking at the house, which direction is "down the street"?-- To the right.

Okay. Now, it's a little bit difficult to see the extent of the flood damage in this particular photograph, but I think you have indicated it came to the eaves of the house?-- That's correct, yes, so inside the house that's equivalent to the front one of the photos I have sent with the air-conditioning unit, you can see the line up to the top of the air-conditioning unit there.

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All right. I will come to that photograph soon. Can I ask you, then, to please look at the second photograph?-- Yep.

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And is this photograph taken from Long Street East?-- Yes, it is.

Now, at 316 Long Street East is there a complex of apartments?-- Yes, there is.

All right. Now, as we look at this photograph, where is that apartment complex?-- The apartment complex is to the rear of

the property and - of our property and also to the right-hand side of the property.

1

Can we see any part of it in this photograph?-- Yes, you can, to the rear.

Is that the orange colour?-- Yes, it is.

All right. Can I take you, please, to the next photograph? Which part of the house is this?-- Which - sorry, which photo have you got up?

10

Okay. It's a photo of - it looks like one side of the house depicts some of the yard with the palm in the back, and looks like some water ponding in the centre of the left of the photograph?-- Yes, that's a photo of the - that's a photo of the rear of the property.

And just to be clear we're on the same one, it's taken at 10.12 on the 15th of January?-- Yes, that's correct.

20

Okay. Now, where is that water coming from?-- I couldn't say for sure where it came from. It was - obviously when I arrived - when I arrived at the property the water had subsided, but - you know, the water had - obviously was - you know, lying around still from after the event itself.

All right. Obviously your property has some proximity to the river?-- Yes.

30

And are there any - is there any other potential causes of water to which your house is approximate?-- Only - only water that would be running off from other properties. As you can see from the layout of the property and the retaining walls surrounding, there's a height and sort of risk of water running off these properties that are sitting higher than our property and flowing into it, which obviously I wasn't there to be able to say whether that happened or not, but it's logical to assume that it would have.

40

All right. So, you're referring in that respect to the property at the back; that is, the Graceville apartments; is that right?-- Correct, yes.

I will come to more detail about that in due course. Can I take you, please, to the next photograph, which depicts the inside of the house and we can see a blue container. Have you got that photograph?-- Yes.

Okay. So, where is that taken?-- That's taken inside - that's taken inside the house, that's in the blue container. I think - that's inside the kitchen.

50

All right. And can we see how far up the water damage came to?-- Yes, you can see the water - the water came up to the - almost the - near the ceiling there.

Okay. And the next photograph has a vanity unit?-- Yes.

I take it that's the bathroom?-- Yes, that's the bathroom.

Again, water up to the ceiling?-- Yes, it was.

The next photograph has an upturned fridge?-- That's a photo of the kitchen.

All right. And, again, damage up to the ceiling?-- Yeah, you can see - I guess I put that in there because you can see that - from the water, the force of the water it turned the fridge over.

10

Now, the next photograph is a picture of the air-conditioning unit inside one of the rooms and is that the air-conditioning unit you refer to as being the level of the flooding?-- Yes, so that's the air-conditioning unit in the lounge room, in the main room. You can see the line of where the water had come up to just to the top of the air-conditioning unit.

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The next photograph in the bundle is an outside shot of a yard. Is that your yard?-- Yes, it is.

All right. So, what are we seeing in the background of the photograph?-- You can see retaining walls that are made of rock, and at the top of the retaining walls you have got a fence and behind that you have the unit complex.

And is one of your concerns the prospect that flood water drained off that built-up apartment complex into your yard and house?-- Yes, it is.

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All right. Can I take you, then, to the next photograph which has a large tree in the centre of it? What's that of?-- That's the back corner of our yard and you can see that in the back corner there's a juncture where on both the left and right side we have the unit apartments and the retaining wall in front and in the corner there is a storm waters drain.

Now, are you able to say whether or not water came up through that stormwater drain during the flooding or that's something you don't know?-- I'm not - I'm not able to say.

40

Okay. And the last photograph in the bundle, please, is a photo of a road. Which road is this?-- This is Long Street East.

When was that taken?-- This was taken on - was taken on - I think it was taken on the 15th of January.

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All right?-- The reason I hesitate was I arrived - I arrived a few days - I flew in on the 15th, but my parents were there the day before and they'd taken some photos as well, so it was either the day before or the 15th itself.

Can you just assist me to orient myself? Where's your house? Which direction is your house when you look at this photograph?-- My house - our house is to the left.



All right. And that would be the forefront of the photo if the photo was longer?-- Correct, yes.

And then the apartments would be in behind that?-- Yes.

I will tender your statement, Mr Clements, of the 13th of September 2011, which is a 10 page statement. It has a number of annexures which also includes an earlier statement you provided to the Commission of the 6th of May 2011. If you just give us a moment while we attend to that?-- Mmm-hmm.

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I tender that statement.

COMMISSIONER: Exhibit 647.

ADMITTED AND MARKED "EXHIBIT 467"

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MS MELLIFONT: The photographs that we just went through are one of the annexures. Can I also indicate that part of the statements to that statement is a Floodwise Property Report printed on the 29th of January 2011, which has the minimum habitable floor level for that property as being 8.5 metres. Now, Mr Clements-----?-- Yes.

-----what was the habitable floor level of your property? Sorry, I will ask it in this way: did it comply with the 8.5 metre-----?-- Yes, it did.

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All right. And, as we have heard, notwithstanding that it was significantly inundated?-- Yes, it was.

Now, just in terms of the development at Graceville Park, is that approximately a 90 townhouse development?-- Yes, that's my understanding.

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All right. And is it your understanding that that was authorised by the Brisbane City Council in 1997?-- Yes, it was.

And that property, as you have indicated, borders your property at the rear and on one side?-- Yes, that's correct.

Now, at .4 in your submission to the Commission, you stated that, "The resultant change", and you are talking about the change from that development, "resultant change to the landscape dramatically altered our property and exacerbated the potential for a flood event." Can I ask you upon what - which basis - sorry, can I ask you the basis upon which you make that statement?-- I make that - I make that statement on the basis of the topography of the land and the location of our house on the land in proximity to the construction around it.

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All right. And are you - is it one of your concerns that a townhouse complex was able to be built there traversing the natural waterway?-- Yes, very much so.

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And did your inquiries so far as you're able to undertake them reveal that the area flooded in the '74?-- Yes, it did, I was able to obtain a map from the Library of Australia indicating that the area was flooded in '74 and also that the area was a flood watercourse.

10

Now, you have conducted some estimations in terms of what the habitable level of your house would need to be to have not been inundated in January 2011; is that correct?-- Yes.

And your estimation is 13.1 metres?-- That's correct.

Which is about 4.6 metres above the current level?-- Yes, that's correct.

Have you requested to participate in the Brisbane City Council property buy back scheme in respect of your property?-- Yes, I did.

20

What's the result of your request?-- The request was rejected.

Have you asked BCC whether you can raise the height of your land via landfill in order to - well, to increase the height of the living space in the house?-- Yes, we did and we were advised that we were not able to do - to change the landscape of the property at all.

30

Were you told why?-- No, we were just informed that it was - wasn't able to be done, that we would need to work within the existing landscape.

All right. Just give me one minute. Madam Associate, can I ask if you have the QRA aerial map which has a cross? Thank you. Mr Clements, just so you can understand what we're doing, I am just showing an aerial map produced by Queensland Reconstruction Authority and it can be seen in the sort of centre slightly to the right a crosshatched area which indicates the site of 316 Long Street East. If that's not already been tendered, I tender it.

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COMMISSIONER: That will be Exhibit 648.

ADMITTED AND MARKED "EXHIBIT 648"

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MS MELLIFONT: Mr Clements, I want to take you now to the insurance aspect of your statement and submission?-- Mmm-hmm.

So, in the days prior to the flooding, did your wife contact Allianz to verify whether or not you were covered for

flooding?-- Yes, she did.

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And what did Allianz tell you?-- They told us that we were - we were covered - we had limitations to our cover, that the flood cover would not include flooding related to rivers or waterways, that it would only be from rainfall or rain type events.

Did you make a claim by telephone to Allianz on the 12th of January or thereabouts?-- Yes, we did, because we were advised to still make a claim.

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All right. And when were you advised about that?-- When we originally made the calls, we were advised that we were still to make a claim, that they would assess the claim given that - given the circumstances surrounding the event.

And when you made the claim - sorry, can I ask you do you know whether that was the 12th or the 13th of January?-- That was the 12th, it was when we lodged the actual claim itself.

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And when you made that claim, were you advised of anything by Allianz in respect of what to do?-- Yes, we were, so we were advised to not take photos - sorry, to take photos of all of the contents of the property, but not to - not to clean anything because they needed the assessor to determine the extent of the flooding and to verify, I guess, the - where the flooding had got to before it - water subsided.

Did they tell you whether or not you were to leave everything as it was?-- Yes, they did, they said to leave it as it was, and I explained to them that it really wasn't possible given the nature of the damage that was caused and the risk to people that were - we were obviously trying to recover what we could from the property and also to rescue as much as we could of the actual house itself and given the fact that the mud and the water was lying around, we felt it was important to clean away as much as we could. They said, "Okay, that's fine, as long as you take photos and keep those photos as a reference when you make your claim."

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All right. Now, when you made that claim, were you told whether or not your claim was declined or accepted or neither?-- We weren't told, there was no - when we made the claim there was no initial response in terms of whether the claim was accepted or rejected, we were just told that it's - an assessor would need to come to the property and complete an assessment before the claim would be considered, and then we proceeded to follow up with Allianz until we could confirm when an assessor was coming to the property.

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So, in that initial telephone conversation were you given an indication as when the assessor would be appointed and attend?-- No, there was no - one of the things that caused a very high degree of anxiety was the fact that Allianz had said to us that they weren't sure when that would be, that they had obviously a significant amount of claims to assess and address, that they would advise us when an assessor would be

available, and when they would - they would come to the property. Our insistence on finding out that particular date was due to my - my flights, and having only been in the country for a week I wanted to ensure that I was present when the assessor attended, so we continually called and followed up. As you can see from the information provided that - we were able to secure the assessor to come around, I think, about five days after - sorry, was around about the 20th they came to the property.

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Okay. So, you flew in from Singapore to Brisbane to attend the property?-- Yes, I was - I was there for a week and - you know, participated in the clean-up and also was present when the assessor was there.

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What did the assessor do when he was there?-- Not a very extensive piece of assessment, it was really just a short questionnaire he had and he asked me a series of questions which unfortunately I was not able to answer because I wasn't present during the flood event. So, he was asking me questions in relation to how high the flood water had got, where the flood waters had come from, what was the colour of the water, et cetera, et cetera, and I was not able to answer most of those questions. He was there for approximately 20 minutes and he apologised that he would need to take at least 28 days to complete his report, so he had other properties to assess, and that he would - I would hear back from Allianz as soon as - the status of his report, submission and outcomes.

20

After his visit did you make contact with Allianz requesting them to prioritise the assessment?-- Yes, frequently, so we - we were - you know, as a matter of - it was almost a daily occurrence that we were following up with Allianz to find out whether the report had been submitted. It was either between Allianz or between Cunningham Lindsey, who was the assessor, and the particular assessor was Ryan Sandiland that we were liaising with to find out what was happening, and, you know, our responses from - from Allianz was back to the assessor and our response from the assessor was very limited, he didn't provide much updates because he was so busy, but obviously we were aware that the 28 days was his - his sort of timeline, so we were keeping an eye on our dates and trying to coordinate around that.

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All right. Now, did the assessor advise you about two weeks after the inspection that he had lodged the paperwork with Allianz?-- Yes, he did, so he advised us some time later through a phone call that he made to me and we sort of back and forth trying to get hold of each other, and it was around about the 11th of Feb, that he was running - running behind and he was hoping to have it done as soon as possible and submitted but he hadn't submitted it to Allianz, and then I got an e-mail from him on the 22nd of February saying that he'd submitted the report to Allianz and that Allianz would actually come back to us and advise us of the next steps. I at that point hadn't actually submitted all of the list of our contents and the photos that he'd asked us to do, and so I

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proceeded back and forth with him a couple of times just to clarify what - what was required and the timings around that and subsequently sent that to him via mail, and then he received that, I think early - early in March.

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Did you ultimately receive a letter from Allianz on or about the 18th of March denying your claim?-- We received a letter from Allianz and the letter was sent to our Graceville property, but we didn't actually physically receive the letter until much later than that, it would have been towards the end of the month because we had to obviously have the mail that was going to the property sent to Singapore.

10

Had you told Allianz prior to this time where you wanted the mail directed?-- Yes, we did, so we had made it clear on a number of occasions that we were residing in Singapore and all - there was no-one living at the property, it was uninhabitable, basically the area was a disaster area so it was not able to be able to have mail services managed from there anywhere, so we said all mail should be directed to Singapore. We also provided our contact numbers in Singapore, both our Australian mobile and also our Singapore mobiles so that we could be reached, but frequently, as I stated in our submission, that we found that either of the Allianz contact centres were not able to dial international numbers, so that was the excuse used for not calling us, or the numbers they had were incorrect, so that obviously created more - created more frustration in - throughout the experience.

20

Right. So from the time of your initial claim on or about the 12th of January to the time when you received the letter which is dated the 18th of March, although received by you later-----?-- Mmm.

30

-----was there any Allianz initiated contact with you about the progress of your claim?-- Nothing, no contact was made to us.

All right. Now, I will just have shown here on the screen the letter of the 18th of March?-- Mmm-hmm.

40

Just give us a minute. And we can see from that letter that Allianz stated to assist in considering the claim they appointed Cunningham Lindsey Australia and WRM Water and Environment, a firm of hydrologists, "The information provided by the attending loss adjuster confirms the Brisbane River overflowed which resulted in widespread flooding." Now, I tender that letter.

COMMISSIONER: Exhibit 649.

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ADMITTED AND MARKED "EXHIBIT 649"

MS MELLIFONT: Can I just have a minute? We will provide hard

copies of these documents for tender later, if that's suitable. We have got them electronically and your Associate has them.

1

Now, Mr Clements, we have spoken about receiving the letter, but did anybody ring you to - say that your - what the outcome of your claim was?-- No, no-one rang us.

All right. Now, after finding out your claim was denied, did you call Allianz and were you referred to a contact officer?-- Yes, we were given a contact officer to liaise with and as we - as we noticed in the letter from Allianz that explained the dispute resolution process that we would need to go through in raising a dispute regarding the claim.

10

All right. What did they tell you to do or that you could do?-- We went - yeah, so we had - our first option was to submit a request for the matter to be escalated to a dispute - a resolution committee or a special area of Allianz who would review it as an exception, but we were - needed to provide grounds as to why we wanted to lodge that appeal, and that we would - any documentation that we could provide to substantiate that claim would need to be provided as well, so we went ahead and did that.

20

In that telephone call, were you provided - were arrangements made to provide you with a copy of the assessor's report and the hydrologist's report?-- Yes, that's correct, because the letter itself didn't really go into any detail about that, but they sent me or they e-mailed me a copy of those - of those reports.

30

All right. Now, was that telephone call on or about the 4th of April, a few days after you'd sent an e-mail on the 30th of March to Allianz?-- That's correct.

All right. Now, we will just bring up on your screen your e-mail to the Allianz on the 30th of March?-- Mmm-hmm.

I can indicate for the record that what it reads is you're saying you, "Do not accept this decision and request an immediate and further investigation as part of Allianz's formal dispute resolution process. I have also left a voicemail message to this effect. We are disgusted with the manner in which Allianz has treated us customers throughout this entire process. We are also especially aggrieved by the impersonal and heartless way in which this decision was communicated." I tender that e-mail.

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COMMISSIONER: That will be Exhibit 650.

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ADMITTED AND MARKED "EXHIBIT 650"

MS MELLIFONT: Can you just scroll to the top of that e-mail,

please? Can I now take you, please, to an e-mail from  
Mr Tim Griffith of Allianz to Mr and Mrs Clements sent on the  
4th of April?-- Mmm-hmm.

1

And I will just take the Commission to the relevant aspects.  
That e-mail confirms receipt of your earlier e-mail and  
subsequent call and encloses a copy of a loss adjustor's  
report and denial letter. And it says, "They hydrologist's  
report on which we have based our decision is available via  
the Insurance Council of Australia website." Can I ask you,  
Mr Clements, were you actually given a copy of that report or  
really given the direction to the Insurance Council website?--  
We were given the direction to the website.

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And were you able to readily locate it on that website or did you have any difficulty in that regard?-- No, we could find it okay.

1

Okay. I tender that e-mail.

COMMISSIONER: Exhibit 651.

ADMITTED AND MARKED "EXHIBIT 651"

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MS MELLIFONT: Did you formally lodge a complaint on the 31st of March?-- Yes, we did.

Was - did you seek an internal review of the decision declining your claim?-- Yes, we did.

20

Was that decision confirming the denial communicated to you via e-mail?-- The decision was sent to us, yes, it was, it was - I'm just trying to recall. There was a letter that was sent to us on the 28th of July explaining the outcome of the decision itself and I believe there was an e-mail that was sent as well.

All right. Now, did you have to chase up Allianz about the result of your internal review or did they make that contact with you telling you that their review had affirmed their decision off their own bat?-- From my recollection there wasn't any phone call from Allianz to explain to us where the status or the status of our dispute appeal and then we didn't receive any sort of formal communication apart from the letter itself advising us of the outcome, so there was that period of time where we just really had no communication from them.

30

All right. And had Allianz advised you that they had sent a letter dated the 28th of July to the Graceville property?-- Yes, they did.

40

All right. And was this letter in respect of the internal review?-- Correct, yes.

And, again, this letter was sent to Graceville, notwithstanding your earlier requests for mail not to be sent to that property?-- Yes.

Was any explanation given to you as to why the correspondence was - kept being sent to that Graceville address?-- No, there wasn't. Actually, can I - can I just amend that? I'm sorry, I'm getting confused. There was an e-mail that was sent but also the actual letter on the 28th of July was sent to Singapore, not to Graceville.

50

All right. Thank you. Thank you for clarifying that. Now, just going through the process of the internal dispute resolution. You lodged your complaint. Did you then send an



e-mail on or about the 19th of April requesting a time frame for resolution of the dispute?-- Yes.

1

All right. I'll just show that document up on the screen. And in it you ask for an indication of the time frame within which "we will need to raise the matter to the Internal Dispute Resolution Committee". We see that in the first paragraph. I tender that e-mail.

COMMISSIONER: That will be Exhibit 652.

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ADMITTED AND MARKED "EXHIBIT 652"

MS MELLIFONT: Can I take you now, please, to an e-mail of 24 April, and I can indicate to the Commission the relevant aspect from that e-mail is that Mr Clements stated he wished to formally pursue the dispute resolution process and requested Allianz to "conduct further investigation on the causation of the flooding to the specific property rather than rely on general findings of ICA hydrology panel reports," and the e-mail states that, "the assessment conducted by Ryan Sandilands of Cunningham Lindsey was neither thorough or adequate enough to draw any meaningful conclusions about the causation of flooding," at your property. I tender that e-mail.

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COMMISSIONER: Exhibit 653

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ADMITTED AND MARKED "EXHIBIT 653"

MS MELLIFONT: Can I take you now, please, to a letter of the 27th of April? What we have up on screen here, Mr Clements, is a letter from the 27th of April from Gunda O'Shea of Allianz which confirms receipt of your e-mail of the 19th of April and that was the e-mail that you were looking for a time frame for the resolution of the dispute?-- Yes

40

And in it they say to you, "We await your formal response before we proceed with a review of your claim through our internal dispute resolution process," and they're speaking about reviewing the information concerning your claim. Do you know what they - do you understand what they were after in that e-mail when they talk about "your formal response"?-- No, and it's interesting that that's actually a letter that was sent to the property rather than an e-mail so we didn't get that till, you know, much later after it was sent.

50

All right. So when you received it did that letter make any sense to you?-- No it didn't, and as far as we're concerned the e-mail I'd sent on the 19th was sufficient enough to

constitute a - you know, a formal claim.

1

All right. Can I tender that letter, please?

COMMISSIONER: Exhibit 654.

ADMITTED AND MARKED "EXHIBIT 654"

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MS MELLIFONT: Can I take you, please, to a letter from Allianz to Mr Clements on the 19th of May? The relevant part of this correspondence is that Allianz have reviewed your correspondence, engaged the services of Water Technology to provide a site-specific assessment. They told you that there would be delays of four to six weeks for hydrology reports. Then they state to you, "As it is now in excess of 45 days since we first became aware of your complaint, you now have the option of either waiting for your response or referring the matter to our external dispute resolution scheme, the Financial Ombudsman Service." I tender that letter, please.

20

COMMISSIONER: What's its date?

MS MELLIFONT: "What's its"?

COMMISSIONER: Date?

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MS MELLIFONT: "Date". Is the 19th of May 2011. Now, can I ask you, Mr Clements, in respect - in response to those suggested options, what did you do then?-- We chose to await the outcome of the formal dispute resolution process.

All right. And so did you send an e-mail on the 25th of May to Allianz in that respect?-- Yes.

I'll just get that document up on the screen here. And in it you state, "As we have not received any response to our communication below," and that's the e-mail of the 24th of June, "it's hard to establish whether anything has been actioned from our most recent communication to you." I tender that e-mail of the 25th of May, please.

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COMMISSIONER: Six 56.

ADMITTED AND MARKED "EXHIBIT 656"

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MS MELLIFONT: Did you then receive a response from Allianz of the 17th of June? Mr Clements?-- Yes we did, yes. I'd e-mailed them on the 25th of May, as stated there, and I didn't receive a response from Tim until the 17th of June.

All right. And between the 25th of May e-mail and the 17th of June had you made attempts to communicate with them?-- No.

1

Okay. So we have up on screen the 17th of June response from Allianz which apologises for the delay in responding to your e-mail of the 25th of May, noting your request for the matter to be reviewed to internal dispute resolution, and it says that, "Water Technology have advised they have been unsuccessful in their attempts to contact you to date, however they note they have left messages". Did you receive any messages from Water Technology?-- No.

10

I tender that correspondence of the 17th of June.

COMMISSIONER: Exhibit 657.

ADMITTED AND MARKED "EXHIBIT 657"

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MS MELLIFONT: Did you receive any messages from Allianz advising that the report had been done and was being reviewed and inspected in two weeks or did you receive no communication about the report having been finished?-- No, we hadn't received any communication into that matter.

I'll take you now to an e-mail from you to Allianz dated the 11th of August, in which you state, "Could you please provide an update on the status of our appeal? It's been months and not a single word from Allianz". I tender that e-mail, please.

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COMMISSIONER: Six-hundred and 58.

ADMITTED AND MARKED "EXHIBIT 658"

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MS MELLIFONT: Can I take you now, please, to the final document? A document of the 16th of August from Allianz. It's an e-mail to Mr Clements which states that on the 26th of July his claim was reviewed through the internal review resolution process and the decision was made to deny - made to maintain denial of the claim and the basis for the decision was the site-specific hydrologist's report. Now, I think, I take it from what you've said earlier, that that's the first time it was communicated to you the result of the internal review process?-- That's correct.

50

Has the matter been referred to the Financial Ombudsman Service?-- No, it hasn't as yet.

All right. Can I tender that correspondence of the 16th of August, please?

COMMISSIONER: Six fifty nine.

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ADMITTED AND MARKED "EXHIBIT 659"

MS MELLIFONT: Now, in the time that the claim was being processed was the house able to be remediated?-- No.

10

All right. So the tenant was left homeless without any belongings?-- For the entire period.

Right. Thank you, Mr Clements, they're all the questions I have for you?-- Thank you.

COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: I have nothing, thank you

20

COMMISSIONER: Mr Dunning?

MR DUNNING: No questions, thank you.

MS McLEOD: No questions, thank you.

MS MELLIFONT: Might Mr Clements be excused?

COMMISSIONER: Yes. Thanks for your time, Mr Clements, you're excused?-- My pleasure, thank you.

30

WITNESS EXCUSED

MR DUNNING: Commissioner, while the next witness is being called, you'll appreciate there was a good or at least a deal of non-opinion evidence led by Mr Clements. Naturally enough we didn't object to his - object to it. It's really no more than a comment on his part, no doubt sincerely held, but I didn't want it to, the fact that we're not-----

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COMMISSIONER: Well, that's all right. I imagine there may well be more evidence about that development but-----

MR DUNNING: Indeed, the development adjoining, yes, thank you.

50

COMMISSIONER: I understand your position, it's perfectly logical, thanks, Mr Dunning.

MR DUNNING: Thank you, Commissioner.

MS MELLIFONT: Miss Wilson has the next witness.

COMMISSIONER: Thank you.

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MS MELLIFONT: Might I be excused?

COMMISSIONER: Yes.

MS WILSON: Thank you, Madam Commissioner. I call Judith Dobrowa.

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JUDITH CARMEL DOBROWA, SWORN AND EXAMINED:

COMMISSIONER: Thank you.

MS WILSON: Thank you, Madam Commissioner. Is your full name Judith Carmel Dobrowa?-- Yes.

20

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

Can you have a look at this document, please? That's your statement and there are some attachments attached to that statement?-- Yes.

Madam Commissioner, I tender that statement with its attachments.

30

COMMISSIONER: Exhibit 660.

ADMITTED AND MARKED "EXHIBIT 660"

MS WILSON: And, Mrs Dobrowa, would you like a drink of water before we start?-- No, thank you

40

Okay. Now, you live in Carnegie Street, Westlake?-- That's correct.

And can I show you this document, this map? And this is the Flood Flag Map for Westlake, and-----?-- Yes.

-----there's a black mark on Carnegie Street. Is that where you live?-- That's my address, that's right.

50

Madam Commissioner, we don't have that on electronic copy. All the parties have got that, the marked copy, and I tender that map.

COMMISSIONER: Exhibit 661.

MS WILSON: Now, your house was flooded in January 2011?--  
That's correct.

But in paragraph two - have you got your statement there?--  
Yes, I do.

10

Okay, so we'll just go through some of the parts - some of the  
matters that you raise in your statement?-- Okay.

So paragraph two addresses that your home was flooded earlier  
this year in January?-- That's correct.

And you say, "not as a direct result of flood water". It was,  
"initially flooded by the sewer system"-----?-- Mmm-hmm.

-----with water coming out of a sewer point in your yard?--  
In the yard - we got water through the yard-----

20

Yes?-- -----but we - the drain - drain things in the earth and  
shower-----

Yes?-- -----and the floor of the bathroom-----

Yes?-- -----in the two bathrooms, that's where it initially  
started to come through.

30

Okay. So it came - the water first came up in the bathroom?--  
Yes.

In the toilet and in the bath?-- No, not in the toilet. It  
didn't overflow in the toilet, it came - it started gurgling  
in the toilets-----

Right?-- -----when you hear that noise - we have been  
basically on sewer watch since 2008, and I know that sounds  
ridiculous but that's what my husband does when it's - well,  
he's not doing it now, we've since had a reflux valve put in,  
but whenever really heavy rain, if we heard gurgling in the  
toilets he would have to tear outside, remove the inspection  
points that are outside our home so that the sewer water would  
come outside the house instead of inside the house.

40

And you discuss the problems that you've had with that sewer  
in paragraphs 21 to - onwards in your statement?-- Yeah.

And you give a nice chronology there of the occurrences that  
happened with your sewerage problems?-- Mmm-hmm.

50

And also there you refer to some correspondence that you've  
had with Urban Utilities in relation to the sewerage issue?--  
Yes.

Now-----?-- First of all Brisbane City Council, then  
Briswater and then Urban Utilities.

Okay. Now - and you talk about, in paragraph 23, that Urban Utilities has since performed works?-- Yes.

1

And what were those works?-- They put in a reflux valve, that is at the end of our line before it enters the main sewer line. This was something that was promised to us back in '89 but then the City Council decided that because they had rectified the houses that actually flooded our home at that time that it was an isolated event, it may not happen again, so they've come and put this reflux valve so that - because our house is - and this is according to engineers from the City Council, is the house lowest on the main sewer line. If there's - people are illegally putting stormwater or pool water, whatever, into the sewer system and there's a blockage it will come back up through our sewer pipe.

10

Okay. Now, you refer to in those paragraphs some correspondence, as I said, that you've had with Queensland Urban Utilities. Can I show you this package of letters that you've shown me today?-- Mmm-hmm.

20

Is that some of the correspondence that you've had with the Queensland Urban Utilities, mainly referring - and they're the correspondence that's referred to in paragraphs 21 and 23?-- Yes, it is, yeah.

Madam Commissioner, I tender that document and the parties have been provided those - copies of those documents.

COMMISSIONER: Exhibit 661.

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ADMITTED AND MARKED "EXHIBIT 661"

MS WILSON: Now, at paragraph four - how about we go to paragraph four of your statement?-- Mmm-hmm.

40

And you - where you refer to at the time of the flood your home was insured with CGU?-- Mmm-hmm.

As a result of it being flooded in January 2011 you've made a claim; that's the case?-- Yes, I did.

And you've been advised that that claim had been refused?-- Yeah, twice denied.

Sorry, I didn't quite get that?-- Twice denied.

50

"Twice denied". And can you advise us the present status of your claim, where it's at at the moment?-- I currently have Queensland Legal Aid in some sort of dispute resolution with CGU and it involves the Financial Ombudsman Service.

Okay. Madam Commissioner, I will tender a statement from James Bruce Merchant, who is - he is employed by Insurance

Australia Group Limited as National Claims Manager for CGU and CGU Insurance, and this statement, with its attachments, addresses some of the matters that have been raised in Miss Dobrowa's statement.

1

COMMISSIONER: Exhibit 662.

ADMITTED AND MARKED "EXHIBIT 662"

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MS WILSON: Now, in relation to your Product Disclosure Statement-----?-- Mmm-hmm

-----in paragraph seven you refer to that, "After the flood we kept trying to get a copy of the PDS from CGU"?-- Mmm-hmm.

And you were provided with copies of the Endorsement Schedule?-- Mmm-hmm.

20

Can you tell me what that Endorsement Schedule was?-- Exactly the same as a renewal schedule. Basically several pieces of paper but it had "Endorsement Schedule" written across the top. I had a lot of difficulty trying to get it because she kept telling me that I couldn't get it, that I wasn't the policyholder, and then in turn my husband spoke on the phone and he asked - he requested it as well.

30

And when you say you had a lot of trouble getting it, you said that "she told me," who are you referring to when you say "she"?-- A staff member at CGU. When I was trying to get a copy of it - actually, I was trying to get a copy for Slater & Gordon because I had got a free consultation through my credit union - through my union, sorry, and they had tried to get a copy and asked me could I get it, so I actually rang and the first time that she said I couldn't do it because I wasn't the policyholder. I said, "I've always been the policyholder on there, it comes out of my wage." Then she said, "No, Con," and then I rang again and this particular day Con was there so Con then in turn spoke to her and she said, "Well, your wife's not on the policy," but that's not unusual because somehow Con's date of birth changed on our car insurances and both of us seem to drop off and I've had to fix those ones as well, so we - I don't know, all she sent - I got two copies from my phone call and one copy from Con's phone call of an Endorsement Statement.

40

You refer later in your statement that you received a copy through the Commonwealth Public Services Union?-- Yeah, through Slater & Gordon.

50

Okay?-- He highlighted flood coverage and whatever.

And did you receive a copy through your solicitor at legal aid?-- No. No. She was pursuing that through CGU, no.



So legal aid has not provided you with any copy of your Product Disclosure Statement?-- No, she's aware that I've got it-----

1

Okay?-- -----a full copy.

Okay. Now, in paragraph eight-----?-- Mmm-hmm.

-----if we can go there, you refer then to the time that you made the claim?-- Mmm-hmm.

10

And that would be on the Thursday, on the 13th of January 2011?-- I made the claim, that's correct, yeah.

Yes. And the conversation that you had with CGU on this date is referred to in paragraphs eight and nine?-- Mmm-hmm.

Now, today have you been shown a copy of the - of a transcript-----?-- Mmm-hmm.

20

-----of the call that you had with CGU on the 13th of January?-- Yes, I have.

And would you accept that that is a correct and accurate statement of the conversation-----?-- Yeah.

-----that you had that day?-- Yes, I do.

Madam Commissioner, the recording of that conversation is annexure one of Mr Merchant's statement. We also have been provided a transcript of that conversation and I should tender that transcript and I will tender that transcript.

30

COMMISSIONER: Six six three.

ADMITTED AND MARKED "EXHIBIT 663"

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MS WILSON: Now, in paragraph 10 you refer that - to the fact that you never heard from anybody after that, "and then about two weeks later I called them". So if your first conversation was on the 13th, about two weeks later is about the 27th?-- Yeah.

Is that what you - when you say you called them?-- Yeah. I rang and I was told that they still didn't have their offices up in Brisbane. I was speaking to Melbourne, I think, at the time. Their offices still weren't up but there was a record of my claim.

50

Okay. Now, today you've been shown annexure two of Mr Merchant's statement which sets out the contact that CGU had with you?-- Mmm-hmm.

And notes made of those conversations?-- Yeah.

Have you seen that document?-- Yes, I have.

1

Now, does that document to you reflect all of the contact that you had with CGU?-- The conversation that I had with the claims assessor on the 3rd of February, that is actually the one that I'm talking about here where she was talking about Westlake and all that because I've actually got that in all my little diary notes that I had been scribbling down as I was talking to her on the phone, simply on the basis of I found it highly unusual that I hadn't had any contact with them whatsoever from the original lodgment of the claim to this phone call saying that my claim was denied, no assessor had been to visit my place, absolutely nothing whatsoever, so what's in their version of it is - I would consider to be very truncated. I don't think it's an actual true version of what was - the discussion. I mean, it's just basically what she told me, not what I actually said.

10

So there is more to those conversations than is included in annexure two?-- Yes, because I was pretty upset when I was talking to her on both occasions when she denied my claim.

20

What about looking - going through annexure two - and you understand the document that I'm referring to?-- Yes, I do.

Does that set out all of the contact that you had with CGU?-- Well, it doesn't show where I spoke about two weeks later and they told me their offices were still flooded. It doesn't have that one in it. But does it properly show everything? It says that on the 3rd of February the assessor was going to appoint - and that she said that she told me on the 3rd - 2nd - sorry-----

30

We'll come to those conversations in one moment-----?-- Yeah.

-----and we'll go into those conversations, but just in relation to the proposition-----?-- No, they're not fully comprehensive, I don't believe.

Now, you talked before that you've made some notes?-- Yes, I have.

40

Can I show you these two documents? And these are notes that you showed us previously today?-- Yeah.

One is obviously a copy of some notes that you made?-- Yeah.

When did you make these notes?-- I was without a home, I was using a mobile phone, and this was just a pad that I'd actually borrowed from somebody and it went everywhere. Every time I took a call, anything to do with the house, I was - well, there's not everything to do with the house because there's ones from trades people and that that are not relevant, but they're certainly my phone calls that I made over that period either dealing with CGU or dealing with people who I thought could help me with my case.

50

Okay. Madam Commissioner, can I tender the copy of those notes so Miss Dobrowa can keep the originals?

1

COMMISSIONER: Exhibit 664.

ADMITTED AND MARKED "EXHIBIT 664"

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MS WILSON: And the parties have got those copies as well.

WITNESS: I mean, it's not magnificent notes by any means-----

MS WILSON: But they're notes that - are they notes to trigger your memory?-- Yes it was, yeah.

Okay. Now, if you can go to paragraph 12?-- Yeah.

20

Sorry, if we can start actually - we'll just go to paragraph 10, which leads into paragraph 12?-- Ten.

This is a conversation - this refers to a conversation that occurred on the 2nd of February?-- Mmm-hmm.

And if you can go to then annexure two of Mr Merchant's statement, and perhaps Mr Zangari can assist you to show where that conversation is found in annexure two.

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Have you got that there, at the bottom of the page?-- Yes.

It starts at 9.26.24. You see where I'm referring to? Sorry, 10.58. 2nd of the 2nd, 10.58.49. Do you see that at the bottom of the page?-- Okay, yep.

And that goes over the page?-- Mmm.

Now, have you read that?-- Yes.

10

Do these notes contained in this document reflect your recollection of the conversation that you had on the 2nd of February 2011 with CGU?-- She did ask about the water and I said it was full of leaves and grass and things like that.

With reference - if I could take you to two matters?-- Yes.

In your statement, you refer to that, "Jackie Briggs, who rang me and told me they were rejecting my claim and any payment was being declined."?-- Yep.

20

Now, that's not referred to in that note?-- Oh, she doesn't say that, does she. Well, she certainly did have a conversation with me.

Ah-----?-- She told me on the 2nd of the 2nd my claim was denied and that's when I started to speak to her with regards to, you know, "You haven't sent an assessor", blah, blah, blah, and she started talking about Westlake and the lake itself and how that was flooded and how they had used weather and satellite photos to make the decision.

30

Okay?-- And that's not there at all, no.

In paragraph 10 you also refer to that you were told that the decision was based on a hydrology report which stated the damage was caused by the river which had gone into Westlake?-- Mmm.

40

Now, that also is not referred to in that note?-- No.

Now, do you still believe that the - that conversation included being told that the decision was based on a hydrology report?-- I can recall the weather bureau - talking about that, I can - her talking about satellite photos, and I can't swear 100 per cent, but I am confident that there was a conversation about hydrology, but I can't - no, I can't-----

Is it the fact that you can't say that it actually occurred on this day, but there was a conversation that occurred about hydrology?-- It was that day. It was definitely that day.

50

Okay?-- Because it was all about me saying, "How could you make an assessment when there's been no contact with us whatsoever, no site visits." It was sort of - to me, it was all done with smoke and mirrors.

Your statement refers to on the 3rd of February 2011 an assessor was appointed?-- Yes, she rang and said that on the 2nd that they had appointed an assessor from a company and that I'd hear from that person in due course.

1

And you've seen the CGU notes in Annexure 2 refer to that conversation occurring on the 2nd of February?-- No, it didn't happen on the 2nd of February. She rang me on the 3rd. On the 2nd, we had a conversation about the assessor, "You've had no assessor", and basically that's when I sort of - and she doesn't mention any of the stuff where I said that I was going to appeal, that I wasn't happy with the decision, I was going to take it as far as I could take it.

10

And-----?-- So, I think the actual appointment of the assessor came after my phone call and that's when she made that decision after probably talking to work colleagues and then got back to me the next day. She certainly didn't give me that information in that phone call.

20

And the notes that you've made, if I can take you to the third page of those notes?-- Yep.

And there's a note that says, "Jackie 3-2"?-- Yes.

Can you tell me what this note refers to?-- It just means that Jackie rang me on the 3rd of the 2nd, told me there was an external loss assessor appointed she said was an independent person, and they were from Crawford & Co, or Crawford & Son. I'm not sure now.

30

Okay. And an assessor did come to your house?-- Yes, he came on the 21st of February, Monday.

And you provided him with some - or you showed him some photos?-- I had some photos. I actually had my entire file that I'd been keeping on my sewerage issues with the Council, which included flood maps, whatever. He was only interested in the photos. He wasn't interested whatsoever in my conversation. He just simply, at that time - and my sister was there because I took her as a support person - he just simply said, oh, he noticed Mount Ommaney Creek wasn't all that far from my home and he believed that the sewer issue and the flooding issue was caused by Mount Ommaney Creek, and that's the first time I'd heard Mount Ommaney Creek being brought into the situation.

40

You showed him the 1974 Brisbane City Council Flood Map?-- Yep.

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And is that that map that I showed you just before?-- Yes.

That we tendered?-- Yes.

You were some time later - a couple of weeks later, you received another call from CGU who told you that the claim was being refused?-- That's correct.

Because the assessor believed Mount Ommaney Creek had caused the flooding?-- That's right.

1

And then you also received a letter, and that letter is attached to your statement?-- That's right.

Dated the 4th of March?-- Mmm.

And if we can just go to that letter for a moment, Ms Dubrowa?-- Ah-----

10

Mr Zangari can assist?-- Yes. 4th of March, yes.

If I can take you to the third paragraph of that letter?-- Mmm.

Where it states that, "We have certainly reviewed your claim, and based on your advice and information available to us, we conclude that the loss for which you have claimed was caused by flood."?-- Mmm.

20

At any stage did CGU inform you what this information was?-- No. And the only information that I seem to have - gave them was showing them information that Crawford - the chap from Crawfords didn't want to see, the photos, my conversation with them originally when I told them that it was the sewer and water had come up through the yard, and her asking about what sort of water was in the house.

And if I can take you to Mr Merchant's statement?-- Mmm.

30

Which is in front of you, and to the actual statement. If I can take you to paragraph 7 of that?-- Yes.

You see 7, and where it - which states, "Our decision to deny Ms Dubrowa's initial claim was based on the following expert and other evidence."?-- Mmm.

And you can see that information was set out there?-- Mmm.

40

Was that information ever provided to you?-- No. And I'm not sure what customer question set was all about, if that was about what colour did the water in your house - and-----

And can I take you to paragraph 16 of your statement?-- 16 of my statement? Yes.

And that paragraph refers to you contacting the Financial Ombudsman in the Insurance Ombudsman's office and the date that you give there is the 25th of February?-- Yes.

50

And is that the 25th of May?-- No, I had initial contact with the Financial Ombudsman that day, but I didn't actually do anything for several months because I - actually, I rang a whole host of names - places on the 25th of February when I'd actually had my claim denied, but I actually made proper contact as a person wanting to actually lodge a claim with the Ombudsman much later, after I'd gone - basically Slater &

Gordon came back to me and said that, having read my sewer file and read my PDS that I, indeed, should pursue it further because I had a case. Damian Scattini said that he was willing to represent me. I explained I didn't have those sort of finances, and he suggested that I either try to tap into Caxton Law or Legal Aid or the Financial Ombudsman, which is - that's when I started to pursue that.

1

In relation to a site-specific hydrology report, do you understand now that CGU is going to do a site-specific study on your property?-- Yes. Just as far as we're concerned, it's something that should have come a long time ago, and it's perhaps too little too late.

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

COMMISSIONER: Thank you. Mr MacSporran?

MR MacSPORRAN: Nothing, thank you.

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COMMISSIONER: Mr Dunning?

MR DUNNING: No questions, thank you, Commissioner.

COMMISSIONER: Mr Newton?

MR NEWTON: Your Honour, might I begin with some corrections to Mr Merchant's statement, please? If your Honour would go to paragraph 6.7 and 6.8? Your Honour, in paragraph 6.7, the reference to the 28th of February should be a reference to the 4th of March in the first line. And in paragraph 6.8, can I invite the Commission to make the same change, where it says in the first line "On the 28th of February", it should say the "4th of March".

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COMMISSIONER: And the date in 6.9 stays the same, does it?

MR NEWTON: It does, your Honour, yes.

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COMMISSIONER: Thank you.

MR NEWTON: And there's one other correction in paragraph 13, in the second line, the reference to Mrs Doyle is incorrect.

WITNESS: Yes, I've been called Mrs Doyle several ways through.

COMMISSIONER: Sorry?-- I've been called Mrs Doyle in this in quite a few places.

50

If it cheers you up, I think Mrs Doyle was called Mrs Dubrowa?-- Okay.

MR NEWTON: Yes. Your Honour, one other thing just for the record: in relation to the diary notes that were produced, they were produced to us in Court just before Mrs Dubrowa got

into the witness-box.

1

COMMISSIONER: I'm sorry, Mr Newton, I'm having a bit of trouble hearing you.

MR NEWTON: The diary notes that were produced were produced to us at the Commission this afternoon. I haven't seen them before then. Might your Honour give us liberty to inspect the originals of that document?

10

COMMISSIONER: Yes.

MR NEWTON: So we can have a look, not having had it before?

COMMISSIONER: Yes. We can probably arrange something at the close of the hearing today for you to do that.

MR NEWTON: Yes, and if I might say so, if we can read around the dates, just to work out what sort of a document it actually is.

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COMMISSIONER: I'm sorry, I'm not following you.

MR NEWTON: We would like to see the original diaries so we can see what the document actually is, rather than-----

COMMISSIONER: Mmm, well, I've said that's not a problem.

MR NEWTON: Yes, okay, thank you, your Honour. That's all. Ms Dubrowa, can I point out the things about which you don't seem to be complaining. I think you seem to accept that apart from the first two weeks or so after you lodged your claim, you were kept pretty much informed of the progress of your claim by your insurance company?-- Informed, yeah. "Denied, denied." Yes.

30

I understand that. But if you have a look, for instance, at paragraph 15 of your statement-----?-- Mmm.

-----you will see that you say, "Apart from the first couple of weeks, we were kept informed of the progress of our claim." Do you see that?-- Yep.

40

And then you go on to refer to "Jackie", which is a reference to Jackie Briggs?-- Yes. I wasn't - yeah.

When you referred to Jackie Briggs in paragraph 10, I assume it is the same person to whom you're referring in paragraph 15?-- Yes.

50

And you say that if you had to leave a message for her, she usually called you back within 24 hours?-- That's correct.

Thank you?-- She'd leave a message for me. I'd ring her back. Often I couldn't get her. I'd have to leave a message, she'd have to ring back.

All right. And you also made a reference in paragraph 9 of



your statement to the fact that the insurance company office was itself flooded. You see that in the second line of paragraph 9?-- That's right. That was the information I was given.

1

All right. Now, can I suggest to you that you are really complaining about two things. In order of priority, the first is that your claim was actually refused by your insurance company?-- That's correct.

10

If you go to, for instance, paragraph 18 of your statement, if you have a look, for instance, at the last three lines of that statement, you talk about the nature of your complaint relating to the refusal to pay?-- Mmm.

Now, that's the complaint you make to the Financial Ombudsman?-- Mmm.

All right. And you also make a complaint in paragraph 8 of your statement, if I can take you back to that? If you have a look, for example, at lines 4 and 5 of that statement, if you would?-- Mmm.

20

You will see the matter to which I'm referring?-- That conversation was not actually on that particular-----

Can I just identify what the complaint is first?-- Okay.

You identify two particular things-----?-- Yes.

30

-----in those lines - in lines 4 and 5?-- Mmm.

The sentence commencing, "I tend to think", and the sentence commencing, "It sounded like"; you see that?-- Yep.

All right. Now, can I take you, first of all, to the claim conversation that you had with the insurance company on the 13th of January?-- Yep.

Now, can I put these propositions to you and we'll see whether we need to go to the transcript or not?-- Mmm.

40

Do you have a - I take it from what you've said in - now, today in evidence, that you accept that the versions which you have given of that conversation in your statement are not correct; for instance, what you said in paragraph 9 is not correct?-- That conversation about the river and the riverine and Westlake and the lake itself, that was all a conversation with Jackie.

50

What I'm suggesting to you, though, is that - I had thought - I may have been wrong - but I had thought you had accepted a little while ago that the version of the conversation on the 13th of January that you give in paragraph 9 is not correct?-- Sorry? Are you talking about the transcript of the conversation that I - has been recorded, because I totally accept that conversation, right?

All right. Which means - sorry, had you finished?-- Which, when I was doing - obviously when I've been doing the statement, what I've been trying to say from that original conversation that I had with Jackie where she was denying the claim is when I believed that they just - it was all about riverine, they weren't interested in what I was trying to tell them about the sewer.

1

What I'm suggesting to you is that having identified the points of your concern in paragraph 8, and you then relay the conversation in paragraph 9, I'm suggesting to you that what you have said in paragraph 9 is not true in relation to the conversation you had with the insurance company on the 13th of January?-- Okay, like you, where you made your corrections to his statement, I need to make a correction to - which I had tried to say before when I was being asked about it - that part of the conversation was actually with Jackie on the 3rd of the 2nd when she rang to deny the claim where I was thinking that they - because what she was talking about - when she was trying to tell me the claim had been denied, I just knew straightaway that didn't actually take part - place on the day that I actually lodged the claim.

10

20

All right?-- So, I need to make that correction, if that's acceptable for you?

Certainly. Now, if I can just deal with what did take place on - during that telephone conversation on the 13th of January?-- Yes.

30

Can I suggest to you that it was a very polite, cordial conversation that you had?-- Yes, it was, yes.

That the attendant actually asked you about the safety of your family?-- She did.

And the safety of yourself?-- Yes.

She wished you all the best?-- She did.

40

In relation to the claim?-- She did.

She, in fact, accepted your claim for lodgement?-- She did.

She gave you claim numbers and took mobile phone numbers for you?-- Yes.

All right. She gave you the phone number of the claims department-----?-- Yes.

50

-----so you could make contact with them, and she told you on the 13th of January that it was going to take some time to have an assessor go out and have a look at your house?-- That's right.

She, in fact, apologised for having to disturb your husband to get his authorisation to permit you to speak to her in relation to the policy?-- Yes, she did. Yep. She was every

bit the professional that day.

1

And there was certainly not the slightest suggestion in that conversation that your insurance company had prejudged the claim in any way?-- No. It was - as I said, my correction goes back to that should be part of my conversation on the 3rd of the 2nd.

All right. Thank you. And if you could just go to the transcript of that conversation at the moment on the 13th of January?-- Mmm.

10

If you can direct your attention to page 3 of that document, and I understand that you've - to the extent you've had the opportunity, you've agreed with this, but can I just direct your attention to it?-- Mmm.

If you go to the third item down on page 3, which is an answer by you-----?-- Mmm.

20

-----it reads, "Well, it's certainly been raining, so it's rained. Yes, it has flooded, but it has also came up through the sewer system." You see that?-- Yes.

All right. And you accept that that's, in fact, what you said, amongst other things, of course?-- Yeah, because it had been raining, yes, we had had flood in Brisbane and my house had been invaded by the sewer system initially.

All right. So, then, so far as the conversation in relation to riverine damage, I think we've accepted the fact that that certainly didn't take place on the 13th of January?-- No.

30

All right?-- Ah, 13th of January, no. February, yes, it did, with Jackie.

All right. Thank you. Now, can I take you to the conversation on the 2nd of February 2011, if I may?-- Yep.

Can I suggest to you that the record of that conversation which you give in paragraph 10 does not accurately reflect what took place during that conversation, and it's true-----?-- Because she doesn't say in there at all, to start with, that she's denied the claim.

40

No, she doesn't?-- But that was when she did deny the claim. So, her version of what - whatever she typed in the notes there is an extremely truncated version of her and I having a conversation. She makes no reference to - only my answer to a question of hers. She doesn't make mention of my anger and my frustration, my suggestion that I would be taking it as far as I could possibly take it. I mean, none of that is in there. So, yes, I don't agree with that, because it's really what she put into notes and it's absolutely not what I said.

50

Well, it's certainly true that there was no hydrology report received by the insurance company by the 2nd of February; that is correct - and, indeed, there was no assessor's report

received by the insurance company by that date?-- Mmm.

1

Because, for instance-----?-- On my home?

Yes, in relation to your home?-- Yes, well, she told me that right up front. She said that she'd never had an assessor to my home, that they had based it on generic information that they had collected for 4074, because 4074 had had flooding in the area. So, you can't have it both ways.

10

What I want to suggest to you, Mrs Dubrowa, is this: that the version which is in the notes which you have in front of you is, in fact, a correct version of the conversation that took place between yourself and Jackie Briggs on the 2nd of February. Can I ask you to go to that document, please?-- Correction of what, sorry?

It's annexure 2 to the statement of Mr Merchant.

COMMISSIONER: The thing that you were looking at before, the conversation of the-----?-- So, we're at the 2nd of the 2nd? Yep.

20

MR NEWTON: Go to the 2nd of February 2011?-- Yeah, down the bottom?

10.58, Jackie Briggs?-- Yes.

Now, you've had the opportunity to have a look at some of that?-- Yes.

30

And if you go to the top of the next page-----?-- Yes.

-----you are told, "Advised OI", which is "our assured", "will appoint an assessor to look at damage to confirm if flood-----"?-- No.

Can I just finish?-- Sorry?

"-----to look at damage to confirm if flood damage or not."?-- No.

40

You see that? And then it said, "I cannot finalise. Awaiting assessor report." Can you then look at the next entry which is a little later on the same day, the 2nd of February at 13.56 - 1.56 in the afternoon?-- Yes.

There's a reference to Theresa Dorey?-- Yes.

And a reference to an assessing company, which is Crawford & Company?-- Yes.

50

And the date of the request is said to be the 2nd of February?-- Yes.

And it refers to an E-mail to be sent to Jackie Briggs, to whom we referred a moment ago; you see that?-- Yes.

If you go a little further down to the next entry for the same date, the 2nd of February 2011 at 14.49 - so, 2.49 in the afternoon - it says, "Received E-mail. Have appointed Crawfords & Co for assessment, contacted OI", which is a reference to our insured, "advised we have appointed Crawfords & Co", and you can read on as it does?-- No.

1

"Awaiting first report from Crawfords."?-- She may have typed that up as the 2nd of the 2nd, but she actually rang me the next day on the 3rd of the 2nd.

10

Now, if you could have a look whilst you've got that bundle of documents to the annexure which is number 4? Along the side you will find the numbering. You see, now, that's the letter of instruction, dated the 2nd of February-----?-- Mmm.

-----to which that entry to which I took you a moment ago refers?-- Mmm.

If you go to the second page of that document, you see the reference to Crawford & Company?-- Yes.

20

Now, that's the letter of instruction or the document of instruction from your insurance company to Crawford & Co to carry out an assessment, more to determine what caused the damage?-- Yes.

All right. Now, I'm putting to you that what, in fact, is recorded here is exactly what happened. She certainly did not tell you on the 2nd of February that the claim was denied?-- She did tell me that. Sorry, you weren't on the conversation, and I'm telling you that she actually did tell me, "denied claim", 2nd of the 2nd. She told me that the sewer had - she actually said the sewer had been breached by the river, the lake in Westlake was flooded, that they'd relied on satellite and weather to assess, because I asked, "You haven't made any contact with me. You haven't been to my home. You haven't asked any questions of us initially from when we spoke." So, there is a great deal of information - she may have, indeed, sent an E-mail off to request that person on the 2nd of the 2nd, but she simply did not advise me until the 3rd. So, there's differences between what you guys have got and what I have made careful notes on.

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40

Do you agree that it would be a very odd thing to ring an insured and say a claim had been denied on the same basis that the insurance company instructs - sorry, on the same day an insurance company instructs an assessor to carry out the investigation?-- I fully believe she only did it simply because I was making such a fuss on the phone. It was not put out there that she was going to do it. She told me that the claim had been denied.

50

I hadn't got the impression, Mrs Dubrowa, that you were making a fuss over the phone?-- I was making - I just told you that her version of what's in the notes there, once she had said the claim was denied, just simply was - it's a shortened version, a truncated version of it. I mean, it's what she has

put in her notes to say what actually took place. I can tell you that anybody that knows me from the 2nd of the 2nd knows that my claim was denied on that day by insurance. 1

And, in fact, the letter, I think you've accepted, that was the letter of denial from the insurance company was not sent to you until the 4th of March?-- That's right, after Crawfords had come.

And, in fact, the Crawford & Co report is dated the 21st of February and received by the insurance company on about the 28th of February?-- That's right, he came to visit the house on the 21st. 10

All right. Thank you. Now, if you go to paragraph 12 of your affidavit, you commence it by saying - sorry, you commence by saying, "Surprisingly, the next day", which was the 3rd of February, "Jackie Briggs called me."?-- That's right.

And I suggest to you that, indeed, it is surprising because the explanation for the surprise is that it didn't happen, that she had told you the day before that an assessor had been appointed, she called you twice to relay the fact that an assessor was to be appointed, and then subsequently to tell you that an assessor had been appointed and, in fact, there is no record in the file notes to which you're referring of a conversation having taken place on the following day, the 3rd of February?-- I can tell you, as I have - I can tell you that I took the phone call on the 2nd of the 2nd when she said that the claim had been denied. I made a fuss about not having the assessor - anybody come to me. She then rang the next day and told me she'd appointed an assessor, right? 20

Having accepted this morning that your recollection of the paragraph - sorry, recollection of the conversation to which you've deposed in paragraph 9 is not correct-----?-- Mmm. 30

-----do you accept that?-- Yes, I did. I just - I think I said that to the Court. 40

So, what I suggest to you is, in fact, you had two conversations on the 2nd of February, and no conversation with the insurance company on the 3rd of February?-- No. I will not accept that. Only based on - I can tell you because the 2nd of the 2nd was the worst night of my life.

And no doubt it was an awful time for you?-- Mmm.

And can I suggest to you that you had better things to do than remember precisely the events as they were occurring?-- These were done as they happened. They were then further transferred into a diary at a later stage. 50

And why were they produced to the Commission today, Mrs Dobrow?-- Because I was going through my council file and they had always been pinned in front of my council file, but having said that, the people who came and took my statement some time back, I actually had referred to those notes on that particular day.

1

But, what, you didn't provide them to them?-- They didn't ask for them but they were all pinned in there in their mangy little lot inside my file.

10

But you didn't provide them; is that correct?-- They read them, they saw them, I referred to them.

Sorry, who is reading them and referring to them?-- Who - I was reading and referring to them and the people who - Paul Brown took my statement.

Do you know who Paul Brown is?

20

COMMISSIONER: He's a police officer with the Commission, Mr Newton.

MR NEWTON: Thank you, your Honour.

COMMISSIONER: Yes.

MR NEWTON: So, you made them available for Officer Brown, did you?-- I had all my paperwork all over my dining room table that day that he and another policeman arrived at my home and, yes, they were - they did see them and today the counsel for the - were aware that I had them.

30

All right. Can I take you, while you have got the file notes of the conversations in front of you, if you go to the item for the 11th of February, please?-- I'm sorry, what did you want me to go to?

If you go to part of annexure 2?-- Annexure 2.

40

If you go to the items of the 11th of February, you will see there's a reference there to Crawfords, who were the assessors, having made repeated efforts to call you, but had to left a message. Do you recollect-----?-- The only message - I regularly got phone calls saying a product number and unless a person left a message for me, I actually - if I didn't take a call, I had no way of getting back. The very first phone message that was left by Crawford & Son was on the 18th of February. I was driving at the time, I pulled over, I took the phone - I listened to the message, I rang him back and he made an appointment to come and see me the very next Monday. They did not leave any other messages, they may have tried to ring me, but a private number I cannot get back to.

50

So, where it says, "Crawford shows repeated efforts to call insured but had to leave a message. More recent attempt was 8 February 2011.", you are suggesting that's not correct?-- No, I had no message. The first message that I received from

Crawford & Son was on the 21st.

1

Right?-- Sorry, 19th, when we made the appointment for the 21st, Friday the 19th - 18th - 19th.

All right. Now, the Crawford's report is annexure 9. Can you have a look at that document, please?-- Yep. That one's got some mistakes in it as well.

Can I take you, in particular, to the second page of that document?-- Mmm-hmm.

10

Where it says were, "At issue is whether the sewer backup was a distinct and separate event from the flooding"-----?-- Mmm-hmm.

-----"or whether it was an early manifestation of the flooding itself. This report favours the latter understanding and makes its recommendation accordingly."?-- Mmm-hmm.

20

And then they go on at the top of the next page to, in effect, say the same thing?-- Yep.

"Which direction did water come to property? From the toilets and drains, then later from the Brisbane River behind the houses, across the street and from Mt Ommaney Creek which overflowed a couple of blocks behind their home."?-- Mmm.

And they recommend that it not be the subject of cover. Now, that conclusion is not inconsistent, is it, with the facts, albeit brief, the facts that you relay to the insurance company on the 13th of January when you said flooding as well as sewer damage?-- Yep.

30

Do you remember that?-- Early hours of the morning it came up through our house. Later in the morning I believe it came up through the stormwater drain outside our home and took out my - came out on the land of ours, plus a neighbours' house on our side of the street.

40

And the conclusion at which the assessor's arrive was what I'm suggesting to you, not inconsistent with the information you have provided the insurance company on the 13th of January when you said, "Yes, it has flooded but it has also come up through the sewer system."?-- Yeah, yeah, but the sewer system happened first, the flooding came later in the morning when the river started to get higher.

Now, could I take you to-----?-- But I - I want to just talk about that particular paragraph where it's actually - says where he's - where you basically said whether it was - "Whether sewer back-up was a distinct and separate event or an early manifestation or flooding itself." I have spoken at length, I logged a job with Brisbane City Council, I have heard from one of the senior engineers that the sewer cannot be affected by the river, so it was a distinct and nobody is listening at CGU to what I'm trying to say.

50



Now-----?-- And that's from experts, that's people who actually monitor the sewer systems here in Brisbane.

1

Now, you received the letter declining cover on the 4th of March or by letter dated 4th of March?-- Yes.

You received it, I think, on the following day, and you also received phone calls on that day from your insurance company talking about the position. Can I suggest you go to the item for the 4th of March in the annexure 2 document you have? Now, that document seems to have been received by the insurance company on the 28th of February and a decision is made which results in cover being denied on the 4th of March, and on the 4th of March Jacqui Briggs telephoned you?-- Mmm-hmm.

10

And you will see it starts at the bottom of the left-hand page and goes to the top of the following page and it say, "Advised OI we have received report from assessor, Crawfords, to advise claim is caused by flood which is an exclusion."?-- Yep.

20

That's as far as I will read?-- Yep.

And then it says-----?-- That's all she's got in that there, but I actually - she doesn't record any of the rest of my conversation there with her, which is a shame, because I was very, very upset.

I have no doubt you were upset?-- And I basically told her what I thought of their - all the things they'd been trying to say to you still now is that you're not listening, you have made a decision based on a Mt Ommaney creek that's - you know, a lower sort of level to our actual house elevation. I mean, Crawford's report, he takes a photo of my house elevation inside my yard, not out on the street. It's basically showing about a third of the elevation up to my house from the street. I mean, how can you - how can you - smoke and mirrors, sorry.

30

And if you go, then, to Exhibit 5, you will see the letter of the 4th of March 2011, to which you were taken earlier, which pointed out that you're not covered for losses caused by flood, and it then points out if you disagree please contact your insurance company's office and a brochure is enclosed that will provide you with information in relation to the internal-----?-- That's right.

40

-----dispute process?-- Yes, I got that and received the letter and received the brochure.

50

Now, you accept the fact, I take it, Mrs Dobrow, that insurance companies have to rely on experts who they appoint to assess the validity of claims?-- Mmm-hmm.

And that this was a matter for expert opinion?-- Mmm-hmm.

And that they make their decisions based on the expert opinion and the recommendations in those opinions?-- That's right.

And you just happened to disagree?-- I actually disagree - yes, I do disagree with it, because I don't believe that - he's actually making two assumptions, it can be one or the other. So, he's hedged his bets and taken the one that favoured the insurance company, not me.

If your Honour would bear with me for one moment? I have nothing further, your Honour.

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COMMISSIONER: Ms McLeod?

MS McLEOD: No questions, thank you.

COMMISSIONER: Ms Wilson?

MS WILSON: I have just got one matter. If I can just take you to annexure 2 and you have been asked some questions on the 2nd of February 2011?-- Yes.

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And it starts at the bottom of the page - across the page, do you see that?-- Asking questions, yes.

Yes, and, "Inquired on higher water. OI advised got to knee-high at about 2.30 p.m." Is that time right?-- No. It should be a.m., but it wasn't - it wasn't 2.30, it was 2 o'clock. I mean, I have got things showing us going through the tollway heading off at 2.30 as we were trying to go to stay with relatives overnight. So - yeah, it should have been roughly 2 a.m.

30

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

COMMISSIONER: Mrs Dobrow, can I ask this of you? Mr Newton would like the chance to look at your original notes. Would you mind either leaving them in the custody of the Commission, and we will get them back to you tomorrow, or if you don't want to do that, would you mind waiting while he has the chance to have a look?-- Yeah, he can have a look at them. I will wait.

40

A Commission staff member will remain too, if that suits you?-- Yes.

Thanks very much for that. You are excused, thank you?-- Thank you.

But if you would stay for that purpose, I would be grateful, thanks.

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WITNESS EXCUSED

COMMISSIONER: We will adjourn until tomorrow morning.

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THE COMMISSION ADJOURNED AT 4.41 P.M. TILL 10.00 A.M. THE FOLLOWING DAY

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