

# 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 10/11/2011

..DAY 57

THE COMMISSION RESUMED AT 10.00 A.M.

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COMMISSIONER: Yes, Mr Callaghan.

MR CALLAGHAN: There's one new appearance to note, Madam Commissioner.

COMMISSIONER: Oh, Mr Kelly.

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MR KELLY: May it please the Commissioners, I appear for the Queensland Resources Council. My name's Kelly, initials L F.

COMMISSIONER: Thank, Mr Kelly.

MR CALLAGHAN: I call Michael Roche.

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MICHAEL ANTHONY ROCHE, ON AFFIRMATION, EXAMINED:

MR CALLAGHAN: Your full name's Michael Anthony Roche?-- That's right.

You are the Chief Executive of the Queensland Resources Council?-- That's right.

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Mr Roche, you've prepared two statements for the purposes of the Commission. For the record, the first of those has already been tendered and is Exhibit 945. The second of those is a statement dated the 9th of November. That appears in front of you; is that correct?-- That's right.

Yes, I tender that.

COMMISSIONER: Exhibit 948.

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ADMITTED AND MARKED "EXHIBIT 948"

MR CALLAGHAN: And at the outset I should also tender a statement of Frances Hayter dated 7 September 2011.

COMMISSIONER: Nine-hundred and 49.

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ADMITTED AND MARKED "EXHIBIT 949"

MR CALLAGHAN: Mr Roche, it's fair to say that the impact of the floods on the mining industry was immediately obvious?-- It was immediately obvious and continuing.

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Well, yes, and to, I suppose, put some brackets around it, we don't need to go to it, but item 12 of appendix 2 to your first statement is a PowerPoint presentation prepared for the Governor as far back as the 19th of January, which depicted the impact as it was understood then?-- That's right.

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And we can fast-forward to your supplementary statement, the second statement that you made. In paragraphs 14 to 17 inclusive you provide an update on the effects which continue to be felt; is that correct?-- That's right, and we did publish our estimates of the range of impacts in late January and they proved to be an accurate estimate.

Okay. Now, your statements cover a lot of territory and are largely self-explanatory. There are two topics I wish to explore just a little further. The first relates to an aspect of preparation for the 2010/11 wet season, and in particular I'd would just like to go over that which occurred in the review of the Fitzroy Model Water Conditions. If we have your first statement, Exhibit 945, at paragraph 51 you refer to a meeting that you had with the Honourable Kate Jones on the 11th of March 2010, and you express the concern that the Fitzroy Model Water Conditions had, "set both the industry and the government regulator up to fail". Can you just explain what you meant by that?-- The experience of the then concluding 2009/10 wet season, the first wet season with the new Fitzroy Model conditions, which had come into effect in December 2009, was that there were difficulties for companies to be fully compliant with those conditions, in fact were being given various breach notices by the Department in respect of what were really quite minor elements of non-compliance, not necessarily any issues of environmental harm. We felt that it was not a good look for industry, nor for the regulator for there to be a continuing flow of non-compliance with the conditions and we felt there was an opportunity to revisit the conditions to deal with some of the issues that we were learning from the 2009/10 wet season.

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And you requested that a review be undertaken in readiness for the next wet season?-- We did, and we felt that the Minister thought that might have been a good idea.

And you refer us then in your statement to the statement of Miss Hayter, and in particular to paragraph 14 of that statement, from which we can gather the relevant steps which were taken on the 18th of May and the 11th of June. Again that's probably self-explanatory. In paragraph 53 of your statement you refer to your increasing concern about the lengthy delay in the implementation of the commitment made by Ms Jones on the 11th of March; is that right?-- We did. We'd submitted some topics for - of high priority for a review to the Department in June and as of August there was no action on those topics.

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And you refer to a luncheon discussion in the QRC boardroom on the 13th of August 2010. Was that meeting one of a regular sort of series of meetings, part of the liaison between the mining industry and the government?-- Quite common for a QRC board meeting held every two months to be followed by a visit by a minister or other dignitary to meet with the board and one of the issues on the mind of several of my board members was the issue of water inundation in mines.

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All right. Then in paragraph 54 you go on to describe a meeting you had with the Minister on the 8th of September 2010 in which you say you were "quite blunt" with her about the lack of follow through on the commitment made back in March. Can you tell us what was the Minister's response to your blunt talk?-- I think she was surprised that nothing had happened and she did invite us to put forward a list of priority issues and I did point out that her Department had those priority issues from us as far back as June in that year.

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Well, you've then described further communications that you had, principally with Mr Bradley, and you've supplemented the record of those in your second statement. We might go to your second statement, to annexure 1 of that statement. This is the nature of communications between yourself and Mr Bradley. There's an e-mail there of 24 November in which you warn that the Fitzroy Model conditions are set to "cause havoc" in basin mines very, very soon; is that correct?-- That's right.

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And you go on. At the bottom of that page it's suggested that there's going to be a meeting on the 8th of December?-- Yes, there was a meeting on the 8th of December with director-generals.

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And we can learn something about the - that meeting if we look at annexure 7. It's on page 14 of the annexures. This is another e-mail in which some of the contents of that meeting is reflected?-- That's right.

And can I just ask you, at the top of the second page of that annexure there's a paragraph which reads, "in turn DERM committed that they will instruct their regional offices to deal with applications on their science and not consider the political ramifications". What were the - what does the phrase "political ramifications" mean in the context of that paragraph?-- Sure. The history of the Fitzroy Model conditions had a heavy political overlay to do with the concerns, particularly people downstream in the Fitzroy system, cities like Rockhampton, who had experienced elevated levels of salinity in their water in the wake of the 2008 flooding events. The Fitzroy Model conditions really came about in response to those community concerns and there were various reviews that were commissioned to do that, and so always at the back of our mind was that those concerns that were evidenced in 2008, resulted in the new conditions of 2009, could reemerge as soon as people had had wind of further mine water discharges in this wet season just completed.

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All right. And, look, as I say, you've supplemented the record in your second statement, and in this context you refer us back to Ms Hayter's statement, and, in particular, to paragraphs 14, and, for example, in paragraph 16 of her statement the opinion is expressed that the process of consultation for the minor amendments to the Fitzroy Model conditions was delayed for too long, inadequate in addressing the substantive concerns raised by the mining industry about the need to prepare for the wet season and generally ineffective. Do you endorse, maintain those opinions?-- We do. I do.

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Well, the other topic I really wanted to explore with you was that of emergency directions and as we look forward it may well be a topic of continuing relevance. You pick up on this in your first statement, I think, in paragraph 30, and can I take you first to the meeting of 18 January - sorry, the meeting with Mr John Bradley, then the Director-General of DERM, on the 18th of January, a note of which appears, as item 10 in annexure 2. Now, was this the first occasion upon which, so far as you're aware, this possibility was canvassed, this emergency direction?-- It was my belief at the time of making that statement, yes. When I revisited my notes of - my notebooks prompted by Mr Bradley's own statement-----

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Yes?-- -----I in fact found that Mr Bradley had mentioned emergency powers in the Environmental Protection Act at the meeting of 8th of December. That is also recorded in my statements.

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All right. So there might have been earlier mention of it-----?-- Yeah.

-----but this is where the dialogue began in earnest, if you like?-- I believe so.

Yes. And in those notes that we're looking at Mr Bradley is recorded as expressing the need for "a fig leaf". You've explained by that he meant there was a need for certain information but what did you understand to be conveyed by the use of that particular figure of speech, "fig leaf"?-- I believe he was trying to convey to us a very strong message that the Department was minded to support the industry in its recovery efforts but that he felt that under - in exercising their powers under the Environmental Protection Act they needed the industry to assist with a whole range of information to enable them to make certain decisions. Scientifically-based information.

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I suppose, just to go back half a step at least, why did you start pursuing this topic? Was it because of concern about the adequacy of the TEP process?-- The Department had done an excellent job and had delivered on commitments given at the meeting of 8th December in staffing up over the holiday period, remember when Cyclone Tasha was upon us, and TEPs were being turned around quite promptly. As the local streams and creeks dried up, delivered their water to the major watercourses, what we were hearing from our member companies

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that TEPs were getting bogged down in the process, it was becoming a slower process, and TEPs that had been granted before Christmas were now of little use in that low flow environment for local creeks and streams. So we're starting to explore other mechanisms for how we could have the TEP process at that stage operate more effectively. I engaged with Mr Bradley by phone and e-mail, we were both on leave, about some sort of fast-track TEP process, and we went through a couple of weeks of interaction around that with his officers and they gave it their best shot. In the end that didn't produce really a meaningful outcome and that's when we were starting to explore, is there anything else in the armoury available to the regulators to deal with the problems my members were facing of flooded mines.

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And just to get a sense of the - of how keenly those problems were being felt, we can see in annexure 2, in item 13, there's an e-mail which reflects the contents of the meeting that you had with the Premier's advisors on the 19th of January 2011 where you've summarised the situation by saying, in essence, this was a "looming economic and environmental time bomb". Is that the way you viewed the situation?-- Absolutely.

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You also said in that e-mail that you thought that you were about to reach "the limit of DERM's experience and comfort". In paragraph 33 of your statement you say that you told the advisors that you had reached the point where DERM would need ministerial or political support to move into "new territory". Can you just elaborate, explain what you meant by that?-- Well, as outlined in Miss Hayter's statement we always had concern that the TEP was being used for a purpose other than that for which it was inserted in the Environmental Protection Act. It was essentially being used as a mechanism to allow companies to be non-compliant with their environmental authorities and to, in certain circumstances, discharge - discharge water. So that was the context in which we felt the TEP was not the appropriate mechanism. The Department did an excellent job in turning around many TEP applications but in the face-to-face meetings I was sensing they were really going into territory that was quite new for them where what the companies were asking for were opportunities to discharge where local creeks and streams were in low flow or no flow.

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All right. In annexure 2, item 14 contains an e-mail sent the following day in which you indicated that you were would "welcome some show of support" - "some show of interest" from Minister Jones. Did that reflect a concern that at least up until that point, whilst you were having regular contact with officers of the Department, you had received no queries from Ms Jones, nor from any other relevant minister?-- No, it seemed to be very much that the Department and officials were the interface, so we were very much reliant on what officials were telling ministers to know whether or not our account of the situation was being accurately reflected.

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The Minister did call you on the afternoon of the 20th of January. In annexure two, item 15. You've recorded that she was "a bit toey". Can you explain what you meant by that or

what that was intended to reflect?-- My e-mail reference in communicating with the Premier's Office to - would be nice for some show of interest from the Minister, was in fact forwarded to the Minister's Office and she quite quickly got on the phone to me to express her displeasure at that comment. I said, "Well, it is a fact that I've not heard from ministers," but we moved past that into a discussion around our concerns. I gave her a briefing on how we saw the situation and I raised with her the concept of an emergency - use of emergency directions as one of the tools that her Department should be allowed to use.

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And she then undertook to seek some advice and to revert to you; is that right?-- She did.

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All right. We can trace through the course of events in your statement but they included a meeting with the Directors-General of DERM, DEEDI and Department of Premier and Cabinet; is that right?-- That's right.

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That's mentioned in paragraph 40 of your statement. And a note of that meeting appears in annexure 2, item 18. You say the directors-general opposed the use of emergency powers. A couple of questions arising from that. First, was a reason identified as the basis for their opposition?-- There were two aspects to the conversation. Mr Bradley made it clear that it was the view of the Department that emergency directions powers should not be used to deal with economic emergencies-----

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Can I just ask what that meant. What-----?-- Well, I think there was a - I was spending a lot of time briefing officials on the emerging loss of coal production issue for the State and the difficulties mines were experiencing getting back into anything like full production, so that was the economic aspect of it, and around that time we were starting to form a view about the range of impacts, which we published just a few days later. The other aspect was that there were predictions around cyclones following Tasha and I was starting to talk about maybe we needed to anticipate flows in local creeks and streams by use of another mechanism, such as an emergency directions power. So rather than wait for the creeks and streams to be recharged and in flood as a result of another cyclone could we not anticipate those flows based on the weather forecasts of the time, and certainly Mr Fletcher made it pretty clear that he didn't think it was appropriate to exercise such a power in anticipation of an event which may or may not happen.

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In part your argument, though, was based on the proposition that serious environmental harm could occur from a dam overtopping or other uncontrolled release; is that correct?-- That's right. Some company chief executives were telling me that on their minds they were worried about the dam levels being at their limits and with the predictions of further cyclones they just didn't have any options about where to put more water and so that was their worry.

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Was there a response, do you recall, to that proposition?--  
Well, as I say, the directors-general felt it was a very  
difficult proposition I was putting to actually anticipate a  
weather event which may or may not occur.

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All right. You've also referred to a meeting with  
Minister Stephen Robertson on the 28th of January. That's  
documented in item 19, and you refer to it in paragraph 41,  
and again we can read those for ourselves, but was there any  
response to your observation that, in effect, the discharge of  
saltwater into the ocean might not have been a major concern  
to the Barrier Reef?-- It was a conversation that didn't  
really go very far because it was an insight into the  
political mindset which was quite resistant to what I was  
putting. By that time we had to hand legal advice about the  
emergency directions powers, so my conversations with  
ministers were by that stage being informed by legal advice,  
which is in the statements, and so we weren't just shooting  
the breeze, we felt we were on sound footing in putting that  
proposition, and it was clear the Minister had no feel for  
that aspect of our position.

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Okay.

COMMISSIONER: So I understand, can I get clear what you  
envisaged by an emergency direction?-- Sure.

Was it one that would apply across-the-board allowing a level  
of release from all mines or was it a mine by mine thing, a  
direction for this mine, a direction for that mine?-- It  
could have been either, Madam Commissioner.

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Did you get down to that sort of detail or not?-- Well, the  
place in which we documented it was in the letter to the  
Premier of the 28th of January and that letter asked the  
Premier to consider adding it to the armoury of options  
available to the Department, and we felt that the Department,  
while it had that in its armoury, needed political cover to go  
in that direction, and so it could have dealt with situations  
of particular mines where their dams were dangerously full,  
and, and again anticipating cyclonic events, or it could have  
been a general instruction to say that, "Subject to water  
being at certain levels of salinity, acceptable levels of  
salinity you can discharge over this period in anticipation of  
these cyclonic events," so it could have been either scenario.

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Thank you.

MR CALLAGHAN: And just before we leave entirely that  
conversation with Mr Robertson and, to be fair to the Minister  
I should ask this: we had some evidence earlier in the week  
about the fact that water discharged from underground coal  
mines might contain contaminants other than salt. Could that  
have had any relevance to this aspect of the discussion or are  
we just talking about discharges from open-cut mines  
or-----?-- I'm not aware of any evidence of water discharges  
from underground coal mines. There was one instance during  
that period of an unexplained in-rush of water into-----

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Yes?-- -----an underground mine but what we're talking about are discharges from open-cut mines.

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Thank you. And penultimately can I take you to annexure 2 to your first statement, item 28. That's an e-mail in response to a letter from the Premier, an undated letter which is attached at item 27. You've suggested, I think, that the letter misrepresents what was asked of the Premier in so far as it might suggest that QRC wanted a general exemption; is that correct?-- That's right.

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Would you just elaborate on that?-- I was unaware at the time that I sent the letter to the Premier on the afternoon of the 28th of January that in fact the Department of Environment and Resource Management had issued a press release in fact saying that that's what we were asking for, a blanket exemption, and that was not possible, everything needed to be done on a case by case basis, so that was the context. There was then a delay, understandably, given everything that was happening in Queensland at the time and a week later we received the Premier's response, and the Premier's response read very much like the press release from the Department of the 28th of January.

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And you've exhibited some of the relevant materials in your second statement; is that correct?-- That's right.

In conclusion, Mr Roche, your statement contains - your first statement contains, in paragraphs 7 to 19 inclusive, some suggestions and recommendations which relate principally to the use of the emergency directions power contained in the Environmental Protection Act. Is there any aspect of what you've written there upon which you would care to elaborate or emphasise?-- Having had the opportunity to read the transcripts of some of the DERM officers in the last couple of days I - as a general comment, Madam Commissioner, I think the - there's an important discussion that needs to be had around the circumstances, what is an emergency, and it's clear that the Department defines an emergency in narrow terms around environmental emergencies. Our reading of the Environmental Protection Act in its context of its objects, in the context of the definition of environmental values is a much broader concept than narrow environment-only considerations. So we believe that needs to be clarified, that there's nowhere that I read in that particular emergency directions power in the Act that it is as narrow, so that - that's a general comment-----

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COMMISSIONER: So you're saying it extends to economic emergency?-- We believe so. When you read the power in the context of the Act itself, which defines environmental value to also capture public amenity or safety, and the environment itself is defined as including the social and economic aspect, so we believe that a broader reading of the Act, in conjunction with emergency directions powers, would open up a broader range of circumstances when you might want to consider using such a power.

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Another thing that the departmental officers say about it, though, is that if those powers are to be used you still need an individual environmental assessment for each mine so it's no faster. Did you want to comment on that?-- Well, I read that. I'm only aware, Madam Commissioner, of two recent uses of those powers in my industry. One was the Ensham Mine. It was applied for on the 1st of February 2008, I believe, and granted on the 1st of February 2008. And similarly in the case of Moranbah North, I don't have the exact date in my head, I think it might have been the 24th of December, applied for that day and granted that day. So the Department itself has its own track record in turning around quite quickly. So the - this goes to the debate around TEP's versus emergency directions. Mr Brier in his very interesting evidence said this week that he agreed that TEP's were something that could be used for economic purposes, dealing with economic consequences, and we agree with that, but then he goes on to say, however, using the same assessment processes as a TEP you could not use an emergency directions power for an economic purpose, only an environmental purpose, or perhaps a human safety purpose. So there's a bit of a tension in terms of that perspective. Something that's, I think, worthy of the Commission exploring.

MR CALLAGHAN: Just to conclude. Your second statement you acknowledge was prompted or at least assisted by having had reference to Mr Bradley's statement, which is a statement dated the 31st of October 2011. I should tender that, and those are the only questions that I have, thank you.

COMMISSIONER: That statement will be Exhibit 950.

ADMITTED AND MARKED "EXHIBIT 950"

COMMISSIONER: Mr MacSporran.

MR MacSPORRAN: Thank you, Commissioner. Mr Roche, my name is MacSporran, I appear on behalf of DERM. It is the case, isn't it, the Fitzroy Model conditions were derived from a report by Professor Hart back in 2008 or thereabouts?-- Professor Hart provided a report on the use of the powers of the Department, the then EPA, in respect to the Ensham TEP. It was the Department's own report of April 2009 that actually directly led to the Fitzroy Model conditions.

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Relying upon the science reflected in the work that Professor Hart had done?-- That's not my reading actually of the report. I've read both reports and I don't see one following from the other.

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All right. In any event, the conditions came in in late-ish 2009; is that so?-- That's right.

They were more stringent than conditions which had applied before that?-- Yes, they were.

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The industry generally was disappointed that those conditions were being imposed across the board?-- No, when the Minister - then Minister Jones informed me on I think it was the 20th of May of the cabinet's decision, at that stage we hadn't seen those reports, and she said that cabinet had decided to - that there needed to be model conditions and they needed to be a general tightening up because of variations across mines and our position - and she said that if it wasn't done voluntarily, then the Government would have to legislate to do so. I gave the answer to the Minister on the spot that, of course, we would cooperate.

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All right. Was the view in the industry that they were too stringent, those conditions, to be applied across the board?-- In the final outcome the industry regarded the model conditions as a blunt instrument which didn't take account of the differences from mine to mine.

It was always possible, of course, was it not, for individual mines to apply for amendment of the Environmental Authorities to change those conditions?-- Well, I'm aware of a couple of examples where mines sought to do that unsuccessfully and that's the case of Ensham Mine and the Rolleston Mine conducted by Xstrata, so there is not a track record, Mr MacSporran, of success in applying for amendments to Environmental Authorities.

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I didn't ask you about success, I asked you whether it was possible for mines individually to apply for amendments of the Environmental Authority. The answer is yes, isn't it?-- The answer is yes, and if I could add, remember that this was a very fast track process to have the new model conditions inserted into each mine's Environmental Authorities by December 2009. My members report to me that the opportunities in that process to vary were limited and then, of course, they were getting on with the business of dealing with the wet season.

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To apply to amend the conditions there was a requirement for proof that the amendment would not result in environmental harm; is that so?-- I believe so.

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That was the responsibility of the company, the mine, owner, to provide proof that any such amendment applied for would not cause environmental harm?-- That's right.

No company was able to provide that proof, were they?-- Well, as I say, the conditions only came-----

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No, just answer the question, if you wouldn't mind. The question is simple. No company was able to provide that proof to seek amendments?-- I don't - I don't have that information to be able to be certain of the position put to me.

Well, you represent, don't you, the companies?-- I represent companies. I'm not necessarily acquainted with the - every dealing of 60-odd coalmines in relation to environmental conditions and their dealings with DERM.

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In any event, you do accept there was a requirement, perhaps sensibly, to provide proof that any amendment applied for would not result in environmental harm. That was the condition. That was the parameter, the amendment?-- Yes, it was. Yes, it was.

So any company was free to go out and by an application of the science establish what they wanted to achieve by amendment to the conditions on their EA would not result in increased environmental harm?-- And that evidence would only emerge after at least one wet season's experience with the new conditions.

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In any event, you've talked about the process which was gone through to negotiate with the Department to have these conditions changed, reviewed, and ultimately the position now is there has been some relaxation of the conditions, talking generally at the moment?-- Well, "improvement" is the word I would use.

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That's come about because there has been a period of monitoring and scientific analysis to establish that the conditions in certain respects can be modified in the case of individual mines?-- Experience of two wet seasons certainly assisted with that process.

So the science has been provided, the proof is there, the conditions can be adjusted in certain cases, without resulting in increased unacceptable environmental harm?-- That was certainly the goal of both parties.

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Now, in any event, the Department took the view that the appropriate process in the lead-up to the wet season just passed was for companies to apply for a Transitional Environmental Program, TEP. That was the Department's view anyway; is that so?-- Well, it is more nuanced than that because that was the position advised to industry in a letter

of the 24th of November, but that was preceded by a process of attempting to get a workshop together, industry and DERM, to, in fact, explore opportunities before last wet season to modify the model conditions.

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Well, the workshop was back in about mid October last year?-- No, it was on the - early November.

November. That workshop was to do with the parameters for a review - a full review of the conditions that applied from the 2009 model conditions?-- It's not my understanding, Mr MacSporran. My understanding is that - I have to rely on other expertise and people like Ms Hayter, but my understanding was that industry had put on the table a range of priority issues, they were the issues that were brought to the workshop. The outcome for the workshop was that those priority issues were by and large not addressed.

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In any event, we move forward to November 2010 and we come to annexure 1 of your second statement. If you just go to that, if you wouldn't mind. That's the start of the relevant time frame we're looking at. You raised with Mr Bradley on the 24th of November that morning you were getting approaches from coalminers that Fitzroy water conditions were set to cause havoc and you referred to that earlier in your evidence?-- That's right.

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Mr Bradley's reply is immediately above your e-mail, just a few minutes later on the same morning. He says, "We're very focussed on the Fitzroy risks and feedback I have been getting from my team in the last week is that the interreaction with companies was working okay, so I would be keen to discuss." That's the start of this dialogue, isn't it, about this particular issue?-- This was the start of the dialogue in the wake of the workshop in early November about the model conditions, so it is really about the dialogue moving forward with the TEP process.

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Yes, all right. If we go to annexure 2 which is the next in point of time, an e-mail from Frances Hayter, and Ms Hayter, she's the environmental director of your organisation?-- Director of Environment and Social Policy.

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Yes. We see what she says there, "It was flagged yesterday, Michael" - that is referring to yourself, "Michael had a brief discussion with John Bradley about the water release issue. John indicated that he was happy to run a fast track TEP process i.e. once company material is received then processed within two weeks as a way of resolving the issue within the regulatory framework available to him." So you were clearly being told there right as at November that the company material needed to be received?-- Absolutely.

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You understood, didn't you, that DERM could not act until the companies provided the material?-- Within that TEP framework, exactly right.

Yes. Then we have annexure 3 which is a note for file. Is

that your file note, Mr Roche?-- Yes, it is.

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That refers to a meeting you had with Mr Bradley on the 29th of November, a few days later?-- Yes.

And other named parties including a representative from BMA, Mr Rowe and Damien Brown from DERM together with Mr Bradley. Mr Bradley you record as having said at that meeting that DERM was poised and waiting to help companies. "DERM needs into about environment risk. He asked whether there were issues with TEP process." That's your record of what was said by him?-- That's right. That's right.

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So again he's emphasising, isn't he, that DERM needs the information. This is as at late November 2010?-- You can't make a TEP application without rigorous information.

Was there some difficulty in the companies who wanted to release water ahead of the wet season providing information to DERM?-- I don't believe so. The context was that companies had been awaiting in many instances an outcome from the workshop which eventually was held in early November which would have gone to possible changes to the model conditions. That essentially didn't occur and therefore it was only during that November month that the paradigm had to shift to the TEP.

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Well, DERM had made it pretty clear, I suggest to you, at that time that the TEP process was their preferred option and they were promoting it to you and saying that the companies had to get proactive and provide the data so DERM could assess it and provide the TEPs?-- That's right. That's right, but the - again, the TEP process only emerged as DERM's preferred option in correspondence to Ms Hayter on the 24th of November, so we need to place that in the chronology of the work we tried to do with DERM during 2010.

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Well, in the same file note is annexure 3 there towards the bottom. Mr Bradley you have recorded as saying, "Have a pre-lodgement meeting with DERM. DERM will give you a benchmark timing, best endeavours time frames." He quoted an example of 20 business days for Rolleston?-- Which is actually the statutory time period.

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Yes. Well, then we have annexure 4 which is the file note of yours again of the 8th of December meeting. This is the one where Ken Smith from Premiers, Mr Bradley, Terry Wall from DERM and Damien Brown from DERM, yourself and Ms Hayter?-- Yes.

There was discussion about the use of the TEP mechanism. "DERM's advice was to have an eye into the future and applying for a TEP. It will come down to the case that individual companies can make, get the dialogue going early. DERM has sent info request re likely demand for TEPs and had heard back from only three companies"?-- Which is not surprising given that the information sent by DERM was on the 6th of December two days earlier, so they had heard from three over two days. We predicted that at least half of Queensland coalmines would

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probably come in with TEP applications.

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The TEP process had been flagged, I thought you agreed earlier, late in November, around the 24th?-- We're talking about a fairly short time period, Mr MacSporran.

Well, not as short as you had us believe a moment ago, talking about early December. It went back to the 24th of November?-- The invitation to companies officially with an attached template was sent to the companies on the 6th of December by Mr Terry Wall.

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But you would have us believe that this whole issue needed to be done and addressed urgently?-- Exactly right.

Well, why weren't the companies being proactive as soon as they understood from the 24th of November that the TEP process was the Department's preferred option?-- The TEP process in this wet season just gone was not a familiar process for most companies. The TEP process had never been used this way as a substitute for - well, for bringing companies into compliance with the Environmental Authorities. There's very few previous examples of TEPs, so many companies did not have that experience and so the guidance the Department was able to provide on the 6th of December supplemented by an e-mail I sent to all coal companies on the 8th of December started to flesh out the information companies needed to be able to put together a TEP application.

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You raised at this meeting on the 8th, as you record here in the file note, you asked if DERM would have staff available to handle the applications. That's the TEP applications?-- That's right.

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You were told by Mr Smith from the Premier's department that DERM will need to look at the leave situation at DERM to ensure people were on deck. Mr Bradley said they were also looking at external resources. So they were making it clear to you that they would do whatever they needed to do to process these applications once they came in?-- And they delivered on that resourcing commitment.

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The merits of the TEP option were discussed at this meeting as you report here; is that so?-- The merits of TEP option?

It is in the third last paragraph, annexure 4?-- Well, yes, this was - what I mean by that is the pros and cons of putting all your reliance on the TEP option versus other - were there other options.

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That's when Mr Bradley, I think you say, first mentioned that emergency powers do exist in the Environmental Protection Act?-- He described three scenarios, one where companies simply discharge water and then had to justify their actions subsequently to the regulator. Another was the emergency directions power and then third, the preferred option, was the TEP.

I think that may have been at a different meeting, but certainly I don't dispute what you are saying about that discussion at some point in time, but on this day, the 8th of December, he did mention that there were emergency powers, but went on to say as you have reported DERM advice was for companies to prioritise their TEP applications making it easier for DERM to access - to assess and approve?-- Which they did.

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Yes?-- Many were applied for before Christmas and processed.

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Then you raised at this meeting the need to prioritise early in the new year a proper review of the model conditions and Mr Brown from DERM said he favoured a company by company approach on amending EAs and Mr Bradley agreed. That was the discussion as at 8 December?-- Yes, that was foreshadowing a view about whether or not model conditions should be the way to go into the future or should it be left to each company to apply for amendments to the Environmental Authorities without the overlay of model conditions.

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All right. Then we have annexure 5 is Ms Hayter's e-mail to the industry group setting out the - in effect the results of that meeting of the 8th and we see there about halfway down the page she refers to Mr Smith's undertaking to provide staff, make sure there were staff available to fast track the TEP applications, and records that DERM had asked - and she sets out the dot points - early as possible discussions take place with DERM regarding the reasons and potential for applying for a TEP; early as possible communications occur with relevant landholders and other interested parties, i.e. appropriate community information and consultation; companies do not put ambit claims to DERM in their TEP applications, e.g. not asking for excessive release points, but focus on what is actually needed and what specific EA conditions need to be managed; companies have detailed science to backup their applications including where discharges may be required to go to order less flow from the major rivers even if there will ultimately be specific dilution of any potential water quality issues. In term, DERM committed that they would instruct their regional officers to deal with applications on their science and not consider the political ramifications. It then goes on to refer to a larger scale review being planned for the first half of 2011; is that so?-- That's right.

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So the effect of that is that DERM was again doing whatever it could reasonably do to make it clear to the industry through the QRC that it was important for the mining companies to get on the front foot, as it were, get these applications in, have them focussed, have them supported by science, and they would be dealt with expeditiously by extra staff put on by DERM if necessary in a timely way?-- And companies responded to that and DERM received a couple of dozen such applications which were turned around generally quite promptly.

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Furthermore, DERM agreed, as reflected in Ms Hayter's e-mail, the second last paragraph there, to bring forward the review of the model conditions to the first half of 2011 as opposed



to the second half of the year; is that right?-- That's right.

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All very positive response from DERM to QRC's need for action at this time; do you agree?-- I have no quibble with the resourcing and responsiveness in that pre-Christmas period.

Now, the same day, in annexure 6, we have an e-mail from Mr Brown. He's the DERM officer to Ms Hayter. Do you see that?-- Yes.

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He raised, that is Mr Brown raises: The question of there having been heavy rainfall in the Central Highlands late the previous week and over the weekend, that DERM has contacted all sites in Fitzroy on Monday and Wednesday this week. We are again following up with sites today and there are ongoing, and in some cases, constant discussions with the companies. Also personally spoken to a number of managers and executives of the majors that are Brisbane based. We now believe we have a good picture of how companies have responded to or intend to respond to the weekend's events." Again, DERM being entirely proactive themselves about monitoring the situation with all of these mines?-- I agree with that.

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"To date DERM has received one TEP application as discussed yesterday and two program notices. We are working closely with a number of sites and there are certainly two to three sites that we would place in the possible category of submitting a TEP in coming days." Then he says this significantly, I suggest to you, "But our research in consultation has painted a different picture to that which you presented yesterday. With this in mind we are keen to make sure that our understanding is as thorough as possible and any information you have and can provide us will be most welcome." So he is saying there to Ms Hayter - you were aware of this, I take it, were you?-- Yes.

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There seems to be a disconnect between what DERM were being told through QRC and what they were being told all around by the individual companies who QRC purported to represent?-- Well, proof of the pudding, Mr MacSporran, is in the fact that 80 per cent of Queensland coalmines applied for TEPs last wet season and probably at least half of those were prior to Christmas and prior to Christmas they were turned around very quickly, so it was only a matter of days before our predictions were validated by the actions of the companies.

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But it doesn't explain, Mr Roche, what has been spoken of in this e-mail. You don't seem to want to expand upon what you understand this to mean, why there was a disconnect if there was? Do you disagree there was a disconnect, do you?-- Well, I'm not sure if it is in our statements or papers, but I do recollect that at the same time as DERM were telling us they were aware of one or two or three, we were aware of about 10 that were on their way and I think we provided that advice to them.

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That's in the former - in the earlier file note. You would

have seen that on the way past. You had that awareness, but whatever was in the pipeline there didn't seem to be a lot happening very quickly. That seemed to be the impression that DERM had about the company's response to what DERM saw as being an urgent issue that needed to be addressed?-- And we tried to explain to DERM that many companies had no experience with the TEP process in this shape or form, so they - it was a learning experience for them to get across the requirements for putting such application.

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But again this is in the context of your so-called concern about the impending wet season, the impending economic and environmental disaster hanging over your heads. Nothing seems to be happening terribly quickly from the mine's point of view?-- Well, they were working on their applications and you will see on the record that there were many applications that were submitted before Christmas 2010, so I think we're talking about a matter of days, Mr MacSporran.

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I am reminded, helpfully, that there was - were you aware there was a meeting, on site inspections by DERM officers of various mines, where they were invited the miners to submit TEP applications?-- I understand that-----

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16 November?-- I'm told that that occurred. We were not aware of that.

So that's really a starting point, isn't it, for the TEP process being flagged by DERM as being the appropriate one to deal with this impending disaster you have been talking about?-- No, but companies did not receive a template from DERM until the 6th of December.

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Well, you didn't have to wait for a template, did you, to submit a TEP application? I mean, a template would be helpful for you, but you could at least get on the job and start providing the data that would need to be provided to allow DERM to assess the situation, couldn't you?-- In my experience the only company with experience with TEPs prior to that was Ensham Mine.

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All right. Can I take you to your first statement, some of your annexures there and trace through the chronology there? Can I take you to annexure 2, item 8 firstly? The way these are put together, because they're e-mailed, we start at the back and work forward, do we, in time?-- That's right.

Just bear with me. We have on the second page from the back, it goes on to the back page, it is your e-mail - your e-mail to its various officers in DERM, is it not, on the 10th of January?-- Yeah.

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And including Mr Wall, Terry Wall. This is item 8, second last page. It is the-----?-- The outcomes from the meeting.

I think it is the first complete e-mail we have in this series, 10th of January?-- Yeah.

5.39 p.m. You say, "Terry, many thanks for today's meeting with the DERM team. My understanding of the key outcomes are", and then on the following page there you set them out, "Urgent follow-up with CSG companies." Second dot point, "DERM to provide guidance on how the EC levels and flow rates may vary, et cetera, and DERM to consider how to handle situations where mines and CSG sites do not have access to major water causes and so on." So this is how it is progressing into January this year?-- If it would help, Mr MacSporran, it was preceded by just a few days earlier a phone call from myself to Mr Bradley which is recorded in the statements seeking his interest in a generic or fast track or TEP-----

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Yes?-- That - his officers did an outstanding job of pulling something together for us to have a look at and some of these questions go to the material that they provided to us about what a template TEP - or a Streamline template TEP could look like.

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Yes. Well, that's that the 10th. Your response is on the - I beg your pardon, Terry Wall's response is on the 11th, further up that page. "Thanks, Michael, I agree with your summation of outcomes. We'll come back to you with the EC guidance and responses to the other matters, et cetera." That's on the 11th. Then of course we know what was happening in Brisbane around that time, that the flooding was peaking and the next one we have is your reply back to Mr Wall on the 11th, "Thanks, Terry, there were also a few other points, et cetera", and then we skip to the front page of this attachment, the bottom of that which is the 14th - Friday, the 14th, by you, "Terry, I trust you and your colleagues have survived the Brisbane floods in okay shape. My members are seeking an update on issues raised by QRC in my e-mail", and so on. Then Mr Wall responds on the 17th, three days later, at almost 6 o'clock, "Michael, please find attached letter of response as per request below. Regards, Terry." That was, in effect, a - was that a reference back to what was required to further the TEP process?-- It went to some of the detail of the template - the draft template Streamline TEP application form that had been provided for us to comment on and it provided some further clarification of the issues we raised.

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What it did was to reinforce the DERM point of view that each case had to be dealt with on its own merits; that is, each mine by mine by mine singly?-- The outcome of that interaction was that really the opportunity for a generic streamlined TEP template didn't really exist even though DERM did, I think, investigate the potential for it in the end. That wasn't the outcome of that interaction.

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Because DERM's view had been - remained and continued to be that regardless of the simplified process that might be available to put in place a TEP, each mine had to be assessed individually to make sure the conditions that were imposed on the TEP suited appropriately that mine. That was the consistent approach adopted by DERM throughout, was it not?-- Well, I was encouraged by the telephone conversation and

follow-up I had with Mr Bradley on 5 and 6 January and as I reported in annexure 2 item 4 to Ms Hayter that John-----

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He was sympathetic?-- He was sympathetic for a generic TEP.

Yes?-- I think we are justified in feeling that there may have been some scope to move past a strict case-by-case scenario.

In any event, your response on the 17th at about 8.27 that evening back to Mr Wall and Mr Bradley said, "This is a very disappointing response a week on from QRC's submissions. DERM has in effect declined to take on any general risk and instead reverted to the safe haven of a case by case approach."?-- That's right, we - it was clear that we had come to the end of the exploration of a generic TEP.

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MR MacSPORRAN: Did you seriously expect that DERM should take on some risk in this scenario; did you? As regulator, the regulator should take on some risk?-- Well, the Environmental Protection Act, my understanding of it is, in the broad, is about balancing up ecological, social and environment considerations. It's the underpinning of the Act. What I meant by "not taking on risk" was operating within the paradigm of environmental harm as an absolute.

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And you saw it as simply being a safe haven for DERM to investigate each case on its own merits, that's what you'd call a safe haven; do you?-- Well, that was the term I've used at the time.

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Entirely appropriate, safe haven, was it not?-- Well, it's - it doesn't get the regulator out of their comfort zone in terms of how to deal with these challenging issues.

And the regulator, staying within its comfort zone, protects the environment; that's the outcome, isn't it?-- Yeah, and that's, I think, how they saw their obligations.

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Well that is-----?-- My understanding of the Environmental Protection Act is somewhat broader.

You take a broader view which would allow - I withdraw that. Your further response in this same email, you went on to say this in the second paragraph, didn't you, "If asked about these matters in the morning on ABC breakfast TV and ABC radio I will have to say that DERM seems unwilling to rise to the occasion and help the coal industry to deal with its emergency situation"; what was that about?-- Well, as it-----

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A threat, was it?-- As it happened - well, two things were coming together there. One was we'd run the course of the examination of the generic TEP, and top of mine for me because I think this was fairly late in the evening was the fact that-----

What's the time of the evening got to do with it?-- -----that the next morning I had some media commitments where - there was a lot of media interest in the issue of flooded mines.

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You knew there was a significant media interest; didn't you?-- Absolutely. Absolutely.

You're totally aware of it and you refer to it in this email?-- Yeah, and I'm expressing my disappointment at the outcome of that process that started on the 5th of January and concluded on the 17th of January.

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And in referring to - if asked about these matters, what you would say on radio and on TV, what did you hope to achieve by making reference to that?-- Well, it was expressing my disappointment that we felt we'd wasted a couple of weeks exploring the concept of a generic TEP because remember in the meantime I'm receiving feedback from company CEOs about the deteriorating situation at their mines.

But you'd already expressed your disappointment in the first paragraph. You said, "This is a very disappointing response", you'd made that known, but you then went on and talked about the next morning if asked on the radio and TV; was that a threat, was it?-- I think it was just simply stating what the QRC's public position would need to be given where we were at, and I was regularly fielding media interest in the subject.

Well, go to attachment - or item 9 at annexure 2, that's the next one, and it's the same day, I think the 17th of January, later that same evening, in fact. Just to recap, your email referring to the media was 8.27 p.m. on the 17th, Mr Bradley came back to you at 9.11 p.m. the same night in annexure - as reflected in item 9; didn't he? He said this to you, I suggest, "I would be happy to meet you tomorrow to discuss these issues, if that would assist." Your response seems to understate DERM's continued efforts to work closely with the sector to resolve issues urgently. "For clarity, our Department isn't approaching this with a view to it either avoiding or taking on risk. Both mining companies and DERM must be able to demonstrate environmental risks have been adequately addressed. There are clearly substantive issues where receding waters are at low or no flows. While we are confident that these risks are publicly understood, particularly in the Fitzroy, we would prefer to work with you face to face than to debate issues through the media. Our record in the last two months demonstrates that this approach delivers defensible and practical outcomes in urgent timeframes. Could you please give me a ring tomorrow morning if you're available to discuss." That was his response; wasn't it?-- Yes, it was.

And did you see that as being a reasonable response to your earlier email?-- And as I said in my response to him, that I felt that the performance of his department had by and large been very responsive and I've been very forthcoming in acknowledging that fact.

You emailed back at 9.50 the same night-----?-- That's right.

-----to Mr Bradley, "John, DERM's performance in recent weeks has by and large been very responsive. I have been very forthcoming in acknowledging that fact". Then the last couple of sentences, or the last sentence, I should say, "If you can advise tonight that this afternoon's letter signed by Terry has been withdrawn, then that will influence the approach I'll take in tomorrow morning's media comments". What did you mean by that; Mr Roche?-- Again, drawing to his attention that we were very disappointed in the outcome of the process that we had been led to believe was going to take us towards a more streamlined TEP process, and in the end the letter of the 17th drew an end to that hope.

So your way of expressing disappointment is to threaten that you'll go to the media?-- I wasn't threatening to go to the media, I was committed to various media appearances the next morning.

Well, Mr Bradley got back to you again that same night, 10.34 p.m. "Michael, Terry's letter explained why we think a tailored approach gets better outcomes for companies and the environment, but I'm happy to discuss why you think this unworkable and how an alternative approach could work. I think we're seeking the same outcome as the QRC sought, a differential approach based on different flow levels and EC levels". That was again a reasonable response to your request; was it not?-- I was very pleased that he offered to meet.

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All right. See, what I'm suggesting to you in a blanket way, Mr Roche, is that DERM's response throughout to the industry, and you in particular was one of reasoned efforts to accommodate where possible your reasonable requests?-- And at the time post Christmas what companies were reporting to me is that the TEPs that they had been granted were no longer of use because of the low flow environment and those that had applications in the system had their applications bogged down because of that low flow environment and so just to finish off there, annexure to item 9 refers to the fact that we were going to meet and we were going to meet in two parts, first with representatives of Anglo Coal and then a separate meeting just around industry wide issues. This Commission has heard separately that Anglo Coal has spoken about their experience with the Dawson North project and that was the subject of that meeting where they had great difficulties getting their TEP application approved, but there were other examples of that running around in my head in my interactions with Mr Bradley and DERM.

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Yes. A couple of days later on the 19th of January, this is item 11, you went to Nicole Scurrah, was she in the Premier's office or thereabouts?-- She's the Premier's chief of staff.

You said, "I'd like the opportunity to brief people close to the Premier. We may be about to rub against the limit of what DERM's prepared to do for approving discharge from several mines without further political input". So you were bypassing DERM at this stage to go directly to the Premier to try and achieve the result?-- I thought it was well over time to actually ensure that the Premier's own office, given all the other distractions they had with the range of cyclones and floods, that they heard directly from me how we were seeing the situation.

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Can I take you then to item 14 of annexure 2, this was an email of the 20th of January to Nicole Scurrah and Mr Bradley, Mr Smith, Mr Wall and industry - I beg your pardon - QRC representatives, is that a summary of who was involved in this?-- Annexure 2, item 14, is that what you're saying?

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Yes. Annexure 2, item 14?-- I think I, in fact, was giving the Premier's office and others, including Mr Bradley, some feedback from companies when I'd gone out to them to seek information about how they were travelling with their TEP applications.

And then in the third last paragraph you say, "If asked by the media to comment today and coming days I believe it would be appropriate for me to say something along the lines of the following", and then you set out a paragraph of what you would be prepared to say to the media; is that so?-- That's right, that we were getting close to the situation where the State was facing an economic and environmental emergency requiring the state government to step in.

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As at the 20th of January this process of mines applying to TEPs had been ongoing for some time, as we know, from the history we've recounted here, but it also involved DERM monitoring what was happening at each mine; didn't it? Paying close attention to what was going on in each of these mine?-- Each mine had reporting obligations.

Yes. Now you say, or you were going to say to the media - did you ever actually publish this proposed statement to the media about, in effect, impending environmental and economic disasters?-- I would think that I did use that terminology in the media because that was certainly my belief.

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And the environmental emergency you speak of here is that you need to get rid of the water now while major water courses have strong flows to minimise the risk of uncontrolled discharges from mines as a result of another major rainfall event, something like that?-- That's right, given the predictions of further cyclones.

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Well, that was never really a serious concern, was it, uncontrolled discharges?-- Well, I've read transcripts of evidence to this Commission of examples of that, but I certainly had chief executives of coal companies describing the situation at their mines where their dams and other water storages were nearly full and they saw no opportunities for dealing with that. They were worried about uncontrolled releases. If they're worried, I'm worried.

But coal mines have the ability, don't they - they have water storage points on site, if they fill and potentially overflow they can be pumped elsewhere on site, but ultimately the mine itself can be used, the mine pits can be used as a storage facility?-- And many were. The ability to pump out a dam or water storage quickly in the face of cyclonic event, that was what was concerning some of those mines. The other environmental issue, of course, is that the longer that that water sat in particularly coal pits the more saline typically it was going to become.

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But the concern you are expressing here is uncontrolled discharges from mines as a result of another major rainfall event, something that is unfortunately on the cards, according to BOM?-- That's right, Tropical Cyclone Anthony was-----

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So your solution to what you called an environmental emergency was to allow contaminated water to be released off site on the basis that there may be a heavy rainfall event, and by



releasing the water cause potentially serious environmental harm?-- I don't accept that there was the risk of serious environmental harm, given the extent of the flows in the Fitzroy system the dilution factor was quite huge.

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In any event, will you at least concede this much, that DERM were closely monitoring that possibility with each of the mines through this period?-- I understand they were in regular contact with the mines.

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And would have been well placed to make assessments as to whether such an uncontrolled release from any of these mines was a realistic possibility?-- That maybe, but that didn't stop company chief executives expressing their own concerns about uncontrolled releases to me.

All right. Can I take you then to item 17. If I can take you to the back of that item, we have a letter from Mr Bradley to you, 21 January 2011, do you have that?-- Yes, I do.

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Now this traces the, where the department sees the situation as then residing, doesn't it? It talks about the number of TEPs approved since the 1st of December, that's the second paragraph. A further - well, there's 25, I think it is, amendments to existing approvals since the 1st of December, a further 15 applications or amendment requests have been received, et cetera, issues raised in recent discussions, and the last paragraph there on that first page, he talks about, "The department has recently approved the TEP application that involved the discharge of mine affected waters to ephemeral stream under low or no flow conditions. In this instance the environmental values of the ephemeral stream and the quality of the discharge water was such that the application could be approved". Now this was the whole point of your concern, that when there's no flow DERM weren't allowing discharges, so you had to take advantage of the fast flowing situation, that was your whole point; wasn't it?-- Well, there were two points. One was to take advantage of the fast flowing situations; but also once that flow had passed from the local streams and creeks to the major water courses there was then the issue of those mines whose only means of delivering water to a major water course was via a now no flowing or low flowing creek or stream.

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Anyway, Mr Bradley is giving you a direct actual example-----?-- Yes, he did.

-----of where DERM had approved releases of water to a non-flowing stream with conditions demonstrating the flexibility and innovation of the Department?-- And that was the only example that ever came to our notice but it was a welcome example.

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Well, it was designed, wasn't it, to encourage your miners to make applications and - with the proper data - and to manage the situation even where there weren't fast flowing streams available?-- And at the same time I had many other examples being put to me by companies where they were in that no flow

or low flow situation but were not having the same success as this fortunate mine that did have.

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And then on page 2 of this letter at item 2, "Issues raised in QRC correspondence", this addresses matters that you'd raised about difficulties associated with TEPs being processed to allow discharges, and then Mr Bradley deals with them, the Millennium Mine, the Lake Vermont Mine; is that so?-- That's right.

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Makes it clear with the Millennium Mine there was no apparent urgency for the reasons he expresses there, that they could prioritise other mines that needed more urgent attention for DERM than the Millennium Mine?-- The feedback from the chief executive of that company was in contradiction to that account.

Right. Mr Bradley says in relation to the Lake Vermont Mine, "As previously discussed, proposals to discharge into water courses without a reasonable receding flow require a higher degree of technical assessment and there has been ongoing contact and communication with the applicant in this regard as further information to support the application was required. It is anticipated that a decision on this application will be finalised shortly." You'd accept those sentiments that where you're discharging to a low flow stream you need more technical data to justify it?-- That was the position of DERM.

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Then item 3 on the same page the heading is, "Importance of proactive action by companies", this is a theme that had started right back in November the previous year, the companies being proactive?-- Well, I think the fact that 80 per cent of Queensland coal mines applied for a TEP is an indicator of proactive action.

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We see what Mr Bradley says in that final paragraph on that page, again emphasising the need for the companies to provide the data in a timely way so it could be assessed in a timely way. All right. Can I take you then to item 21, again, we start from - this is the one where the legal advice you'd received about the emergency direction power was included; is that so?-- That's right.

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And we see - just after that we see an email train, Friday the 28th of January, 4.48, an email from you to Mr Smith, that attaches the letter - is that the advice you were sending or was it a different letter?-- No, it was - the email to Mr Smith, Mr Fletcher and others, including people from the Premier's office, was conveying to them a copy of a letter I'd sent about that time directed to the Premier's office to the Premier seeking her support for the inclusion of emergency directions in the armoury of options available to DERM. So that was, the email was conveying to them a copy of that letter and then the subsequent emails were from Ms Scurrah in the Premier's office who had been a recipient of that earlier email.

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Yes, and the first response from Ms Scurrah was, as we see there, "Thank you for your email. So that I'm able to provide a full picture of current status for consideration can you please provide full details including correspondence that confirms information from companies involved on what you believe to be outstanding or not approval Transitional Environmental Programs", so she wanted further information from you to support what you were saying; is that so?-- Apparently she wasn't prepared to take my account of the feedback from companies, she was looking for further evidence.

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You replied later that same evening, 9.29, told her, "In relation to TEPs DERM can assist", et cetera. And then she came back to you the same evening, 9.47 p.m., "Thanks for your response. Our office has contacted some of the companies direct who I am advised have not detailed the issues that you outline, so I wanted to receive the information you have to see why the story is different to that we are hearing direct." That was the response, is that so?-- That was her response, yes.

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So she seemed to be raising that the information that she had from direct contact was different to the point of view you were putting before her?-- It so transpired that that information was provided to her by DERM, but pleasingly the Premier's office did start to make some phone calls over that weekend and there's a feedback from BHP Billiton as one of those contacts, and then further meetings that following Monday. So I'd say that - I'd have to say that in my knowledge the direct dealings were subsequent to that email from Ms Scurrah.

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All right. Can I take you to item 24 of annexure 2, it is your email of the 30th of January, the Sunday evening, to your industry group; is that so?-- Yep.

"All, I understand that as a result of QRC representations the Premier's office is arranging tomorrow for company by company meetings on water release issues. To date the Premier's office has relied totally on advice from DERM to get a picture of industry views, although my letter on Friday to the Premier did result in David Shankey from the Premier's office doing a ring around of some companies on Saturday." Then you say this, don't you, "I realise different companies are in different situations. However, I must emphasise we have the opportunity to push past the constraints of the DERM TEP system and lay the ground work for overhaul of the Fitzroy model conditions if we hold firm and press for urgent action along the lines recommended by QRC". What you're really saying there, aren't you, is that there are differing requirements and differing views in differing companies, but the whole group must stand firm to get around this TEP constraint imposed by DERM?-- Different mines were in different situation. Not every mine had the same degree of inundation, so that's the reference to the different positions. And, yes, the feedback from company chief executives to me was regularly about not just their own predicament, their view of the TEP process, but they were

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already thinking beyond the wet season about how to not be in the same situation the following wet season.

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Item 25, the next one, this is headed, "Update TEPs", is that a file note by you or-----?-- It is by Mr Greg Lane, the Deputy Chief Executive, Queensland Resources Council, and it's an account of feedback sessions that he and Ms Hayter had with some companies following the meetings the Premier's office held with some of those companies.

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And the heading is, "QRC consultations with coal members. 31 January - 2 February re water/TEPs", is that so?-- That's right.

And then down the bottom of that page the heading is, "Current position. This culminated in government holding a series of one on one meetings with companies on Monday 31 January 2010", that should be 11, shouldn't it?-- 2011, yes.

And "Feedback to QRC from companies thereafter. QRC FH and GL", that is Frances Hayter and Greg Lane, I assume?-- That's right.

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"Was provided with feedback from companies who attended these meetings, that DERM asked each company whether they were interested in a cookie cutter approach to discharge", that means this one off large discharge take advantage of the fast flows with a, some sort of generic TEP; is that the cookie cutter approach?-- No. To position this note, it follows my letter to the Premier of the 28th of January urging her to give an okay to emergency direction powers being added to the armoury of options available to DERM. So that position of QRC in the letter to the Premier was - and I wasn't at these meetings - characterised at those meetings as a cookie cutter approach. So it was in relation to the emergency directions powers, not the TEPs.

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Okay. In any event, what's recorded here then is that the universal feedback, that is the feedback from your miners to you, your organisation, QRC, "The universal feedback was that despite some complications and time issues, a tailored site by site approach utilising TEPs is preferred", this is your membership; is that right?-- If you go on to the second page-----

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I'm going to the second page in a moment?-- Okay, thank you.

But that's what is recorded?-- No, you need to read the full note in the context of the second page.

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I'm going to come to the full context, but that's what Mr Lane has recorded as a universal feedback; isn't it?-- That was his observation - and I was not at the meetings - that the impression he had was that the Premier's office had put to companies: You don't want a cookie cutter approach, do you? And the general impression Mr Lane gained was: No, we don't because we're all different. And that's where we investigated company by company feedback, which is on page 2.

Now on page 2 we have, top of the page, "However, on Tuesday an email from FH was sent to Fitzroy environmental contacts asking for clarification on their responses to DERM from Monday's meeting, specifically where the companies wanted QRC to pull back from its focus lobbying for a universal release. Several responses were received from companies", and then they are detailed on the second page. The first is BMA, that is one of the largest coal miners in Queensland; is that so?-- The largest.

"Happy with the site-by-site approach but appreciate QRC's call for a mass release as it would be a real relief for operations but not so aggressively that it causes a reaction and retraction of current mood for relaxations on such matters as low flow, no flow releases and downstream dilution measurements. ie continue the collective industry approach and the companies can continue site-by-site negotiations. The executive management believes QRC has opened the door and site-by-site approach is now the best." Is that right?-- That's what it says.

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Well - so BMA were not interested in what has been referred to as your "cookie cutter" approach?-- That was the feedback to Ms Hayter, apparently, from the Environment Manager at BMA-----

And apparently was the feedback to DERM from BMA along the same lines?-- I'd have to-----

The largest coalminer in Queensland?-- I would have to find it in here, Mr MacSporran, but I did include in here the e-mail from Mr Ross Willams of BHP-Mitsubishi alliance, BMA, David Shankey in the Premier's Office on the Sunday, the 30th - Saturday, the 30th of January, which in fact endorsed QRC's approach. So a more senior officer in BHP endorsed the QRC's approach, and, in fact, Mr Willams' e-mail referenced the support from the overall president of BHP Metallurgical Coal for the QRC approach.

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But their environmental officer, who might have had some concern for the environment, had a different view, it seems?-- I don't think the two are at odds. I think-----

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I suppose it depends on who you are talking to as to what feedback is again?-- These - this is feedback, as I understand it, from environmental contacts.

All right. Ensham is the next one. That's a large miner, Queensland, right? You have to answer for the-----?-- Sorry. The Ensham - Ensham is a one mine company but a large mine in Central Queensland. It's a mine that has vast experience of the TEP process.

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The note is, "Generally happy with TEP turnaround and hearings with DERM, noting that the QRC CE letter to Premier had had the desired effect. Also well positioned through their previous flood experience to better handle TEPs and DERM this time." Macarthur is the next one, Macarthur Coal. "DERM approach was to understand implications for return to full production if a full release authorised. Macarthur pumping from pit to pit and see no potential to speed up discharge. Four weeks at least depending on further weather developments. Refer"-----

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COMMISSIONER: Mr MacSporran-----

MR MacSPORRAN: I'm sorry.

COMMISSIONER: -----I'm just wondering if you need to read quite so much as opposed to just referring the witness to the sections. 1

MR MacSPORRAN: Certainly. Mr Roche, can we agree on this much, that the feedback apparently to DERM, and by and large to your own organisation, was that the miners, who were important components of your organisation, were generally content with the approach being adopted by DERM?-- Well, my reading of that feedback was that it was variable, that there was a many that endorsed the QRC position, but remember it was in the context where the government had made it pretty clear that they weren't interested in that - in the proposition the QRC had put to the Premier on the 28th of January. 10

See, one of the problems with the universal discharge proposal from the QRC was that companies had to have the infrastructure to manage such a discharge in a short period of time, didn't they? Otherwise there was no point in obtaining it?-- The QRC position put to the Premier never used the term "universal discharge" or "cookie cutter approach", that was how it was characterised by some. What I asked the Premier was that she would give political leeway to DERM to say it was okay to add to your armoury of options to deal with a mine situation an emergency directions power and that's the way it was expressed, to add to the armoury of options available to DERM. The "universal discharge" terminology was not mine. 20

Well, if it's added to the armoury, to be able to use it in the armoury you need to have the infrastructure to do it, don't you?-- That's right. 30

And we see on this page the feedback from Peabody, one of the other miners, it seems to use that terminology, "Endorse universal discharge but not sure they have enough infrastructure on all of their sites to permit this and going to be pumping long after flows have receded". So if you haven't got the pumps you can't avail yourself of a universal discharge, can you?-- Again, I never proposed universal discharge but----- 40

You know what we're referring to, though?-- -----but pumping requires pumps and many mines were still scrambling to secure pumping equipment at the height of these flooding events.

COMMISSIONER: What precisely did you have in mind?-- Well, as we discussed earlier, Madam Commissioner, the - understanding there are variability across mines and some mines were coping - Ensham is an example of a mine that understood the TEP process, and the mine actually is bisected by a river. So there was going to be differences. Some mines are right beside watercourses and for them a less challenging environment in which to discharge within their TEPs and their conditions. Other mines, further away from major watercourses, they were the ones that I had in mind that they would be given the opportunity to discharge along low flow or no flowing creeks, knowing that the water when it reached those major watercourses was going to be heavily diluted. 50

And what did you envisage the parameters of an emergency direction as being? Simply a matter of volume, "This is how much you can discharge," or would there be further conditions to that, what were you thinking?-- Well, I didn't - didn't design one, I didn't suggest one. What I said to - in the letter to the Premier was that you obviously have to put a limit of, say, salinity that you would be prepared to allow a mine to discharge and then the period would have to be a judgment about the flows in the major watercourses. I don't think there was any problems with flows in the major watercourses at that time-----

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But would that then be a standard direction for all of these mines and the position you've described? In other words, upstream, not near a major river-----?-- That's one possible scenario or it could have been, as I said earlier in my testimony, that it could have been on applications from mines who were having difficulties convincing the Department through the TEP process, cyclones are looming, perhaps this is another - another mechanism to allow those mines to prepare for perhaps further inundation. Remembering, too, that on the day of the letter I sent to the Premier on the 28th of January the Premier held a press conference at 1.45 on the 28th of January where she told Queenslanders that Tropical Cyclone Anthony was reforming and was going to cross the coast perhaps by Sunday or Monday, and she also foreshadowed, I think for the first time to Queensland, the existence of Cyclone Yasi, and she indicated that it could cross the coast somewhere north of Gladstone. Of course, for me that is an alarm bell in terms of anything north - crossing near Gladstone goes straight across the coalfields, so that's the context in which the letter was also drafted.

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Thank you. Mr MacSporran, now that I've interrupted you shall we take the morning break?

MR MacSPORRAN: Yes, I'm content with that, thank you.

COMMISSIONER: And we will come back at 5 to 12 o'clock.

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THE COMMISSION ADJOURNED AT 11.38 A.M.

THE COMMISSION RESUMED AT 11.55 A.M.

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COMMISSIONER: Yes, Mr MacSporran.

MR MacSPORRAN: Thank you, Commissioner.



MICHAEL ANTHONY ROCHE, CONTINUING:

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EXAMINATION-IN-CHIEF:

MR MacSPORRAN: Mr Roche, just one other brief topic. You say in your statement, your first statement I think it is, under the heading on page 1, the historical context to the exercise of the emergency direction power. You refer to the two occasions to your knowledge when it's been used. You agree with that?-- Yes, I see that.

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The first was in respect of Ensham coal mine on the 1st of February 2008 and the other one was the Anglo coal mine which was at Moranbah North on the 20th of December last year, and you've attached those - the correspondence relating to each of those emergency directions as items 1 and 2 of annexure 2 of your first statement; is that so?-- That's right.

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And we see in respect of the first one, the Ensham one, which is February '08, in the letter from DERM, Mr Rogerson, District Manager, "the release was necessary and reasonable because it is an emergency and there are no practical alternatives to the removal of river water that has inundated the affected mining pits". That simply follows the terms of section 468 in the EP Act-----?-- That's right.

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-----that set out the requirements for such a release?-- That's right.

Now, you argue in your statement, I don't want to take you through it but you argue that the term "emergency" is too narrowly construed by DERM, that the provision is too narrowly construed, you have a wider view, a wider interpretation, but in respect of the two releases you are aware of, at Ensham and Moranbah North, they were true emergencies, weren't they?-- Well, the - for Ensham it was catastrophic-----

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Yes?-- -----because their total production capability had been brought to a halt by water inundations.

But it was more than just a halt to production, it was a safety issue as well, wasn't it? Overtopping of the storage facilities and uncontrolled releases into the environment, structural safety issues?-- I'm not across the details-----

All right?-- -----of the reasoning for the emergency direction.

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All right. So you don't know the circumstances in respect of Ensham or Moranbah North?-- I believe Moranbah North did involve concern about an overtopping dam.

Which would be a - potentially a catastrophic environmental event?-- Sure. Sure, which is why I also use that as an

example of why emergency directions power could be considered by the Government.

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And all although it wasn't an emergency direction power are you aware of the Arrow Energy example where they had structural integrity issues with one of their storage dams on site, resulting in their deliberate release of water to bring the level down below the overtopping point in that dam?-- I've read the transcript.

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And you understand from the transcript, no doubt, that that was - although not with DERM permission, DERM understood the need for such a release because it was a structural safety issue. You understood that in the evidence?-- That's the way it read.

Those issues - Ensham, Moranbah North and Arrow Energy - are very different from the circumstances we are discussing with your mines in this situation, aren't they?-- Well, we're talking about an industry-wide situation when I raised that position with the Premier on the 28th of January.

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All right. Thank you.

MR DUFFY: No, I've got no question, thank you.

COMMISSIONER: I'll just check the others, Mr Kelly. Mr Duffy?

MR DUFFY: I have no questions.

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COMMISSIONER: And Ms O'Gorman?

MS O'GORMAN: I have no questions.

COMMISSIONER: Mr Kelly.

MR KELLY: Mr Roche, you were asked some questions by my learned friend Mr MacSporran about speaking to the media and about whether you had threatened, effectively DERM with speaking to the media on occasions in January of 2011. Can you help the Commissioners with this issue: given the seriousness of the problem that was affecting the Bowen Basin mines and the Fitzroy River, and given the potential economic impact and impact on property, did you think that this topic of how the problem was being handled at a government level was a legitimate issue for discussion with the media?-- Well, I'm very proud of the fact that the Queensland Resources Sector is 21 per cent of the Queensland economy and probably two-thirds of that is the Queensland coal industry and it was on its knees at that time, so it wasn't surprising to me that media, both local and national, and international, were chasing me for comments. They wanted an account of how the industry was travelling and its prospects for quick recovery.

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It was also put to you in a question by my learned friend Mr MacSporran that mines such as open-cut coal mines have the ability to store water on site by using pits for doing so. Could you just give the Commissioners your opinion about the desirability of that as an outcome for storing water?-- By necessity many mines have to deal with otherwise overtopping dams and other water storages by moving water into coal pits, as Mr MacSporran explained. The difficulty with that, of course, is that that water is going to more than likely build up in salinity as it comes in contact with the coal and the surrounding geology, so not a desirable long-term solution, and, of course, economically it takes that coal pit out of action.

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But where does it get the - where does this salinity come from, if I could ask you that question? Does it come from the contact with water and coal seam or the water and the overburden or the other soil around it?-- From both. From both. The con - coal is a reasonably inert mineral but the contact from the soil and rock, the so-called overburden, as well as the coal itself, does result in leaching of salts into the water.

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And today we've heard the word "contaminant" used, and that's appropriate because it's used in the Environmental Protection Act, as you're aware. Can you just explain to the Commissioners what are the main contaminants you have with water going through open-cut coal mines? What are they?-- In the - in this particular instance the sole focus was on salinity, the so-called electrical conductivity levels of the water. There was a subsidiary concern around the turbidity or the cloudiness of the water, but given the overall flooding situation anything that coal mines might have added to the cloudiness of the water would be very much at the margin, so really we were talking about salinity rather than any other contaminators.

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And that salinity measure, that gets - we see it picked up in the documents by the expression "EC" for "electrical conductivity"?-- That's right.

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And, Mr Roche, in preparing to give evidence to the Commission, to avoid duplication you have in fact referred extensively to Ms Hayter's, Frances Hayter's statement?-- That's right.

So to understand your statement the Commissioner would need to look at Frances Hayter's statement in conjunction-----?-- I've tried to avoid duplication of the materials.

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Right, thank you. Could you please - I would just like to take you back to 11 March 2010, before the wet season of 2010 and 2011 started, and I think it's paragraph - you had a meeting with Minister Kate Jones and it's - you kept a diary note of that meeting at annexure 3, item 1 of your statement.

COMMISSIONER: Which statement is it, Mr Kelly, the first or the second?

MR KELLY: It's the first, sorry, Madam Commissioner.

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COMMISSIONER: Thank you.

MR KELLY: And in that note you express concern that - as my learned friend Mr Callaghan took you to earlier, that the conditions that were being set up by - these are the model conditions that were in the process of being set up or had they had they been set up by then?-- They had been in effect that wet season that was just concluding.

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All right. You said that - in your diary note that you had mentioned to the Minister that it was setting up the industry and the government regulator to fail and then the Minister replied that she thought the review was a good idea and that she would talk to DERM about working with the QRC, the Queensland Resources Council on a review, and then there's a significant lapse of time then; is that correct?-- That's right. It then sort of defaulted to interactions with the Minister's department.

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All right. If you could then, please, pick up Ms Hayter's statement which is Exhibit 149 and look at paragraph 14. Ms Hayter sets out a chronology of events and you will see that on the 18th of May 2010 there are some minutes of a meeting you attended about the Fitzroy Model conditions-----?-- Yeah.

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-----with DERM and then on the 11th of June 2010 Ms Hayter sends an e-mail to Mr Elwood of DERM and then we get to the 8th of October 2010 and you, Mr Roche, met with the Director General of DERM, Mr John Bradley, and it is quoted that you reported to him, to Mr Bradley, and back to Ms Hayter, that you "ran him through my fear scenario of La Nina early wet season, lots of water in mines, how do we get it out without environmental harm, meaning relaxation of end of pipe measurement?" Now, could you just explain to the Commissioners what you meant by "end of pipe measurement"?-- One of the provisions in the original Fitzroy Model conditions was about the - say, the salinity level of the water being judged as it came out of a discharge point into a watercourse as opposed to measuring the environmental risk or harm or impact by taking account of the flow in that watercourse and therefore the dilution factor, so that was sort of shorthand for that construct of the model conditions as they were then.

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All right. So on the 8th of October you told Mr Bradley that you have a fear scenario yourself about what is going to happen at the mines. What was happening with the rainfall up in the Bowen Basin as at that time in October?-- Quite extraordinarily the wet season started in August and large parts of the coalfields were experiencing either highest ever or well above average rainfalls in the months of August and September, much earlier than normal onset of a wet season, so it was the early onset and the extent of the rain, so that was already top of mind in reporting to me when I met with Mr Bradley.

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Did you explain to Mr Bradley the basis of your fear and concerns?-- Well, it was both the real impacts as being reported to me by the company Chief Executives on their operations and, secondly, the, I guess, general knowledge that we were in a pretty strong La Nina event and we could expect a whole range of cyclones and other rainfall events to be thrown at us through that La Nina event and having had the two months experience by then.

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All right. Now, just to go through the chronology, on the 3rd of November a workshop takes place?-- Yeah.

Can you explain why there's such a delay between the 8th of October in your meeting with Mr Bradley and the 3rd of November when the workshop takes place to discuss issues about the conditions and so forth?-- Well, probably the biggest delay was getting to that point of 8th October of being able to bring it to a head because there - the view of DERM officers in charge of this area was that a review was more appropriately conducted in 2011 rather than 2010, but we tried to put it on the agenda because of what we saw happening out

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in the field. The meeting with Mr Bradley on the 8th followed a meeting I had with the Minister I think on 30 September, certainly late September, where she gave further commitments to the review happening and so this was about a meeting with Mr Bradley to ensure that that did happen. Initially the target date for the workshop was the 25th of October. I think it was logistical issues that prevented it happening earlier than the 3rd of November.

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All right. Then it was put to you by my learned friend Mr MacSporran that by the 24th of November 2010 the letter has come out - came out from DERM setting out DERM's position that the TEP was a preferred way in DERM's view of proceeding. So between the 8th of October and the 24th of November what was happening with the weather up in the Bowen Basin?-- Well, the record in above average rainfall was continuing throughout the coalfields.

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If I could take you to your second statement which is Exhibit 148, annexure 1, my learned friend Mr Callaghan took you to this earlier today. This is your second statement. Exhibit 948. You will see there is an e-mail that you wrote at 8.17 a.m. to Mr Bradley?-- That's right.

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On the 24th of November? Do you see where I am referring to, Mr Roche?-- Yes, I do.

You refer to the fact that "the Fitzroy water conditions are set to cause havoc in basin lines very, very soon", and it follows on. It then goes on towards the bottom - the second half of the first paragraph, "The usual answer from DERM is that companies can apply for a TEP, but the TEP process in our company's experience is way too slow for what is emerging as a problem needing to be addressed in a matter of weeks not months", et cetera. Was that sent before you received the formal letter from DERM of the 24th of November?-- Yes, it resulted from some then very current pieces of feedback from company - coal company Chief Executives about the problems they were experiencing and later that morning Ms Hayter received a letter from an officer of DERM reporting the outcomes of the workshop process and the conclusion which was that the TEP was the recommended mechanism going forward into the wet season.

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After that letter of 24 November was received did Ms Hayter send a letter of 6 December 2010 expressing concerns of the industry about the outcome?-- That's right, she consulted the environmental manager constituency of the QRC and that was the considered view back from the membership.

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One of the concerns is about mines located at or near the top of the catchments. Could you explain to the Commissioners are there significant mines that are so located near the catchments?-- Many mines are located away from the major watercourses and so the - their local watercourses are, in fact, ephemeral creeks and streams that usually only run after a heavy rainfall event and so the way they looked at the model conditions is unless you were respectively a mine alongside a

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major watercourses they did not see in the conditions an opportunity to discharge and I guess they were concerned that that sort of thinking would apply also to the TEPs that they were going to apply for.

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Why do you say in your evidence that some of the TEPs that were granted before Christmas 2010 were no longer of any use in the new year in January 2011?-- Because they - they were taking into account the then prevailing high flow environments in those local watercourses, but they did not permit the company to continue to discharge into a creek or stream once it had stopped flowing and so, yes, they had an approved TEP which had been often turned around very quickly, but they were no longer able to make effective use of the TEP to discharge water.

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Thank you. Could you please take up Ms Hayter's statement and look at annexure G, please? Commissioners, it is page 310 of Ms Hayter's statement. In that document Ms Hayter set out what are - a description of what TEPs are and then gives a summary of why QRC has a view that they are unsuitable to address flood preparation. Do you see that document?-- Yes, I do.

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Do those views accord with yours?-- They do. They do and I think similar views to that expressed by Mr Burlinson from Xstrata Coal to these hearings.

All right. Now, you have also been taken to task about the expression "cookie cutter" and "universal discharge". Did the QRC ever propose itself a cookie cutter approach?-----

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COMMISSIONER: I think Mr Roche has already said that, hasn't he, Mr Kelly?

MR KELLY: I beg your pardon?

COMMISSIONER: I thought Mr Roche had already said a couple of times that wasn't what he was saying and he didn't use that expression.

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MR KELLY: Thank you.

COMMISSIONER: Or he didn't use the "universal discharge" expression, I mean.

MR KELLY: Thanks, Commissioner. I just might take the witness directly to the letter to the Premier. If I could take you to that letter to the Premier. I believe it is annexure 2 item 20 of your statement?-- Yes, I have that.

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It is dated the 28th of January?-- Yes.

Is that the letter in which you set out the QRC's position?-- It is and it was the first and only time he put in writing a QRC position in relation to the use of emergency directions.

If you could please look at item 27, that's annexure 2, item

27, that's the Premier's response?-- Yes, I have that.

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You will see on the second page of that letter in the fourth paragraph it begins, "I would like to also address two apparent misunderstandings in your letter.", and in that paragraph further on the Premier writes, "This would not be consistent with the suggested use of these powers", that is the emergency powers, "which you envisage which would appear intended to effectively provide a general exemption for the mining sector from certain Environmental Authority conditions for a category of Environmental Authority holders for a specific period." Now, you took a view yourself that the Premier's letter did not accurately respond to your concerns; is that correct?-- I think the Premier may have been advised of a position of myself in the QRC that was not, in fact, our position. Given that she was so caught up in the whole range of disaster events around the State she may not have ever personally had an opportunity to consider my letter and that would be understandable.

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Mr Roche, did you set out your concern in annexure 2 item 28 in your e-mail to Mr Shankey who worked for the Premier's Department?-- Can you repeat that, please?

It is annexure 2, item 28, an e-mail of 4 February 2011 which is sent to Mr Shankey which sets out your concern about the way your letter had been responded to?-- Yes, I did.

All right. Now, my learned friend, Mr MacSporran, took you to annexure 25 to your statement and that is the report that Ms Hayter and Mr Lane prepared from talking directly to mining companies about their conference they had with representatives of the Government; is that correct?-- That's correct.

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Those representatives, were they from the Premier's Department?-- Premier's office and Mr Bradley, I understand, were at most of these meetings. As it turned out not all the companies we contacted were offered such a meeting, but most - most were.

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All right. QRC was not present at that meeting?-- We were not invited to these meetings, as I understand it.

All right. Now, you can close that up, thanks, Mr Roche. There's been discussion in evidence about the ability to - I think Mr MacSporran asked you if the model conditions that were in place before the 2010/2011 wet season if there was an ability to apply - for any mining company to apply for amendment of the conditions. Are you aware of any company that successfully applied for amendment to such condition?-- No, I'm not.

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Are you aware of any companies that unsuccessfully applied for amendment?-- Yes, I think I stated in my earlier testimony I'm aware of at least two examples of that.

What are the two examples?-- I believe it was the Rolleston Mine with Xstrata Coal and, sorry, the other has gone out of



my head.

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Was it Encham?-- It may have been.

You also, in answer to Mr MacSporran's questions, at one stage referred to the BMA approach and you said you thought it was in the material somewhere there was an e-mail from Mr Ross Willams, I think you said. Could I ask you to look at annexure 2 item 22 of your statement, please?-- That's right. I have that.

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I just want to confirm with you is that what you were referring to in your evidence?-- That's right.

That's the e-mail - if you look at the bottom of the first page, it's from Ross Willams to David Shankey dated the 30th of January 2011?-- That's the e-mail that I was referring to.

All right. In particular, in that e-mail which is addressed, "David", the important part is the fourth paragraph which begins with the words, "While TEPS provide for"?-- Yes.

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Then if I take you to item 21 of your statement, which is the previous annexure, you were taken to this e-mail where Ms Nicole Scurrah from the Premier's Department had an issue with you about the information you were providing to her, so if you could look at the bottom of the page on the 28th of January 2011 Ms Scurrah said, "Hi Michael, thanks for your response. Our office has contacted some of the companies direct who I am advised have not detailed the issues that you outline, so I wanted to receive the information you have to see why the story is different to that we are here hearing direct." Do you see that?-- Yes, I do see that.

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At the top of the page in your response you've written, "Nicole, given your obvious doubts about voracity", et cetera. Do you see that?-- Yes, I do.

All right. In that exchange you were not taken, I don't think, to your e-mail at annexure 2 item 24. If I could take you to that, please? At the bottom of the page, Sunday, the 30th of January. You are writing to your members, the members of QRC, and you say in the first paragraph, "I have had a fascinating interchange with the Premier's chief of staff Nicole Scurrah since Friday night. Her first responses were to challenge the picture QRC was portraying and to say they were getting a different view from coal companies.", and then you go on to say, "As I've tested that proposition with her it turns out their source of what companies are saying, that is that the TEP process is working well, is from DERM." So did you take that up with Ms Scurrah directly?-- I actually asked her where she was getting her information from and hence my encouragement for her and her office to make direct contact and to their credit they did some of that that weekend and one account of that context is Mr Willams' e-mail to Mr Shankey.

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Commissioner, I don't have any further questions for the witness. Could I just mention one thing in passing? The

witness isn't a lawyer, as he says in his statement, and some legal propositions were put to him about Environmental Authorities by my learned friend Mr MacSporran that you could apply for a variation only if there was no environmental detrimental harm, and there's not much may turn on it, but could I just make the point that the Act doesn't actually necessarily work in that way. If I could just mention for the record, Chapter 5 Part A Provision 3, it really section 238 onwards, deal with when one may apply for an amendment to the Environmental Authority.

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COMMISSIONER: Thanks, Mr Kelly. Mr Callaghan, do you have anything?

MR CALLAGHAN: I just want to clarify one aspect of the record, Mr Roche. Can I take you to the first statement, annexure 2, item 17? The second part of that is a letter dated 21 January 2011. Mr MacSporran took you to that letter?-- Yes.

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You've obviously provided the Commission with the copy of the letter that you actually received and would it be right to say that the underlining that we see there is yours? There is an underlining on the first and the third pages?-- It doesn't show as underlining, sorry. This is the letter of 21 January?

Yes, letter to you-----?-- Yes.

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-----from Mr Bradley, a letter of 21 January 2011.

COMMISSIONER: It's on the screen if you want to look at it?-- I don't - I don't believe that that's my underlining, but I can't be sure.

Could we look at the underlining on the third page then and there is a comment written there in some handwriting which you may or may not recognise?-- That's not my handwriting.

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Not yours?-- It could be - it could be comments provided by officers within my office, but I-----

Suffice to say it's not yours?-- No.

That clarifies that aspect of it. That's all I wanted to check, thank you. Thank you, may Mr Roche be excused?

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

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WITNESS EXCUSED

MR KELLY: Madam Commissioner, may I be excused?

COMMISSIONER: Yes, thanks, Mr Kelly. Ms Wilson, you are calling the next witness?

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MS WILSON: Yes, thank you, madam Commissioner. I call Barry Ball.

BARRY WILLIAM BALL, SWORN AND EXAMINED:

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MS WILSON: Can you tell us your full name, please?-- Barry William Ball.

You are the former manager of Water Resources, Brisbane City Council?-- That's correct.

Water Resources was formerly called Waterways?-- I can clarify that.

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Yes?-- The arrangement was Waterways was amalgamated with the branch of Water and Sewerage to create Waterways.

Okay. How long were you employed by the Brisbane City Council for?-- Since 1982 to 2009.

Where are you presently employed now?-- Queensland University.

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Now, you've participated in two interviews with Commission staff?-- That's correct.

The first on the 28th of October 2011?-- Yes.

And the second on the 7th of November 2011?-- Yes.

You're aware that both of these interviews were recorded?-- Yes, I was, yes.

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You've seen a transcript of these interviews?-- I have.

Can I show you these documents, please? Now, you've - have you had an opportunity to read these?-- I've scanned both of them, yes.

Is there any corrections that you wish to make to any of the content in them?-- Only some - some minor wording issues in there, not in the content, but more in - I think there was some minor mistakes in wording, but that was all.

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To the best of your knowledge and recollection, the content is true and correct?-- That's correct.

Madam Commissioner, I tender those documents.

MR DUNNING: Madam Commissioner, I object to the tender. The provenance of them is not finally in issue, but respectfully I

don't see how they add anything in a probative sense. If our learned friend wishes to cross-examine the witness on an answer he gives now, that's fine, but for them to stand as something like an ersatz evidence-in-chief in our respectful submission would be undesirable. Mr Ball was only very recently contacted by the Commission. It is plain from the transcripts themselves he is asked about events a long time ago that centre around documents of some detail without being shown the documents. Now, if it is thought desirable to cross-examine him on them, well and good, but to simply tender them in that unqualified way, in our respectful submission, is inappropriate.

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COMMISSIONER: I am not sure if I am getting your point. Every other witness has had their statement tendered.

MR DUNNING: Yes.

COMMISSIONER: This is just a statement unmediated by somebody else reducing it to paragraphs.

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MR DUNNING: And that's the vice in it, in my respectful submission. It doesn't carry with it the utility that the statement carries with them. The statements were prepared on adequate notice with an opportunity to review the relevant documents. To compare this to that is the very basis of my objection. Mr Ball was asked about events that were eight years or thereabouts ago. They were all recorded in documents and notwithstanding that his recall in respect of those events that are documented and about the contents of those documents was subject of the interview, he's almost exclusively not shown in the documents, nor is he given the opportunity to have refreshed his memory before conducting the interview. So in terms of its probative value, it is the very point respectfully, Commissioner, you make to me that it is not proper comparison to a statement as all other witnesses have put statements in and to admit it on that basis would be, in my respectful submission, unfair to this witness.

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COMMISSIONER: If we were in a regular Court I would be saying to you you are making arguments about its weight, but that's got nothing to do with its admissibility, but this isn't even a regular Court.

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MR DUNNING: Well, respectfully I can deal with that two ways. In my respectful submission, it wouldn't be open to that sort of unqualified tender in a regular Court. All it would be available to do is cross-examine a witness.

COMMISSIONER: Would it not be available for tender in a regular Court?

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MR DUNNING: In my respectful submission, no, there would be no reason to tender a record of interview elsewhere as a witness's account out-of-Court on another occasion without more. The only proper basis, in our respectful submission, of a tender in those circumstances would be to elicit some evidence from a witness, whether it be in a written statement

or viva voce and then if you want to challenge that and say,  
"Look, on another occasion you said this."

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COMMISSIONER: But in a regular Court I suppose the tapes  
might be tendered rather than a transcript, but there is no  
argument that the transcript doesn't reflect the tapes.

MR DUNNING: No, there is no argument.

COMMISSIONER: That happens all the time. The obvious example  
is the police record of interview, so I can't quite see what  
it is you say is remarkable about this.

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MR DUNNING: Well, you would not, in an ordinary civil trial, and I appreciate the differences here, but my objection is the probative weight of these statements as, in effect, an equivalent of somebody's evidence-in-chief.

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COMMISSIONER: Sorry, Mr Dunning, I just can't see it. I'm going to admit them. You can make whatever submissions you like about weight.

MR DUNNING: Yes.

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COMMISSIONER: But I really can't see any argument about their admissibility. So the first transcript which is date dated the 28th of October will be exhibit 951 and the second will be 952.

ADMITTED AND MARKED "EXHIBITS 951 AND 952"

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MS WILSON: Mr Ball, you joined Waterways in 1998; is that the case?-- I'm not sure.

What was your role when you joined the Brisbane City Council?-- The Brisbane City Council, I took a role on as an engineer in a Planning Minister section within what was the Works Department of the Brisbane City Council.

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In terms of flood studies being obtained and - commissioned and obtained by the Brisbane City Council, perhaps I can mark your joining of Waterways to that point, in terms of these flood studies you joint Waterways after it had received the June 1998 report, that is the Brisbane River flood study by Sinclair Knight Merz; does that assist?-- No. The process was that council was under a structure of the Works Department in which the City Design Group was a unit of that structure. I had a role in the Works Department which was in the Planning area. There was a restructure of the organisation, the whole council into a purchase provider in '98-ish and in that restructure the Waterways branch was created as a purchaser group. So it was a new organisation and I was appointed as a manager of that group. So it was a restructure of the organisation into a purchase provider function.

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In terms of the Sinclair Knight Merz 1998 flood study; are you aware of that flood study?-- I am.

And when you were at Waterways did you do some reviewing of that flood study?-- I asked for a review of that study to be done.

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Okay. Madam Commissioner could Mr Ball be shown Ms McClelland's statement which is exhibit 946 and in particular paragraph 42B of that statement. Mr Ball, it will come up on your screen so you will be able to see it. If we can just go up a bit to paragraph 38 which - the headings are

important because it gives a context. A bit further, if we could. The decisions regarding SKM 1998 and it sets out the engagement. And then if we go down further it sets out the briefings that occurred; do you see that?-- Yes I do.

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Do you see the bottom of the page - the bottom of that screen. And if we can just go down a bit further to paragraph 42B we see that one of the briefings that has been identified in that paragraph is - it comes fax from K Morris, that's Ken Morris; is that the case?-- Yes.

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To S Abbey of SKM and it's dated the 9th of October 1998 and it notes, "There is still some deliberations re this. Barry Ball will be presenting to the council mid next week"; do you see that?-- I do.

Do you recall doing these briefings?-- Not at all.

Not at all, okay. Did you at any time in your role at Waterways, and then Water Resources, brief - present to council?-- Not to council.

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Okay. When we say the word "council" what does that mean? What does - what do you use that term-----?-- I interpret that to be for council.

Okay. Who did you do briefings to then?-- Put in the context of this or-----

In the context of flood studies?-- Of flood studies. I had briefings with the chair of the Planning committee-----

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Right?-- -----who was a member of the civic cabinet and E and C Strategy and E and C Formal, which are committees of council of the chairs of the various organisational arrangements within council.

So if I can understand your evidence, you never gave briefs to full council, which is the representatives making up the full council, but you did give briefings to some subgroups of the full council; is that the case?-- Correct.

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If I can now turn your mind to Water Resources commissioning work from City Design. Now can you just explain to us what you understood City Design's role was in relation to flood studies?-- Can I clarify whether this was pre the creation of Waterways branch or post.

It's in around the 1999, you know, the report that was commissioned from City Design in June 1999 you received and one and you received another one in December 1999. Around that area, around that time?-- If you're referring to the - I requested Russell Mein, M-E-I-N, to undertake a review of the original 1998 Sinclair Knight report managed by City Design and then subsequent to that review he had a number of recommendations and I asked City Design to review that original report against those recommendations, if that's the ones you're referring to.

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Yes?-- Yes.

And that occurred on two occasions?-- Correct.

And you received a report which was known as the City Design December 1999 report?-- I accept that.

Okay. And then it was decided then to have a technical workshop; do you recall that?-- Yes.

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In October 2000?-- Yes.

Okay. And at that time Brisbane City Council was advised by DNR, Department of Natural Resources, that they were doing relevant work in this area; do you recall that?-- Correct.

And at the time of that workshop it was thought that that data, which would be relevant data to any flood studies that the BCC were doing, would be available in around two months; do you recall that?-- Correct.

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And because of that and some other reasons flood studies were delayed until you received the data from DNR; do you recall that?-- Yes.

Now that two months blew out to two and a half years?-- Correct.

What I'm interested in is how that time, looking back now, could be managed better. I understand that the Brisbane City Council often had contact with the DNR to try to get the data. Looking back now, how can we set in a process that this information can be obtained in not such a large time frame?-- There was a - there was two elements to that. One was, it was work that DNR were doing themselves, but they were relying on information from the Bureau of Meteorology. The Bureau was doing a review of rainfall patterns in Australia and - so what was happening was that the, the information that council was waiting for from DNR was dependent on the rainfall curves that were coming out of the process that the Bureau was putting together. So I would suggest that the, the way that we could avoid this happening was to, before commencing studies, was to look to the range of those sorts of activities going on around Australia, if the Bureau was about to revisit the rainfall patterns, then I would suggest you wouldn't start the study until those rainfall patterns have been completed and fed into the relevant models. If DNR are doing a revamp of the flood flows in the river because of a reassessment of the safety of dam, then you would wait for that to happen as core data to feed into the model. So it would be to better understand the landscape of other activities going on in the region and in Australia.

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What about the communication between the Brisbane City Council and Department of Natural Resources to be able to obtain that information, the data the Brisbane City Council required in a shorter time frame, have you got any suggestions about



processes that could be put in place for that to occur?--  
Well, the relationship between Brisbane City Council and the Department was excellent and so there was no issue with that communication. It was simply waiting on core data to be able to ensure that the appropriate information was fed into the model. So my point is, is that there was no issue with the relationship between the two organisations.

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Brisbane City Council received the data in about July/July 2003 and then SKM was commissioned to do further work?--  
Well, they were asked to do work based on that information from DERM, yes.

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And also the Brisbane City Council also commissioned an independent review panel to review the work that SKM were doing?-- Correct.

Was the independent review panel, not SKM, the body that council was looking for, for the authoritative guidance as to the figure to adopt for the Q100 flow?-- I'm sorry, could you repeat the question?

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Was the council looking to the independent review panel as the authoritative guide as to the figure to be adopted for the Q100 flow?-- Council - the independent review panel was the organisation that council was looking to for the appropriate value for the Q100 level.

We have had some discussion about the interaction and relationship between the Brisbane City Council and the Department of Natural Resources, if I could turn your mind now to the interaction of Brisbane City Council with SEQWater, and perhaps the best way that we can do this if I can show you some meeting minutes that are attached to Rory Nathan's statement, which is exhibit 884, and if I can ask you to go to RJN 20, which are meeting minutes of the 14th of July 2003. Now we see that that's the Brisbane River flood study meetings and these are the meetings that took place, were they, whilst SKM were undertaking that flood study?-- That's correct, yes.

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Okay. If I can take you to that second page, which is item 4, and we can see what that says there. There was a suggestion that someone talks to SEQWater to find out how their dam operating rules could be changed to better manage downstream flooding. Do you have any recollection who "we" was?-- I would suggest that was council, but I can't be certain.

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Okay. And to follow this suggestion up, if we can go to RJN 23, and if we can go to the 4th page, which is item 5C. Now this was the meeting minutes for the 31st of July 2003, and if we can look at the 7th dot point down where we can see that you had preliminary discussions with the CEO of the Water Corporation. What I'm interested in is the protocol for communication/interaction that was established between the Brisbane City Council and SEQWater at this time. Was that the usual way how you did interact, was just that you could get on the phone and talk to SEQWater about the possibility of changing their operating manual?-- That wasn't the formal

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mechanism, but I knew the individual and so I rang just to progress whether there was a mechanism or way that we could address this issue.

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And what was the formal protocol at that point in time?-- It would have been through DERM because DERM were doing the study for the flood flows in the river, and so it was, it was that relationship. But we did have these joint meetings to look at how the work done by all the agencies can be obviously coordinated and work together. So the formal process was through DERM, but there were regular meetings to look to how we can coordinate the activities we were doing.

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So is it the case that possibilities and suggestions could be made between yourself and SEQWater on an ad hoc basis, but if it was going to progress any further then it had to go through the formal channels of DERM?-- Correct.

So it was quite open for you to contact SEQWater to talk about possibilities and suggestions to see what their feel was?-- Correct.

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The SKM 2003 report and the Independent Expert Review report both made recommendation from a Monte Carlo analysis; you are aware of that?-- Further recommendations, yes.

Yes. Further recommendations to the work that had already been done?-- Yes.

But, however, the Monte Carlo analysis was suggested by SKM during the process of preparing their flood study; do you recall that?-- No. Is this - can I just clarify which flood study because there was many.

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SKM 2003 when they were doing their report?-- This is post-----

No, this was while they were doing it, the 2003?-- So this was the flood study that was used - the August, I think it was, to feed into the-----

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The independent expert review panel?-- I don't recall it being in that.

Sorry, you don't recall?-- I don't recall it being in that study, as a requirement in that study, the one that was - the August SKM.

Okay. Perhaps if we can go back to then Rory Nathan's statement and I can show you some minutes of a meeting. Exhibit RJN 31, if we can go to that. We can see there that this is the Brisbane River flood study expert review panel notes from the meeting. So the purpose of these meetings at that point in time, can you tell us what that was?-- So we'd established the expert panel, we had then met twice, I think this was, this might have been the second meeting of the panel. It says number 2, so I guess it was the second meeting of the panel.

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And was that so how these reports could be progressed and how they were, what was occurring with the reports?-- When the panel was formed there was an agreed process. The process was that we would meet, present information from SKM, from City Design to the panel. They would then have time to assess and review, ask for further activity, and then meet again to do the same process based on that request for extra activity. Reading this, we have had our first meeting, the review, other data has been provided, other activity has happened, and this is the second presentation, second meeting of the review panel.

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Okay. And if I can take you to item 6 of this, these notes which refers to Don Carroll's presentation, and if we can see that second paragraph - we can see that the Monte Carlo - the possibility of using the Monte Carlo approach was discussed?-- Yes.

But that analysis would be too long, it would take too long?-- That's what it says, yes.

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Do you have any recollection of this at all?-- No.

Do you have - you have no recollection of the discussion of the Monte Carlo approach during this process?-- Not at this meeting I don't, no.

Well, perhaps if you can just look at it being too long, were you operating under very tight timeframes?-- No.

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Okay. Because this seems to say that, "Converted from...and at six weeks that is too long". So it appears that six week process would be too long at this point in time; do you agree with that?-- Well, it says that, but we didn't have a deadline on the panel review process.

Okay. So you can't really explain why that says that? You're aware that the independent expert review panel's recommendations in 2003 recommended that - made a further recommendation that a Monte Carlo analysis be done; you're aware of that?-- There's a context to that statement. I think it would be - I'd rather talk to it in the context of the statement.

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And I appreciate that, and that's important, but if we can go to paragraph 60 of Gavan Blakey's statement, which is exhibit 947, where he sets out the recommendation is for further work. If you could just take a moment to read that. It goes on to recommendations for further work as well, so if you-----?-- Yep.

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Not going too fast?-- No, that's fine. Thank you.

Have you read that?-- Yes, I have.

Does that set out the context that you're wanting to state?-- Thank you.

Now did you yourself ever consider whether to implement the recommendations that are contained in that, what you just read there, about a Monte Carlo analysis?-- The context is those recommendations apply to a process beyond the determination of the Q100. Yes, we started a process to implement those recommendations.

But what about your role in that process?-- My role was to ensure that those recommendations, because they were adopted by council, were implemented.

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You recall, though, when you were interviewed by Commission staff you were asked questions about your - did you ever consider the Monte Carlo analysis, and you replied that you didn't, and I can take you to that, if you wish?-- Yes.

But is it the case that you just couldn't recall at that point in time your exact role in this process?-- I just have to clarify the comment that you're referring to in that statement.

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Okay. We can go to the - if we can go to, for example, page 35 of the transcript of interview on Monday the 7th of November 2011 starting at 8.11 a.m. You have got the document there?-- I've got the document, yes.

It will come up in a minute, and it's also in front of you. Whatever's easier. We can see there - we see about halfway down, and we can see at the bottom of that screen, now in the middle, "So one of the recommendations was still a Monte Carlo analysis, that's a City Design not one for me"?-- That's correct.

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Okay. Can you explain that to me?-- And I've, I think, reiterated a number of times in that statement-----

Yes?-- -----is that the Monte Carlo was a methodology that a design office will use. If you look at those recommendations, it talks about a risk based strategy.

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Yes?-- And then it says if you're going to undertake a risk based strategy, the Monte Carlo was a methodology you used for risk based strategy. It's not the only methodology you use, you use subjective analysis. So the decision from a policy perspective was whether council was going to adopt the risk based strategy for flood level determination, that's the policy side of it. From a technical side of it, it is whether you use Monte Carlo analysis as a tool to help in that decision making, and the point I was making there, because they - Ms Hedge was referring continuously to Monte Carlo, is that was a City Design issue. I, as a policy manager, don't direct the technical group what tools they use to undertake those analyses.

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Okay?-- So the question was never asked about risk management, it was asked about Monte Carlo analysis.

So that's a distinction that you draw?-- Absolutely.

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And just for completeness, can I show you paragraph 79 of Mr Blakey's statement, and if I can ask you to read that. Mr Blakey refers to you and - you and Mr Blakey and Mr Ball and Mr Barnes considering the Monte Carlo analysis at that time. Do you have any recollection of those discussions or considerations?-- I don't directly, but I'm sure as a result of the recommendations we would have had a number of discussions about the content of those recommendations. So I take the statement there as it is.

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Okay. And so you don't dispute that statement, but you put that distinction on that statement comparing it to the transcript that you've just provided?-- Correct.

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Can I ask you this: in terms of when flood studies are commissioned and then provided to a council who do you see as the person or the role that should make the decisions whether recommendations should be implemented?-- Would depend who's commissioning. So in some cases flood studies are commissioned because there's a bridge being built across the river and it could be an external agency, Main Roads, or it could be an internal organisation within council, the Transport Department, so it is their - it is - they are commissioning organisation, therefore they're the ones that have requested the work and therefore will accept the technical advice given to them by the design group.

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In the flood studies like - that was commissioned by SKM in 2003 and also the Independent Review Panel is it necessary and important for those types of studies, and the content that is in them, the recommendations, should the decision about whether those recommendations be implemented be a matter for council, that is the elected representatives?-- Correct.

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So when a recommendation's come through technical support can provide their opinion and view but ultimately it should be a matter for council?-- Absolutely.

COMMISSIONER: Ms Wilson, would that be a convenient time?

MS WILSON: Yes, Madam Commissioner

COMMISSIONER: Should we start a bit earlier-----

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MS WILSON: Yes, Madam Commissioner

COMMISSIONER: -----the day doesn't seem to be progressing so well, so what time do you suggest?

MS WILSON: We can start at 2 o'clock.

COMMISSIONER: Two o'clock. Can everybody manage that? Right. Two o'clock then.

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THE COMMISSION ADJOURNED AT 1.01 P.M. TILL 2.00 P.M.

THE COMMISSION RESUMED AT 1.57 P.M.

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COMMISSIONER: Yes, Ms Wilson.

MS WILSON: Thank you, Madam Commissioner.

BARRY WILLIAM BALL, CONTINUING:

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EXAMINATION-IN-CHIEF:

MS WILSON: Mr Ball, in terms of the recommendations about doing further work using the Monte Carlo methodology, those recommendations were not implemented by the Brisbane City Council?-- Maybe I just need to gain the context for that.

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Certainly?-- The - I'm just waiting for them to come up on the screen, sorry.

Certainly. Is there a document you wish to have?-- Well either the expert panel recommendations.

Could we have paragraph 60 of Mr Blakey's statement, please. And if we can - you need to go down. Is there a part that you wish to go to?-- Well, you're referring to the recommendations for further works?

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That's right, yes?-- Okay. So you're referring to whether those recommendations-----

Yes?-- -----are being - were and have been implemented?

Yes?-- The - recommendation (a), "the panel strongly recommends that such a study be done as council moves towards a risk-based approach to flood management". That process had started to be implemented, that risk-based approach to flood management, towards the end of 2003 and beyond, so that recommendation was being implemented by council, from memory. Whether the Monte Carlo methodology was being used by City Design in the relevant flood studies relating to that risk-based methodology I can't answer.

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And that's a matter of technical - that's a matter of technical content that you can't answer?-- And more - sorry. And more to do with time because I moved into the - I think the acting divisional manager role in early '04, so I really moved out of this area for some time then for about six to eight months, I think.

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Well, thank you, Mr Ball, I have no further questions.

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

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COMMISSIONER: Mr Dunning?

MR DUNNING: Mr Ball, can I can ask you, please, you were asked some questions about two records of interview you gave. Can you tell the Commission, please, when you gave those records of interview?-- I was - just so I've got the right

dates-----

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You can tell us the days?-- The days. It was a Friday, a Friday afternoon was an interview with the panel, late in October I think, the last Friday in October, the 31st, and that was to do with the Commission - Council requesting my views on how the flood management activities might be improved, learnings, I suppose, from my background, and then the one on the Monday, the 7th, I was asked to come to the office, and again based on my recollections, to provide some responses to the processes that had gone on around the 1999 to 2000 flood study process and activity in the review panel.

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Had you had the opportunity to refresh your memory at all from Council files at the time of either of those interviews?-- No, they were purely off my recollection of events.

Thank you. That's the re-examination, thank you, Commissioner.

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COMMISSIONER: You don't actually work for the Council, am I right, you're at UQ?-- Correct.

How long since you have worked with the Council?-- Two years.

Thanks. Thanks, Mr Dunning. Ms O'Gorman?

MS O'GORMAN: Sorry, Commissioner, there were some issues that were raised with respect to Bureau of Meteorology. They aren't issues that have been aired with the Bureau or brought to our attention before today. We were considering asking for leave so that we could perhaps consider tendering some material that responds to those allegations.

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COMMISSIONER: It was just something about waiting for the Bureau to do its work. If you think it needs responding to by all means do.

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MS O'GORMAN: Thank you, Commissioner.

COMMISSIONER: I', not sure it's a burning matter but it's up to you.

MS O'GORMAN: We will keep that in mind.

COMMISSIONER: Ms Wilson?

MS WILSON: No, Commissioner, I have no further questions for Mr Ball. May Mr Ball be excused?

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

WITNESS EXCUSED



MS MELLIFONT: Good afternoon, Madam Commissioner. I call  
Colin Jensen.

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COLIN DAVID JENSEN, RECALLED, RE-SWORN AND FURTHER EXAMINED:

MS MELLIFONT: Is your full name Colin David Jensen?-- That's  
correct.

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Are you the Chief Executive Officer of the Brisbane City  
Council?-- I am.

How long have you held that role?-- Since August last year.

And since the last time you gave evidence at this Commission  
have you produced three further statements?-- I think since  
last time I gave evidence I've produced four but relating to  
this session three.

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All right. So I'll show you your fifth statement dated the  
31st of August 2011?-- Yes.

Is that your fifth statement?-- It appears so, yes.

And is it true and correct to the best of your knowledge?--  
To the best of my knowledge, yes.

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I tender that statement.

COMMISSIONER: Nine-hundred and 53.

ADMITTED AND MARKED "EXHIBIT 953"

MS MELLIFONT: I will show you your sixth statement. It's  
dated the 8th of September 2011?-- Yes

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Is that your sixth statement?-- Yes.

And is it true and correct to the best of your knowledge?--  
To the best of my knowledge.

I tender that statement.

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COMMISSIONER: Exhibit 954.

ADMITTED AND MARKED "EXHIBIT 954"

MS MELLIFONT: I'll show you your seventh statement. It is dated the 20th of October 2011?-- Yes

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Is that your seventh statement?-- It is.

Is it true and correct to the best of your knowledge?-- To the best of my knowledge it is.

I tender that statement.

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COMMISSIONER: Exhibit 955.

ADMITTED AND MARKED "EXHIBIT 955"

MS MELLIFONT: Now, this morning, Mr Jensen, have your legal representatives shown you a document, which is Exhibit 918 before the Commission, namely, attachment 2 to Mr Gary Mahon's statement, and this is a table which summarises the advice provided by the Department of Community Services to the Department-----

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COMMISSIONER: Community Safety or Services?

WITNESS: Community Safety it would be, I think.

MS MELLIFONT: Safety.

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COMMISSIONER: It's always called "services" here, I don't know why, Mr Jensen-----?-- Yeah.

-----but everybody does that.

MS MELLIFONT: Sorry-----

WITNESS: I don't think it's limited to here, Commissioner.

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MS MELLIFONT: My apologies, Madam Commissioner. So provided by the Department of Community Safety to the Department of Local Government and Planning with respect to the Reflection of State Planning Policy 1/03 within the Brisbane City Plan and Subordinate Planning Instruments. You've been shown that document?-- I've been shown that, yes

And have you particularly had your attention brought to pages 11 to 17 of that document and the comments by the Department of Community Safety in respect of the Brisbane City Plan and Subordinate Legislation?-- Yes, I have.

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Right. Now, have you in the time available been able to collate information in response to the commentary raised in that table?-- Only in a very limited way, I'm sorry, in the time available.

All right. So, in the time available are you able to assist the Commission with Council's response to that commentary?-- I can give you some brief comments now and I'd happily follow up with some written comments, say, in the next week, if that's-----

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We will ask you to do the followup but if you can provide an overview now, please?-- Sure. So the references pages of that table that were supplied this morning to me appear to relate to the approval processes around particularly neighbourhood plans but also amendments to the City Plan and comments made by community safety department. Whilst I'm not party to that normal transaction I am aware of the process that occurs there. The Department of Local Government and Planning coordinate those comments on behalf of the State through the interest checks, therefore they normally provide those comments to us. I can't attest that they did or didn't in this circumstance but I would say it's normal that they do provide those comments, or at least a summary thereof would be provided us. We ordinarily - we, Council, would get to respond to those comments and ultimately the Department of Local Government and Planning makes a recommendation to the State Minister who approves the plan. Importantly, approves the plan with or without recommendations that we must comply with.

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Right. And so far do you have any other information on the topic or it's something you need to investigate further?-- I'd have to investigate it further-----

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Yes?-- -----that's just based on my general knowledge rather than detailed response to each of those, I'm sorry.

All right. And in terms of providing a detailed response to the commentary who is it within Council you will have to make inquiries of?-- I'd make inquiries of my City Planning and Sustainability Division, in particular City Planning.

Thank you. Your sixth statement provides details of the Council's investigations into the use of levees as a means of protecting property. Now, Council's investigations resulted from a recommendation in the report titled "Flood Action Planning Commission by Council" following the January 2011 floods; correct?-- Yes.

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And Council commissioned a report from GHD Consulting Engineers to report on engineering options that may be available to mitigate flooding in Brisbane; correct?-- In an initial perfunctory sort of way, yes.

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Yes. And in so far as documents relate to that you've marked that as Exhibit 51 to your statement, and I'll show you-----?-- It is in the statement.

Yes. So 51, to identify it for you, is "Brisbane City Council Engineering Solutions For Flood Mitigation in Brisbane Discussion Paper February 2011"?-- That looks like it, yes.

Now, what I would like to take you to, please, is the Brisbane City Council Queensland - it's headed "Brisbane City Council Queensland Floods Commission of Inquiry January 2011 Flood Action Plan Progress Update as at 31st of October 2011"?-- Yes.

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All right. I'll take you, please, to page 9 of that document, and to the bottom row?-- Yes, thank you.

You will see that this row relates to a recommendation that Council investigate the feasibility and appropriateness of establishing local levees to protect areas of strategic significance such as the Rocklea Markets. Can I ask you, please, just to read to yourself the entry in the next column, that is the entry commencing with the words, "Council supports the investigation by property owners"?-- Yes, I've read that.

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Now, appreciating that you've dealt with this in part in your statement in paragraphs 2.6 and 2.7 of your sixth statement, can you give the Commission an understanding of what has been done and what remains to be done and time frames, please?-- Yes, certainly. I suppose, firstly, my apologies that this - the language in this is pretty brief, it's our internal report, but I thought it might be of assistance to the Commission just to know where we were at in terms of progress, so in terms of the language used it is based on internal information.

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All right. If you can interpret it for us as you go?-- Yes, yes, my apologies for that. What we have is actually already established by a set of consultant engineers, a technical report, a framework for establishing whether or not levee banks would be successful, of benefit, of use. Criteria that would actually be applied to actually see whether or not they would be used in areas of significance in terms of strategic importance within the City of Brisbane, and what those criteria would be. The reason for the two parts of the report is, first, it can be applied by any private owner who might want to consider whether or not a levee would work for them, and the second part, the strategic significance is that's where Council would actually provide some further collaborative assistance with the property owners to actually see whether or not levees would be of use. Finally, then, we have that draft report, the draft technical report. I anticipate that we will actually have that finalised. There is a meeting today with the consultants to finalise the last remaining comments. The 17th, next week, we will have that finalised. I'll take it to through to the Civic Cabinet by the end of the month. The stakeholder consultation has already been completed with people like Energex, Queensland Urban Utilities, Rocklea Markets and the like. But to make it actually work, to give effect to levees actually being able to implement on the ground we'll have to give legal effect to the technical work that's been completed to date.

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By what means would you envisage that would occur?-- Sure. We'll have to do it - it's not been decided yet, either by local law under the City of Brisbane Act, or we would actually

go for a City - City Plan amendment. The former would require us to go to full Council to get approval of a local law. The latter, in addition - the latter, in addition, would also require ministerial approval at State level.

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Right. And does Brisbane City Council consult with State Government in respect to possible use of levees?-- I suppose that would be on - in the past that would be on a case by case basis, particularly because levees often would be tidal works under the definition of the Act and therefore we don't have unilateral authority to do those works. In terms of the future, the whole idea of the framework is to establish the way that you could consider whether a levee is of technical feasibility and how legally it could be applied. I possibly could add, if it's of assistance, to say that at the moment the advice from the private stakeholders is that financially the levees are not looking very viable for them in terms of the cost of establishing and the benefit that that derives.

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Right. And in respect of the particular framework and work that's been undertaken thus far, that is wholly within Brisbane City Council with the assistance of external experts; is that correct?-- Yes. We've employed consultants to do that for Brisbane City.

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Okay. So at this stage that's not something you've consulted with State Government about?-- I can't answer that definitively. The extent that we would consult it would only be with respect to application in Brisbane City-----

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All right?-- -----not as a Statewide activity.

Okay. The Commission has received some suggestions from some places that more overarching State involvement with respect to the use of levees may be of assistance to councils. Do you hold a view on that?-- A personal view. Probably as much from my past work rather than current work is to note that Brisbane City is quite a different council in size and scale than other local governments, so I would say, firstly, that there are some local governments throughout Queensland that often require assistance from the State where Brisbane would not reasonably expect the State to provide assistance. For Brisbane City we would be very keen that what we did in terms of a framework was supported in terms of the State process, State legislation and the like, which is why we've not yet made a decision as to do we do this solely in our local law within Brisbane City or seek a plan amendment with State approval-----

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COMMISSIONER: Do you have any local law governing the construction of levees presently?-- I will have to take that on notice slightly but my knowledge would be no we would not so-----

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It's not an issue that presents itself? You don't find property owners whacking them up and annoying the neighbours?-- I suppose property owners occasionally do unapproved earthworks on rural properties, semirural

properties, commercial properties. Perhaps not primarily for levee construction, they do it for a variety of reasons, and occasionally we actually have to then work retrospectively with that property owner to either reinstate the land - for example, illegal filling in a watercourse, it will exacerbate flooding for other people, we have to get them to remove it, versus construction of a levee. I'm not aware of a single case personally but I can have a look for that more if you desire.

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Look, if you could just get some general idea of whether it's presented any problem to the Council and how it's been dealt with. That would be helpful because-----?-- Okay.

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-----we're looking at it across the State, as you know-----?-- I understand.

-----so if there's any experience you've got that would assist it will be appreciated?-- Happy to do that.

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MS MELLIFONT: Can I take you please specifically to Rocklea and just show you the photographs attached to CDJ-49 to statement six. So the photos which are being brought up are in respect of the electricity substation at Rocklea, and we see, just going over to the next photograph, the next one along, that's an aerial photo of flooding in 2011; correct?-- Correct

Okay. Can you - from what can be ascertained for the notes on Council file a levee structure design to Q200, being AHD 12.6, has been discussed, but the file doesn't appear to contain a resolution or conclusion about those discussions. Can you assist the Commission with the current position?-- Only in general terms that I've found this morning since being given that advice that you are interested in this today. Firstly I should explain, I suppose, any sort of works is done by a development application of one form or another. It is the applicant. I recall this being Powerlink, in terms of the substation. So in that case Powerlink as the applicant has the onus, I suppose, to actually work through what they consider their application should be. My statement that you referred to I recall saying that we had a - an initial meeting, a pre-lodgment meeting, as we call it, to actually work through whether or not this would be a practical outcome. Since that time there's been further discussions around should the various electrical works be elevated, placed on pads, structures, something else. Our concern with Council in the assessment, as I understand it, is that it may actually exacerbate flooding for others if a levee was placed around it. I'm not aware of where that development application is, I don't get involved in them on a routine basis, but again happy to find more information about it so-----

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All right. And just before moving off levees. Another issue that has raised its head with respect to levees is where you have levees which might have a cross-boundary effect, say from one Council to another Council-----?-- Sure.

-----and that's been mentioned in the context, therefore, of the State having a more overarching involvement. Can you tell me whether in your experience with the Brisbane City Council you've experienced that issue?-- I'm not aware of a single occurrence of that. I'd probably, by way of explanation, note that BCC is a large geographic area. Indeed, the southern capital cities, the chief executives and I have talked about how would they actually go about managing a flood like this in their areas because it would be many councils, not one council. I'm quickly trying to think of which watercourses actually cross the City boundaries other than the Brisbane River-----

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Well, rather than you doing that on the hop-----?-- Thank you.

-----we will just add that to the list of things you can respond to?-- Happy to do that, thank you.

All right?-- Sorry I can't assist more now.

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Can we just move on to the Mirvac development - I'm sorry, I'm reminded to tender that 31 October 2011 plan progress update, please.

COMMISSIONER: Nine-hundred and 56.

ADMITTED AND MARKED "EXHIBIT 956"

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MS MELLIFONT: Now, by "Mircvac", or the Mirvac development, I'm speaking, of course, of the development at Tennyson?-- Tennyson Reach on the river, yes

Right. And I'm covering in that question the State Tennis Centre and the residential development?-- Okay.

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Now, in your seventh statement you note that Council has purchased from Mirvac, I think it's two and a half hectares of riverfront land-----?-- Yes, approximately.

-----approximately, and that's land that was going to be part of the residential development of Tennyson Reach by Mirvac?-- Previously - currently already approved development so-----

Yes?-- -----future development that is approved, yes, or was approved prior to us purchasing it.

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Yes, okay so-----?-- Yes.

-----the Mirvac development which was going to go ahead-----?-- Yes.

-----but which ceased-----?-- Yes.

-----really, it seems, in consequence of the floods of 2011?--  
I can't comment on that but it has ceased by effect that we've  
acquired the land.

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All right. Now, can I ask you, please, in that decision of  
Council to purchase that land did the fact that Council had  
approved the Mirvac residential development project in any way  
factor in the decision to purchase the land back?-- No. I  
can say absolutely not. Never mentioned to me. Not a  
consideration in my dealings on it, and I did do initial  
dealings on that purchase. It was more that it's, frankly, a  
unique piece of riverfront land that could be put into public  
ground connecting the tennis centre to the river, so - and I  
could get it at a fair price.

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All right. So do I take it then that in your decision you  
didn't consult with the development assessment branch?--  
That's correct. Well, my decision in principle to proceed. I  
don't have unilateral authority to purchase.

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It has to go to Council?-- Not that far due to the amount of  
money, et cetera. Actually, sorry, I will take that on  
notice, it probably did go to full Council. Sorry, I can  
answer that. Sorry, thinking on the fly. It was approved as  
part of the budget for the financial year that we're currently  
in. It was actually placed in that as a parkland development  
so that's where the approval had - came-----

As a - sorry, a part-----?-- As a park development.

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"Park" development, thank you?-- Open space.

All right. Did you have any part in any of the process of  
assessment and approvals of any of the development  
applications for the State Tennis Centre or the residential  
development there?-- Those approvals predate my time as Chief  
Executive of Council, however, in my role in the State  
Government I had various - I'm just trying to think through,  
technically nothing in approval, however I was Coordinator  
General, I headed up planning and infrastructure in the State  
and previously worked in transport, so I was aware of the  
things like the overbridge on Fairfield Road connecting the  
rail station to that development. So personally that's the  
only extent that I've had of approval on it.

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All right. So you had-----?-- So I think the answer for your  
purposes is "no" but I wanted to be fulsome.

Sure. And in terms of the awareness you have mentioned, was  
it purely that, an awareness of or were you part of the  
decision-making process?-- No, I wasn't part of the  
decision-making process. Sorry can I be clear?

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Yes?-- For the development approval is what you are asking  
there?

For any of the development approvals-----?-- Yes.



-----for the Mirvac Development?-- I was part of the decision approval process for the purchase of the two and a half hectares.

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Yes?-- Nothing prior to that time.

Yes, thank you. Now, the Commission has received evidence from Mr Blakey in particular. Mr Blakey refers to a 2000 - I'm moving off Mirvac, sorry?-- Okay, thank you.

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A 2003 Independent Expert Review Panel Report in the context of estimates of Q100 and of - topics of that nature. Are you familiar with there being a 2003 Independent Expert Review Panel Report?-- I'm familiar with that having occurred, yes.

Okay, all right. And just if I could take you, please, to Mr Blakey's statement, paragraph 59. I take you down to the part of the paragraph which reads that, "the panel notes that the current best estimates of Q100 and the corresponding flood level at the Port Office" - thank you. This is on page 14, and it's up on the screen there if it's easier to follow?-- I've found it now, thank you.

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Okay. So if you just read that paragraph to yourself so you can just orient yourself to the next line of questioning?-- Yes, I've read that paragraph.

All right. Now, let us know if this is outside your area of knowledge-----?-- It may well be.

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All right. Are you aware that in 2003 the Monte Carlo method was recommended to Council by the Independent Expert Review Panel in respect of moving towards a risk-based approach to flood management?-- I'm aware this calendar year of that, yes.

Oh, so that's only something-----

COURT REPORTER: Sorry?

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WITNESS: Only this calendar year have I become aware of that.

MS MELLIFONT: All right. Okay. I take it was that in - as part of your preparation for coming to the Commission you've become aware of that or in some other context?-- Well, I suppose not solely Commission but in the context that January was a very large flood event and therefore as Chief Executive it now figures far more strongly in my duties than it did last year so.

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All right. Are you aware of the recommendation by the expert hydrology panel, which gave evidence to the Commission on the 26th of October, aware of their recommendation that a Monte Carlo analysis be undertaken in a comprehensive flood study of the Brisbane River to determine the Q100 amongst other flood levels?-- In general terms only, yes.

All right. So do you have a view or feel that you have any expertise to express a view as to whether the Monte Carlo method is now sufficiently developed for use in that way?-- I don't have a technical view as to proficiency as to whether it's sufficiently developed. As Chief Executive I have a great interest to find whether that is now the case that it can be applied.

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All right-----?-- And I haven't formed that view yet, so.

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Okay. So perhaps this is too obvious to ask, but given that your attention really was brought to the Monte Carlo method only this year-----?-- Yes.

-----I take it you're not able to assist as to whether the Council had a procedure in place with a view to implementing it prior to the floods of 2010/2011?-- No, my only knowledge really has come from the evidence and processes around the Commission's activities.

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Right?-- No. Sorry.

I have no further questions for this witness.

COMMISSIONER: Mr MacSporran?

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

MS O'GORMAN: I have no questions.

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COMMISSIONER: Mr Dunning?

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MR DUNNING: Mr Jensen, are there any - in light of the involvement that Council has had in the Commission, are there any particular recommendations that from Council's perspective you would see of utility at least in the relatively short to medium term in response to flood?-- I suppose in short I'm looking forward to - as many are to the Commission's findings and to implementing those. In particular, the Temporary Local Planning Instrument that we have in place for the interim flood level will fast run out. It was only in place for 12 months and will expire in May - mid May next year and so if the Commission were mindful to recommend around that being extended while the City Plan is amended, that's useful.

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COMMISSIONER: How hard is that to do? There's been discussion about whether you could or you couldn't. Ipswich City Council were concerned, I think?-- I would have to seek formal legal opinion, but it is my knowledge that actually a TLPI is only allowed to be in place for 12 months. I say this as the former Chief Executive of planning for the State. I recall the intent to be to ensure that Council's don't just use TLPIs as a stop gate, but do the City Plan amendments. Unfortunately we're at the stage of a full City Plan review which we will do through 2012 in any case and obviously flood, flood immunity, flood response figures heavily in our consideration, so between the Commission's findings in February and expiry in May I think inevitably we will require it. I don't recall, but I think it is expressly stated that they shall ask for 12 months, not more than.

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So it would require legislative amendment, you think?-- Or a technicality of letting it expire and then quickly forming a new similar one perhaps, but that's me thinking on the fly on that.

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Thanks?-- Yeah.

MR DUNNING: But do you think that would assist the Brisbane City Council in giving better effect to the Commission's recommendations?-- Absolutely, yes, no doubt about that.

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Yes, that's-----

COMMISSIONER: As you are aware, this is going to take some time, so something has got to go on in the interim?-- I'm well aware and it is worth doing properly, yes.

MR DUNNING: That is the re-examination.

COMMISSIONER: Thank you.

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MS MELLIFONT: How does Thursday, the 17th, sound for a response for the additional material, the time frame?-- Sounds reasonable. The one would be just the - if you are asking for the flood levy framework, I think I am getting it on the 17th, so it will either be very late on the 17th or perhaps the 18th for that part of it.

Thank you. Might this witness be excused?

COMMISSIONER: Thanks, Mr Jensen. You're excused.

WITNESS EXCUSED

MS MELLIFONT: I recall Mr Kelly.

MR DUNNING: Commissioner, while Mr Kelly is coming I had some inquiries made about the position regarding the flood levels and as we understand it the position is the Brisbane City Council would have power to do it under a local law, but no local law is currently promulgated regarding it.

COMMISSIONER: Thank you.

RORY JOHN KELLY, RECALLED AND FURTHER EXAMINED:

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MS MELLIFONT: Am I to proceed without Mr Kelly being resworn?

COMMISSIONER: Mr Kelly, I think you were probably just stood down, weren't you?

MS MELLIFONT: Yes, he was.

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COMMISSIONER: You are still under your former oath or affirmation, whichever it is, thanks.

MS MELLIFONT: Thank you. Mr Kelly, have you produced to the Commission an eighth statement, this is a statement dated the 9th of November 2011?-- Yes.

All right. I will show you a copy of that statement. Is that a copy of your eighth statement?-- Yes.

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

All right. I tender that statement.

ADMITTED AND MARKED "EXHIBIT 957"

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MS MELLIFONT: Mr Kelly, attached to that statement is a letter provided to the Commission on behalf of the Brisbane City Council, a letter dated the 31st of October 2011. I want to take you, please, to paragraph 10 of that letter. I will just give you an opportunity to read that paragraph to yourself?-- Yes.

All right. You will see at paragraph 10(c) that no information was provided by the applicant to Council in terms of the development application. Can I just ask you whether Council gave the applicant any information regarding engineering and hydraulic issues at that meeting?-- From Mr Schwartz's recognition it is likely that the information was only verbal. As they presented something, they might have got a verbal comment back.

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So if any information was given, are there any records of it?-- No, I could find no other records.

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All right. So are we in the position that we don't know whether any information was handed-----?-- Yes.

-----was given; is that correct?-- Yes.

All right. Do you know whether the suitability of the site as a whole, and we're speaking of the Tennyson Reach Mirvac development site, whether the suitability of the site as a

whole was discussed at these meetings?-- No.

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Okay. That's not been able to be determined?-- No.

Despite inquiries made by you?-- Yes.

All right. I want to ask you about the consideration of the development applications made by Mirvac and ask you whether Council gave particular consideration to the purposes of the Codes, that is the Council Codes, or whether what occurred was that Council looked to see that the application made provision for acceptable solutions and, if so, Council regarded that as sufficient?-- I can't recall. It would be normal process to look at the whole of the Code, including the purpose, and including the desirable environmental outcomes for the City Plan as an overall whole. That's the normal practice, but I can't tell you in this instance whether we were trying to fit that development into acceptable solutions or performance solutions which would look at the purpose of that Code and other sections of the City Plan.

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All right. That's not something you are likely to be able to find with further inquiry. That's correct, isn't it?-- Most likely, yes.

Okay. So in terms of the approach by Council to the application there isn't any particular documentation which indicates that there was an independent assessment for the purposes of the Codes; correct?-- Without - I can't - I can't answer that because I would have to - unless it is written down, I can only make an assumption that we do do that because that's what we do with preliminary approvals and the type of application proposed where it's not previously designated or zoned for that type of use, it's almost standard operating process that we do, we go to the purpose and look at that as part of an overall assessment of the application.

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I take it you've actually made a very thorough examination of all the files with respect to Mirvac and - that's correct to start with?-- Yes.

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In that thorough investigation you haven't found anything written down?-- I haven't actually - while I've gone through the files and I've read a lot of the documents before, a lot of it came back from memory. I could remember what had happened at the time. I didn't specifically look at whether the purpose was looked at when I was looking at those documents.

Right?-- I was just trying to recall and detail my involvement in that application in what we considered, but I can't recall whether I specifically looked at if the purpose has been ticked off.

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Now, I would like to take you, please, to a passage of your evidence. This is page 3589 of the transcript at line 18. I will just give you that. Might you go up a little bit, Madam Associate, just to get the context? Just up to the

previous page. I will just give yourself the opportunity, Mr Kelly, to read from about line 50 and let us know when we need to go down a page. Again, just if you can read down to about line 33. We just need a couple more lines?-- Yes.

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Okay, thanks. Just with that last paragraph, the paragraph which starts, "Right, and with time", can you tell me whether you did find any more documents of that character?-- Regarding flooding?

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Yes?-- They - no, they were contained within my document, my statements.

All right, thank you. All right. Now, can I also take you just to the previous paragraph and you will see the words starting in the second line, halfway along, line 19, "that we've gone back to the applicant for more information on several occasions to get this application right". Now, I want to ask you some detail about that. Can you provide any more detail as to when you went back to the applicant and what was asked for?-- At this point in time only from recognition I recall we went back with regard to the walkway along the front of building F trying to get some details there. We went back to the applicant to get a montage of - from the river at angles we wanted to see to make - to look at that impact on the river scape. We went back to the applicant about architectural design matters because we weren't happy with the external appearance. The design criteria for that was to try to replicate the architectural theme that was - of the previous building that was there, some marine sort of era of architecture and having the columns in the building and looking at that. I remember going back about the parkland to make sure that the parkland would be usable. We went back - I think we might have gone back about the mangroves just to ensure that we were trying to maintain the mangroves where we could. We might have gone back about some car parking matters because the building was conditioned to have some car parking that's normally used by the residents, also used by the users of the park because of the park configuration that was proposed. Residential, we might have gone back and - a number of things about the use of the outdoor sport and recreation facility they had, their gym, making sure of some details. I think we might have also recalled going back to the tennis centre about plumbing and sewerage - sewerage matters. I recall we definitely - they came back a couple of times about first the building didn't have a roof and then it had a roof and then some of the clarification initially of some of the uses, make sure we got the application right. So there was a lot of things goes back and forth about - when I talk about getting it right, we're talking about what we were happy with, not necessarily what Mirvac wanted.

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Certainly. Do I take it that to the best of your recollection in terms of going back to the applicant to get it right none of that was about flood mitigation or flood risk?-- If we did, it would have just been about making sure that the floor levels were above the standard that we applied.

To the Q100 plus 500 mil?-- The DFL, yes.

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The DFL plus 500 mil; is that correct?-- Yes, and making sure they were stipulated on the plan so we knew the level because the height of the building was an issue. We didn't want to go higher than the original building on the site.

Right, but that would have been the extent of it?-- That I can recall, yes. There might have been something about roads as well-being designed at a certain height and we might not have done initially, but towards the end of the process there might have been some discussions that we had.

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Right. I will come back to the roads, but - sorry, I didn't mean to cut you off, so if there was something else please say so?-- I was just going to say because I wasn't the assessment manager, I was supervising other files at the time, there might have been a lot more that the assessment manager went back on. It's just from what I recall when looking at the file.

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Yes, and from your extensive investigation of the file there is nothing on the file to indicate that Council went back to Mirvac on flood-related issues beyond that you have already mentioned?-- No.

Is that correct?-- Yes.

Now, you've mentioned the - there might have been some discussion about the height of access roads. Just to orient you as to that, please, can I take you, please, to paragraph 93 of your first statement and then I will take you to exhibit RJK21? All right. Now, to make this as brief as I can, paragraph 93 refers to there having been sent an information request to Mirvac?-- Yes.

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Okay. Now, taking you then to RJK21, this is the information request, and while that is being turned up it is the case, isn't it, Mr Kelly, that if Council needs further information when considering a development application, it can send a formal information request to an applicant?-- The formal information request is sent for the first time but then Council does a frequent process particularly for larger more complex applications to then go back and ask the developer to - if they've changed something for further clarification, in other matters we might go back to the developer about - as a result of submissions received.

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All right. So the general process is that there's an ongoing exchange of information and request?-- But there's only one formal information request as per the IDAS guidelines.

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Yes, thank you. If I can take you, please, to paragraph 25 of the formal information request which is RJK21, you will see here a reference to the access road and the minimum level accommodating the Q50 flood level. Now, having interrogated the files, if I can put it that way, that's the extent of any written information about flood levels - written information



request to Mirvac about flood levels; is that correct?-- That I can recall, yes.

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Can I take you then to transcript 3595 on the 4th of October 2011 commencing at around line 17? Now, just to orient you, I asked you a series of questions about whether the development - sorry, the conditions in the approval refer to the GHD report provided by Mirvac and you said that they did not. We see that answer there at about line 18. If you could just read to yourself the following paragraph, that is the paragraph which commences at, "Why was that?"-- Mmm. Yes.

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Now, specifically I just wanted to ask you for some clarification of your answer in the first couple of lines, "Because if there is something else in the report that generally we don't refer to hydraulic reports unless they're quite clear." Now, if you receive a hydraulic report which isn't quite clear, how would you rely on that report?-- Well, if it's - if it's on the basis of our assessment, if it wasn't sufficient or adequate, if it wasn't clear and they haven't made a point we would have gone back to the applicant and asked them to clarify what wasn't quite clear.

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Yes?-- Okay.

By way of supplementary report or merely by way of correspondence from them?-- It might be by way of if it was the first time an information request, it might be by way of e-mail back to the applicant. If it is outside that, it might be by way initially of telephone conversations to see if we can't clarify over the phone. It is - it would be not clear to the hydraulic engineer and the hydraulic engineers may talk amongst themselves, you know, external consultant and the Council hydraulic engineer, and resolve differences and if it couldn't be resolved it would be put in a formal information request or a further issues letter that tend to follow information requests if something is not quite clear.

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Right. So you would do that until you got to the situation of clarity?-- Until we were satisfied with the information - the applicant had demonstrated that there wasn't an issue with the type of flooding that might be affecting a site.

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All right. So if you get to that position, so you've got the applicant demonstrating that to you, why then not reflect precisely in the conditions and the approval that understanding rather than merely refer to compliance with, for example, subdivision guidelines?-- Because if a report details something specific that is in our guidelines and our conditions say the same thing, we will go with the conditions so that the engineers know what they mean as part of their assessment. It may be in this instance, and I can't recall the recommendation, that the recommendation indicated that provided the building was at our design flood levels there's not a lot of other things they had to do and therefore we set the standard floor levels as part of our conditions or we set standard road heights or drainage channels or took easements because there wasn't anything specific enough to put in a

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condition that would otherwise have been unique. When we have a lot of conditions on application we do try to make sure that they're consistent so we know how to interpret them or the person who will be interpreting them later on will interpret them in accordance with current standards.

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Can I ask you whether in the particular case of these development applications a lack of clarity in the hydraulic report was identified?-- Well, according to the Andrew Blake memo, no, the applicant demonstrated that the buildings in the location, as I understand from his report, were satisfactory, he just asked to go back to clarify, if I recall one of the attachments in my first statement, certain aspects and they would have gone back or conditions were set.

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All right. So this - we have a case example here of hydraulic - a hydraulic report which appeared to be sufficiently clear and then conditions included in the approval which don't replicate or refer to the hydraulic report, but rather link back to the subdivision guidelines and other Codes. Is that quite common practice?-- It's common practice where - well, it's common practice as far as I'm aware and-----

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Then and now?-- It would depend on what the recommendation of the hydraulic report was and how we had to change our condition. We have conditions that we might add a bit of that report in, whether we would refer to it, it might be referred to the front of the conditions package that it was a report that we relied on, but when you come to interpreting what we wanted to achieve, flood immunity for that development, it's in the development conditions, but it may refer to the report as documents and plan supporting the application.

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Can I take you, please, to some of the conditions in the approval? Now, I think you have had the opportunity through your legal representatives to having been shown the specific conditions I want to take you to, but I will run them through for the record. So this should be RJK32 to Exhibit 1 - statement 1 which is Exhibit 633?-- Sorry, which exhibit was that?

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Exhibit 32 to your first statement?-- Yes?-- Yes.

Okay. So these are the conditions, so if I could take you first of all to condition 53?-- Yeah.

You will see that that's a condition which relates to run-off from roof and developed surface areas of the site and you will see it requires the development to be in accordance with the Council's subdivision and development guidelines; is that correct?-- Yes.

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Okay. So condition 55 which deals with managing onsite drainage, ponding and discharge required the development to design, construct and thereafter maintain, rehabilitate or replace facilities in accordance with Stormwater Management Code, the City Plan, the Services Works and Infrastructure

Code of the City Plan, subdivision and development guidelines and the QUDM. Okay. Can I ask you are those types of conditions still commonly and currently used?-- They will have - it's likely they would have been updated. It is five years, six years ago since that condition was applied - five years ago and a lot of the engineering conditions will have been updated.

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All right. Just in terms of the sort of formula, that is-----?-- The intent of the conditions are still probably a new conditions package, yes.

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Yes, all right. Just in terms of the formula, the type of formula which is - in order to, for example, manage onsite drainage, make sure you comply with, for example, the subdivision and development guidelines?-- Mmm-hmm.

That's still commonly used now as a condition?-- Yes.

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The next page, condition 56, again run off from site to be done in accordance with the guidelines, do you see that?-- Mmm-hmm.

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Condition 57, similarly, design and construct all buildings in accordance with the subdivision and development guidelines to ensure floor levels; do you see that there?-- Yes.

And then over, please, to page 915 at the top of the exhibit, condition 128, we see that kind of formula again adopted?-- Yes.

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And again 130, 131, 132, agreed? So you agree that's the formula commonly used in that condition, in those conditions for the approvals; correct?-- Yes.

And still commonly used now?-- They're - yes, if they haven't been superseded by a condition that combined them.

Yes. Now you'd agree that in processing these development applications council was tasked with assessing the development application against the city plan including the codes and guidelines, you'd agree with that?-- Yes.

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All right. And council was required to satisfy itself that the development application did, in fact, meet the requirements of the city plan and those instruments?-- Yes.

All right. So why then not require the applicant to demonstrate compliance with the codes and guidelines rather than simply conditioning the approval to comply? Do you understand what I'm asking?-- No, sorry.

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Okay. The way in which these conditions go is that they require the developer to comply with the guidelines, comply with the codes, but they - but that really leaves it in the hands for the future to see whether there has, in fact, been compliance. Why not actually look at the development application to see whether or not what they are proposing by way of design and plan does comply with the guidelines and codes?-- Because at the development application stage we were dealing with the conceptual building designs and conceptual ground levels or - where we try to lock them in. They haven't gone out and done the detailed - detailed - they haven't collected sufficient detailed information to lock them into a specific design criteria. What these conditions do, or some of those conditions you refer to do, is that they require a subsequent application, a schedule 12 which has to comply with that condition or the application is refused, or can be refused, or a compliance condition that said they comply with those conditions, and it requires a lot more information, the type of information that we don't normally receive at a development application stage, because they're still dealing with conceptual plans and documents to a certain degree. Okay?

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Of the latter type of application you just spoke of, that is the type in which you envisage that kind of detail to be

available, is it council's current practice to condition approvals in the same type of way using the same type of formula as we see here?-- Yes.

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Right. So why?-- Well, no, we condition - sorry, I might not have understood. But what it would mean is that each one of these conditions or - might require specific plans to be signed off and to have a look at the subdivision of our guidelines, and that in the subdivision development guidelines there might be a range of options, if something happens they still comply with those requirements. So that level of detail really needs to be worked out at the later stage, but conceptually it's demonstrated to work, but they're not at the standard, the details that we would normally get because there's a lot more information that supports and is shown on those plans, and that's what the subdivision development guidelines, while we use that, you know, broadly in this development condition, this is very specific when you're dealing with those aspects of those conditions, and you might be dealing with a different section of the subdivision development guidelines and are supposed to list it all out.

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And just so I understand, when you say development application at this stage, you're talking about the preliminary approval type stage?-- I'm talking - well, the preliminary approval might have conceptual plans. In this instance they sought a development permit for buildings E and F and a tennis centre, so they sought a development permit for that, they gave us conceptual plans and drawings, we worked it up to a stage we were happy with that concept, those concepts could work, but some of the other information they needed to provide to us could really only be worked out when they'd gone away and done a final design and, in fact, in this instance for this application because of the complexity they modified the development a couple of times since obtaining these, this development approval initially.

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All right. So can I ask you this: If you were conditioning an approval for a material change of use, would you expect to see this kind of formula in such an approval?-- The conditions that we've used?

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Yes?-- Yes.

Now can I take you, please, to exhibit 18, to your first statement and to the page 389 in the top right-hand corner. Now just to orient you, this is appendix G to volume 6 of the development application by Mirvac, have you got a document headed there, "Stormwater management", it's up on the screen, it should be in front of you?-- So it's the initial application this.

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Yes. Now we see there P1 under the heading, "Performance criteria"?-- Mmm-hmm.

And in terms of assessment we see the entry, "The proposal will comply with subdivision and development guidelines". Now can I ask you - well, can I suggest this to you: We don't see

elsewhere in that development application how the proposal will, in fact, comply with the guidelines; would you agree with that?-- I'd have to have a look at what the acceptable solution was. This is not a section that a planner would normally investigate and look at. It's normally done by a - one of the engineers or the ecologist, if we're talking about stormwater management, so that would be looked at by an engineer as such-----

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Right?-- -----in finer detail.

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Okay. Well, sorry, I won't make you look through the development application to see whether it contains information about how it would comply given the length of the document, but can I ask you this conceptual question: Would you expect there to be in a development application of this type precise detail as to how there would be compliance with the guidelines or is the situation as you've explained just now in your evidence, we're at broad concept stage and the council doesn't require it?-- Because we're dealing with two different developments, ie the tennis centre which has a catchment which goes out one way and the residential which has a different catchment given the road to some degree, as we have heard previously, divides the catchments, I would have thought that would have dealt with concepts, and if the concept wasn't satisfactory, either the engineer or the ecologist, who would be looking at quality and quantity of stormwater, would come back and say, "Look, it doesn't seem to work or it conflicts with other aspects that I have assessed", or it would be assessed on the plan.

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And from your own inquiries and interrogation of the file are you able to say which occurred here?-- Well, no, I'm not sorry.

Can I take you, please, to paragraph 85 of your first statement. It's up on the screen, if that's faster for you. Can I ask you just to read that to yourself?-- Yes.

Okay. You will see there that there's a reference to, "I am aware and based on Andrew Blake's advice the GHD report was sufficient to satisfy council that if there were any off site impacts of flooding caused by the proposed development they would have no adverse impact". Can I ask you, what did the council do to satisfy itself that there was not - there was not unacceptable on-site impacts of flooding?-- On site impacts in light of water that came off the development into people's units as a result of rain water or what type of flooding would you be talking about?

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Anything that - any type of flooding that might occur on-site once the development was done?-- Well, the conditions that we've seen here deal with the applicant addressing stormwater that came from an adjoining catchment and passed naturally, or was occurring and passing through the site, and given that the development had a large disused power station on the site and substantial earthworks were doing, there was a known overland flow path which is identified in the document, in the end they

talk about two catchments and where the water was coming from. The on-site impacts of stormwater generated on the site would be picked up at a later date by stormwater drainage that would naturally be done, or not naturally, but would be part of an assessment of a later application, say, through the building approval. What we were concerned with is ensuring that the stormwater - what council is concerned with is ensuring that stormwater that's generated elsewhere on the site is not impacted by adjoining properties, be they upstream, downstream or adjoining. What Andrew Blake's assessment here is, that was about flood conveyance. Other engineers would have looked at the specifics of stormwater, whether the stormwater polishing they might have done didn't impact on park users, in the future stages as well, make sure that the water could go out there and not impact on residents using the park or public using the park. I do recall that where the walkway is there was an outlet underneath there and they used some of the existing outlets to channel their stormwater so the park could still be useable and, you know, they didn't get sheet flow down the park, and that the roads were sufficient to pick up the stormwater that would land there and it directed off. So when you talk about on the site, on the site overall, the tennis centre and the residential site, we look at that as part of the road drainage because that's the sort of water that would fall on. Specifically on individual building, the drainage associated with a building, that's a private certifier matter. You deal with that, making sure that water is dealt with to meet the Building Code of Australia requirements, so we don't go into that detail. We look at the detail, making sure that they can get the water off the site to a lawful point of discharge and that that lawful point of discharge is not impacting on someone downstream.

Okay, and that's the extent of-----?-- That's about the whole lot, yeah, that I would - that we would do as part of this that I have been able to glean from the files.

All right. So you used the phrase "we would do", that you did do or that you expect would have been done in the ordinary process?-- We collectively as the south team or the development assessment branch, because it's the standard type of assessments that we do for all type of developments that council actually sees as part of its assessment.

Yes, okay. But the things you've just mentioned in evidence, are they things-----?-- We being the team.

-----are they things that were done by you or your team, or are they things that you think would have been done because it's the ordinary process?-- Some of those things I'm aware of from looking at the file and looking at those conditions that we, the team did, okay, as part of it, and some will be I've assumed they have done that because the consequence of that is something else and you wouldn't have got to that stage without doing the initial assessment up front.

All right. So which things have you assumed so I can be clear about what you know was done and-----?-- That the size of the

pipes are adequate to carry the water that flows on the surface area, for example.

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Anything else that you have assumed?-- Well, that's making the assumption they have looked at the catchments, that the catchments that they identified upstream were the correct catchments to handle the water that would flow down through the site that the site had to handle. That the stormwater from the developed surfaces is channelled to a lawful point of discharge.

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Okay?-- We talk about that so-----

So can we have exhibit RJK 18 up, please, page 365. This is the development application by Mirvac?-- Mmm-hmm.

Now what we're seeing here, and it's on screen, is a map which the applicant's engineers have drawn up or marked with some projections about the site once the development was finished. Do you accept that that's a fair characterisation of what the document is?-- Post development, so I assume, yes, once the development is fully developed, yes.

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Yes, okay. And what we see as the big arrow in about the centre of the page, pointing towards the centre of the page, is the overland flow path once the development has finished; correct?-- Yes.

And it's quite hard to see on the screen, but close to buildings E and F which we know are Softstone and Lushington but on the roadside of them you can see a green line; you can see that there?-- Mmm-hmm.

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And that's been designated by the engineers as the post development 100 year ARI extent; correct?-- Yeah, based on an RL level at AHD.

Yes, based on an RL 7.9 AHD. So what we see there is what the applicant's engineers were saying would designate where water would come to in a 100 year event; that's as you would have read that document?-- I probably would have read the document both ways. Water would have gone, had there been a downpour, water would have moved in the direction, in the opposite direction of the arrow if the water source was coming from Tennyson Memorial Avenue and the upstream catchment, being part of the golf course; and conversely that water would have gone that way if the river rose above a certain level and, that's the natural - there was an overland flow path in that vicinity previously.

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Yes. And we see by the little arrows from the direction of Softstone heading in an easterly direction an indication of the active flow path?-- For the Brisbane River, yes.

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Okay. So what we can see, therefore, by this projection is that in a 100 year flood event that the flood waters would be very, very close to the west of building F, including up and in behind - by that I mean on the non-river side of the



building?-- Mmm-hmm.

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You'd agree with that?-- Yes.

And we can also see from this document the overland flow path is just to the east of buildings E and F?-- Yes.

All right. And on the right-hand side of the map just where we can see the words "limit of mapping" in that general region that was a lower lying area, a depression?-- Yes, on the DPI site or ARI site.

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Of the Animal Research Institute site, yes?-- Yes.

And your understanding was that site was subject to back flow effects at Q20?-- From the river or from overland flow on the site?

I will be precise about it. Can I take you, please, to page 318 of the same exhibit. The second paragraph under, "On site detention", halfway through the fourth line from the words, "From survey information the base of the depression" if you could read that paragraph to yourself up to the words, "Backwater effects"?-- Yes.

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All right. And we see also in that paragraph at the top of it, "Overland flow run off from the eastern portion of the state tennis centre site will be directed to the depression location on the ARI site"?-- Mmm-hmm.

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Okay. So hopefully that clarifies my question, that is, that there are some backflow effects at Q20 in that depression area; correct?-- Yes.

So can I ask you just to take a hypothetical, just say you had an event at Q199 - sorry, at Q99, your residential buildings may have remained dry, but what you've got is the depression being very full with water and water coming up close to the buildings and either sides of the road; do you accept that that would be what was really being shown by these projections?-- That's what it's indicating there within the green area.

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All right. So once you get to Q100 you'd already have a lot of water come in from the river over a site with those surrounding effects; agreed?-- Yes.

All right. So can I ask you why the council considered - in light of that can I ask you why the council considered that to be an acceptable risk insofar as approving this residential development?-- At a Q100 the residential was above. The road that traverses the site, albeit shown green in here, I believe, is above that area. Water would have gone under the road. So there would have been access out from both the buildings because the access location is above that green, as I understand, and it would have met the standards that we applied at the time.

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So, in essence, insofar as the residential units go, from council's perspective, provided that the GFL plus 500 ml requirement was satisfied, that was good enough?-- Well, that was the standard we apply for residential development on the site and also in the subdivision development guidelines access.

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Okay, and that was - those two things were good enough; is that correct?-- Yes. That's the standard that we would have applied to this site to ensure that they didn't impact on flooding-----

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Yes?-- -----for the residential component of this site.

Yes. Okay, I understand that. And that was the case even though the site had direct proximity to wetlands and waterways?-- Um-----

Let me show you exhibit 570 to make that question fair. Now accepting that the rectangle is just a rough approximation of the site, when I speak about proximity to waterway and wetlands, the blue crossed area is waterway and the green dotted area is wetland?-- Yes.

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I want to understand whether the proximity of this site to the waterway and the wetlands was taken into account as a specific consideration, or did someone just come back to the access road issue you've just mentioned and the height issue you've just mentioned?-- Sorry, the question?

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Was specific consideration given to the fact that the site had that proximity to the waterway and to the wetlands, or, rather, did it come down to the two issues you've just mentioned, that is that the height was GFL plus 500 ml plus you had the access issue?-- Yes, it was taken into consideration, and I recall early on at the pre-lodgement stage, which is attachment 6 in my first statement, there's maps showing the existing development and those two constraints, for whatever purpose, on the particular site. The wetland area when we look at it from a planning point of view is looking at values of the wetlands, there might be some values, environmental values in the wetland, so we look at what's disturb there.

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Yes?-- If you have a - if on the aerial map, albeit in black and white, you can see part of the wetland area, which is that sort of inversed - inverted T, that you can see, is in an area of the old power station, that's highly developed, in that - it also corresponds where - where stormwater drainage so it's a depression in the area, so it might have had some vegetation, some sedges-type vegetation there that triggered the - looked at the wetland. In the pre-lodgement minutes, in the initial pre-lodgement discussions when we looking at issues on the site both those things were taken into consideration. I don't believe they impact on the flooding. What it does show to us and what I do recall it showed to us was there was a depression there which meant water flowed to that area and we need to take that into consideration as part of the overall development. Even though it was on - most of it was on the ARI site, the road that we put through the ARI site was a consideration. And I also recall that area reflected where an old creek used to be before it was filled in with a whole lot of waste from the power generation and that was a consideration as well too with regard to how deep you put the drainage. So I don't believe those two things have an impact on how a residential building would have flooded or whether it wouldn't have been safe, they are really just identify aspects of a city plan that we look at and the wetland or environmental but obviously where water is and the waterway corridor is that it's a remnant waterway corridor, it's not an ephemeral waterway corridor, and therefore we look at that it's more that the overland flow was a bigger risk that through that area than those two things in particular.

All right. Can I ask you, please, to have a look at this e-mail. It's an e-mail from Mr Adam Caddies to Mr Steven Schwartz, 10 May 2006. Subject Tennyson Tennis Centre. Signed off, "Regards Adam, City Planning". Who's Adam Caddies?-- Adam Caddies is a - was a planner. He was probably at that time a role of coordinating strategic advice between TST, NES and Community Life, which are other areas at the time of the division that we were in. So they would provide comments to Adam, Adam would put them together and forward them on to the assessment team as part of the overall assessment of this application. Adam Caddies is no longer in Council.

All right. So would he have been a - do you know what his qualifications were?-- He - I don't know personally but he would have been a planner. That role that Adam would have had at the time was one of coordinating comments from the whole of the division or the branch. The division that we were in.

All right. So have you seen this e-mail before?-- I've never seen it-----

Never seen it?-- -----until you gave to it to me.

All right. So in the course of your interrogation of the files I take it you didn't see it; correct?-- No.

That's correct?-- I can't recall - sorry, I can't recall seeing it as part of my interrogation of files, yes.

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All right. Well, you see that you've got Mr Caddies, who is a planner, saying unkind things about the Towers but specifically saying that "at places towers five and six too close to the water". To your knowledge did others within the Council planning section share that view?-- We - the view that was shared by, and I'll do "we" 'cause it was a view at the time, we - that's why we sought additional information off the applicant, to work out why - what we could do to - if we could set that building back a bit further. If it made a difference. What impact it would have X metres from the water. What was at the back. What - we looked at the development overall and came to the conclusion that what was approved was approved. At the - this is an early stage in the assessment process and it would appear to be views of two officers talking or e-mailing between each other, not necessarily a formal comment from Adam Caddies representing City Planning Branch at the time.

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I'm not suggesting that it does-----?-- Yeah. But, yes, it was - sorry.

Sorry. The question was whether others within your team shared that view?-- At this point in time in the assessment process-----

Yes?-- -----yeah.

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All right. And was there a difference in the placement of towers five and six which are - which we expect would be E and F, was there a difference in the distance from the river to those towers ultimately than existed at this time, 10 May 2006?-- Sorry? Are you saying did they change-----

Yes?-- -----at this time?

Yes?-- I think we changed some of the interface. They provided more information to address some of the concerns across the whole of development assessment at the time that might have been raised about those-----

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Sorry, just give me a second.

COMMISSIONER: Did the towers actually shift, though, the positions?-- I think they moved - they couldn't move very much further back because there is a SEQEB power cable under the ground that is a massive cable with oil-filled encasement around it and that - that prevented us moving any further than we could possibly get those away from the water.

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So did they shift at all?-- They might have shifted a little bit but not much but the design interface changed a bit as well.

When you say "a little bit"?-- I'd have to go back and have a look at it. It was how it - people using the boardwalk,

because that's where the boardwalk is at the time. We moved the boardwalk back so it wasn't over the river and we made sure that we were looking at people standing on their balconies flicking - knocking a glass didn't fall onto the people below. I do recall at the time my manager, Richard Sivell, looking at other examples at Teneriffe where the buildings were close to the river and we did a comparison about how far we'd approved other buildings and the proximity to the river at the time, and I do recall going out there and having a look at those, but we asked the applicant a lot more information before we finally signed off and said, "No, we're happy with where they were". Given the size and the height and the bulk and scale of the buildings setting them back a little bit further if we could have wouldn't have made a lot of difference to the riverscape and the enjoyment of people using that boardwalk.

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MS MELLIFONT: So in so far as you were exploring the possibility of moving the towers further from the river-----?-- Yes

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-----it was related to amenity and scape but not - not as part of flood consideration?-- No, because the - where they were when the hydraulic report was done was closer to the river. If we could move them further away from the river that wouldn't have worsened, in my recognition, the flooding impacts on site or to those units.

COMMISSIONER: But I think you are being asked was reason for thinking about moving them at all not related to flood but just to how things looked?-- No, just related to amenity and people using that boardwalk below.

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MS MELLIFONT: Can I tender that e-mail, please?

COMMISSIONER: Exhibit 958.

ADMITTED AND MARKED "EXHIBIT 958"

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MS MELLIFONT: Again at your first statement, paragraph 90, please. Just read paragraph 90 to yourself. It is up there on the screen?-- Yep

Okay. Now, the road you are talking about there is King Arthur Terrace, is it?-- The new road, yes.

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Yes. Okay. Can I just show you - sorry, can I take you to RJK-20. While that's coming up I'll just ask you that - in terms of the proposed road the eastern part was to extend through the animal research centre?-- Yes.

Okay. Which we've discussed as being part of the lower-lying area; correct? All right. So just have a look, please, at RJK-13, which is a note file from Mr Samuel Gay, engineering

officer, and you will see there that we have a reference of "Kevin Matthews spoke with Bob Adamson today and they have agreed that the level of access road to the tennis centre should only have to meet Q50 levels. Particularly in view of the fact that the level of existing Fairfield Road is at Q50". Now, first of all, who's Kevin Matthews?-- Kevin Matthews was the principal planning - principal engineer in Development Assessment South at the time.

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And Bob Adamson?-- Bob Adamson was a hydraulic engineer equivalent to Andrew Blake's position today.

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Okay. Inside Council?-- Inside Council.

And that - so what we have in this memo is an indication that the access road could - only needed to be Q50, particularly given Fairfield Road is at Q50. Do you know whether there are any other reasons leading to Council's view that the access road could be built at Q50?-- No.

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Sorry. I'm sorry, Madam Associate, can you go back to that document? I've forgotten to go to the second paragraph. They also - it says, "They also discussed that was preferable for the access road to be structurally elevated as opposed to the road corridor being filled up thus creating an effective dam through the low north-east section of the property". Are we safe in taking "they" as meaning Mr Matthews and Mr Adamson?-- Yes. I would - on reading this I would think that's what Samuel Gay was talking about, yes.

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Right. From your examination of the file, and in reference to that second paragraph, is it your understanding that the concern was that if you had a road built at Q100 without structural elevation that what it would do is to cause a dam effect, pushing water back into the residential units area?-- Stopping the Brisbane River going out and then back in until the water reached that level. That's - I think that's what you're referring by the "dam". So it would stop the water going - if the road was built at Q100 with solid fill as opposed to an elevated platform the water would - from Brisbane River flooding would stop at that wall and then not impact on the residence until it reached 7.9 metres AHD or above the DFL. I think what they're referring there, however, is water coming downstream from the golf course onto the Tennyson site, under the railway line onto the Tennyson site, ARI site, would dam and pond there. I would add that this was early on in the process and the road wasn't built to Q50, it was built to Q100, the real Q100 not DFL as part of it-----

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With or with - did it have any structural elevation?-- No, it's got culverts under it to deal with the water flowing through the site.

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I see. Okay. I just want to ask you a brief question about basements. Can I take you, please, to the Subdivision and Development Guidelines, clause 6.12.1. So we will just - excuse me. We will just hand you a copy of that specific clause which deals with pumps stormwater drainage. And so you

can direct your mind when you're reading this I want to take you to, please, to clauses 3, 4 and 5, which start at the bottom of page 32, and I want to ask you how Council took into account these guidelines in the conditions that it attached to this development?-- Yes.

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Yes. My question was - I've forgotten it now precisely but words to the effects of how Council took into account that particular guideline in the way in which it conditioned the approval on these applications?-- I'm not an engineer but we tend to use - reading that first part of items one, two and three, that tends to be in relation to where they can't dispose of their stormwater on the site to a lawful point of discharge and they have to pump it up to a lawful point of discharge. I don't know if that applies to this site because they had the river to drain to, which is a lawful point of discharge, and the tennis centre controlled that land between the tennis centre and the river and could put a pipe through there, it could get a lawful point of discharge. This is more if a tennis centre, for example, couldn't get lawful point of discharge and had to pump the water to - a lawful point of discharge so it had to actually, you know, pump it up and get it to another drain that led to a lawful point of discharge. So I don't know - because I'm not an engineer I wouldn't have gone through that myself but I think this is applying to water that fell on the surface level, let's say it fell onto a tennis court, and it couldn't get away from that area because they couldn't get a lawful point of discharge off the ARI, the Animal Research Institute, or off the residential component, that they would have to collect it and then pump it to - say, over to Softstone Street to a lawful point of discharge, and that's not the case so I don't know if this would have applied.

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All right. So do I take it that as a planner you would be reliant upon your engineers feeding back information to you that there needed to be conditions-----?-- Yes, because-----

-----referring to this in any particular development?-- Yes, because the engineers would be looking at how the stormwater fell on the site, where it flowed to, and how they could get a lawful point of discharge conceptually, and then those conditions that we looked at earlier pick it up and get a bit more detail.

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Okay. Insofar as these particular development applications, you don't have a precise recollection as to whether the engineers came to your team on this?-- No, sorry.

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All right. Can I ask - sorry, are you aware that the stormwater systems link directly to a Brisbane River outlet on this development?-- As a result of information that was provided, yes.

When you say, "information provided", do you mean recently from the Commission?-- Yes, you provided that e-mail and a document from - an assessment from Beavis & Cochrane.

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Yes?-- And that had plans and that showed drainage, so I became aware then.

All right. So just to be clear for the record, when you speak of me, you're speaking about your lawyers having received-----?-- Yes, sorry.

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-----documentation from Commission officers attaching a Beavis & Cochrane report?-- Yes.

All right. Which mentioned that the stormwater system was linked directly to a Brisbane River outlet?-- Well, showed it on the plans that were attached.

Okay. Is that the first you know about that issue?-- That specific, yes.

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Yes?-- Sorry, I was aware of some outlets that they were using - they would use on the earlier - the later stages, A, B and C, that went under that was - that were previously used by the power station and they were going to reutilise those and the stormwater drain that was going out to the east of buildings F - D and F.

Drawing on your experience of planning at that time, could the Council have conditioned the approval so as to require non-return valves to be installed?-- No, I can't, sorry. If it was in the Subdivision Development Guidelines about a reflux valve to stop the water coming up then it might have been practice at the time, but I can't recall specifically looking at that.

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All right. So you would have read in the Beavis & Cochrane report, which is a draft, may I make clear, that there's some suggestion that there were - that non-return valves were to be installed but, in fact, were not? Is that the first you've heard of that?-- Yes. I - the reason why we wouldn't have assessed it is that that's the type of drainage work that's approved by a certifier, not by Brisbane City Council.

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All right, thank you. Can I tender, please, 6.12.1 of the Subdivision and Development Guidelines as at November 2000?



MS MELLIFONT: Now, if you can accept from me, but disagree if you know it to be untrue, that the approval in respect of the State Tennis Centre Development didn't contain any conditions requiring the use of flood barriers, does that accord with your recollection?-- Yes

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Okay. Do you know whether Council considered conditioning so as to require use of flood barriers in the State Tennis Centre?-- Not until more recently when they sought modification.

Okay. Are you talking about in 2009?-- No, 2011.

Okay?-- When they sought to extend the use of rooms underneath the tennis centre.

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Okay. So the player amenity rooms we have heard from you about last time. Can I ask you how Council assesses the adequacy of flood barriers when they're proposed by a developer?-- In this instance it would have been part of what function they formed and the risk associated with first inhabiting those areas and what impact that would - the flood barrier would do, whether it stopped all of the flooding or just gave them more evacuation time if they needed to.

All right. Who looks at it within Council? Does it go off to a team of engineers?-- Engineers and hydraulic engineers would look at it just to make sure that the assumptions made were reasonable and what the hydraulic regime is to make sure those assessed assumptions were correct.

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Thank you. Still on statement number 1, Exhibit 29, please. Correct me if I have this wrong, but this was documentation which went from your section to the Urban Planning and Economic Development Committee in respect of the Tennyson Reach Development; is that right?-- Yes.

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It needs to go there because their approval needs to be obtained, is that how it works or worked?-- Yes, they made a formal recommendation to Full Council.

All right. Beyond this document was any additional information provided to the Urban Planning and Economic Development Committee?-- They would have had a full set of the development conditions, a full set of the plans. They would have had the files to look at if they wanted to. That's what normally was happening there and it still happens now. They would have had a power point presentation or a presentation outlining the details - I think that is also contained in my statement - as part of the preparation for this, so officers like myself give a presentation to the committee. They were able to ask questions.

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Okay. So when you say they have the full files, does that

mean they get the full development application, any correspondence to and from after that, all the file notes of anybody that has anything to do with this?-- They get everything that's on the file that's stored. I think there were three files at the time by the time it went through there. They would have got all those, all the plans, all the old plans that were superseded, everything.

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Now, can I take you to RJK36, please, in your second statement? Now, this is an e-mail to Shirley Shannon from Mario Furlan and Mr Furlan is an architect within Development Assessment South. Who is Ms Shannon?-- Ms Shannon is a planner in Development Assessment South.

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Okay. Can I take you to dot point three and ask you to read that to yourself, please? Number three, rather?-- Yes.

All right. You see that Mr Furlan is questioning the operation of the protection barriers or perhaps their adequacy, more accurately expressed, and he says, "This issue is to be commented by the hydraulic engineers." Now, Council did send this to the developers for comment. Do you know whether or not the internal hydraulic engineers, that is Council's internal hydraulic engineers, commented on this?-- No.

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Don't know or they didn't?-- No, I'm not aware - I don't know if it was sent to them and I couldn't find a comment on the file.

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Okay. That is all - that is the questioning of Mr Kelly, but can I please tender for the record the Stormwater Management Code which applied at the time of the application?

COMMISSIONER: Exhibit 960.

ADMITTED AND MARKED "EXHIBIT 960"

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MR MELLIFONT: I think on the last occasion I think I did tender a copy of the Code, but it was in part from the wrong time period, so this copy is the correct version. Thank you.

COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: Nothing, thank you.

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MS O'GORMAN: I have nothing.

COMMISSIONER: Mr Dunning?

MR DUNNING: Thanks, Commissioner. Mr Kelly, can I perhaps start with Tennyson? There's obviously some understandable community concern that a building so recently completed was the subject of flooding and there's at least the implication in the questioning that you've been asked that Council ought not to have approved it. Can I ask you these couple of questions: first of all, have you had occasion to consider whether the planning approval in respect of the Tennyson development, both the residential and the tennis, complied with the requirements in relation to flooding for an approval in Brisbane - within the Brisbane City Council?-- Yes.

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What has that consideration revealed to you?-- To the best ability that I have been able to identify, the application complied with the flood standards at the time.

In all respects?-- In all - with regard to the height of the floor levels, the DFL, yes.

Thank you. Since approval have you had occasion to see whether there has been any deviation from what has been approved in terms of what was constructed?-- Yes, the most recent modification underneath the tennis centre and we dealt with that through the Subdivision Development Guidelines by looking at a risk assessment for use of that area.

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All right. So that's the multipurpose room?-- The multipurpose room and the other facilities that they expanded down there.

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All right. With that exception, otherwise appears to have been built in compliance with the-----?-- Yes.

-----approved plans. All right. Now, you were asked some questions by our learned friend Ms Mellifont regarding your awareness of whether particular things had been done and the proposition was put to you you say you think it had been done. Are you familiar with the practice of planners approving applications like this?-- Sorry?

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Are you familiar with the practice of your planners in terms of how they go about assessing an application such as this?-- Yes.

All right. From your knowledge of that practice, are you able to be informed from looking at the file as to whether something, in fact, would have been done in the ordinary course?-- Yes.

All right, thank you. Now, you were - as I say, there is at least the implication in the questions you have been asked that the residential component of this development ought not to have been approved at the DFL level but should have been approved at a higher level, that is that there should have been in respect of this development a requirement by Council of a level of flood immunity beyond that generally set within Brisbane. As an experienced planner do you consider the Brisbane City Council has the ability to impose a higher

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standard than DFL in respect of flood immunity for residential developments?-- The standard we set are minimums, but for developments to go higher than that they generally have to justify why they need to go higher, what impacts. Going higher in this instance meant that the overall height, the key criteria in relation to this development was that they didn't exceed the height of the previous use of the site for a power station set at 45 metres something AHD and going higher in flood level meant the development would have lost floors. They surely would have thought if we wanted to go higher, they had the opportunity to do that because we only set minimums.

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What, in your experience, would be the response of developers who try to impose upon them a minimum beyond that DFL?-- They would have resisted it. I don't - sorry, I can't recall ever doing it, but generally developers look at access and outside the site and the impacts that it has to get into a building and the higher we ask for it to be, the more requirements that they have so they tend to look at the economics of the building and whether it stacks up before they raise it. So generally they would say, "No, we will meet the minimum standards because that's the standard we have to apply to."

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All right. Thank you. Can I ask you, please, to have a look at this e-mail of Mr Caddies? I didn't quite catch the number on it. I think it might be 948 or 968.

COMMISSIONER: 958.

MR DUNNING: 958. All right. Can I ask you, please, it is clear enough from the tenor of the e-mail that Mr Caddies doesn't share any support for this proposed development, but what I would like to do is take you to the matters that he seems to summarise as being problematic with it, so they're those dot points. The first one is, "Places towers 5 and 6 too close to the water." Now, do you understand that to be a reference to flood immunity or to visual amenity in terms of the river?-- Visual amenity in terms of the river.

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All right, thank you. Just while we're on that topic, when we talk about the river corridor in terms of planning requirements to the Brisbane City Council, does it have any application to the topic of flood immunity?-- No.

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What does it relate to?-- It's got to do with trying to - it identifies that there are four precincts in the Brisbane River. You have the heavily developed precinct that is down near the city end, Bulimba and around that area. You have a semi-rural or semi-natural area which is upstream of the William Jolly Bridge and then you have the very rural area which is upstream, say, from Jindalee or the Centenary Highway bridge basically. The boundaries might be a little bit different and as you go up that river you see the river change and the policy that we have for that is about trying to keep that feel about the river.

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All right. Thank you. Now, in those three categories where does Tennyson fit?-- I believe it is the precinct where

there's some development and try to retain vegetation along the river bank.

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In terms of the end result, did it achieve that objective in your professional opinion?-- The additional information they provided demonstrated that given the existing development that was there, they were worsening the river scape.

In terms of the visual impact on the river scape of the development as built, how did it compare to the visual impact of the derelict power station?-- Well, that was the photo montage, so it was - there wasn't a lot of difference or wasn't - as I recall at the time, you couldn't quantify that difference just being substantially great that the building should change.

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All right. Thank you. Now, if we move to the third dot point, "Makes no effort to utilise the existing powerhouse building", was consideration given to utilising the existing powerhouse building?-- Early on, yes, there was.

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All right. You don't need to give me all of them, but can you give me at least some of the reasons that you understood stood in the way of using it in that regard?-- The - I believe some of it might have dealt with contamination, some of it might have dealt with that the building couldn't be readily adapted, say, for residential use given that you would have to put holes in the walls that weren't designed to have holes in and it made - they couldn't convert it readily for residential use and that it was likely below our flood levels at the time.

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All right. So in terms of the height of the existing powerhouse building compared to the height of the buildings that were ultimately constructed, how did they compare?-- From my recollection of the assessment, they were at the same height.

All right. What about the - what I am really getting at is the flood immunity of the powerhouse that was there compared with the buildings that were ultimately built?-- I understood that the powerhouse was probably lower than the flood immunity that we achieved for the residential building.

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All right, thank you. Now, if I could then take you to the last dot point, that really relates to those same matters we spoke of in respect of the first dot point. Do the same responses apply in relation to that-----?-- Yes.

-----in terms of its compliance with the requirements you have regarding this sort of development on the river?-- Yes.

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MR DUNNING: All right. Thank you. Now can I take you, please, to another topic. You asked some questions by my learned friend Ms Mellifont regarding the content of the planning approvals. Now it's the case, isn't it, that the language typically employed in the planning approval will be that approval is given to carry out the development generally in accordance with a set of plans that will be attached to that approval?-- Yes.

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All right. And as I understood your evidence you'd say that they were conceptual plans?-- Yes.

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Okay. In your mind is there a distinction between planning approval on the one hand and building approval on the other hand?-- Building approval has a lot more to consider and it goes into a lot more structural integrity of the building, fire, we don't look at that, drainage, light, ventilation and other aspects that aren't considered necessarily at planning approval stage.

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All right. And can you explain, please, what you understand to be the rationale for on the one hand having an approval process of planning that's conceptual and a more detailed process for building?-- The planning, we approve the use and form, and the building, the building assessment looks at the habitability of that building through a number of aspects that are considered by planners.

All right. Thank you. And is there a difference in the currency between building approvals and planning approvals?-- Yes. A building approval has a currency of two years; and a development permit for a material change of use is four years.

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All right. Thank you. And still on this topic, in terms of the setting of conditions in planning approvals by reference to council promulgated standards rather than, say, a particular report that's been received in respect of a particular application, and if we take by way of illustration the hydrology reports that have been received in relation to the Mirvac development, in your professional opinion is there utility in there being uniformity in the requirements that council condition with?-- Yes.

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All right. And can you explain to the Commissioners, please, why?-- Because at a later date, it might be some years later, that an officer who is trained to look at - an engineering officer that maybe looking at the standards that apply in that condition will go there, and because they're trained to use those standards, and they use them on a daily basis, they will ensure that the standard is achieved. In those conditions we talk about the subdivision development guidelines. So as those standards change the building can be improved. A building meeting the subdivision development guidelines back then and today, if built, would meet different standards, improved flood immunity standards, but more so because the engineers and the technical officers that go and do that assessment, and the consultants that have to understand what council wants and needs, like to have a standard set of

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guidelines that they can use to ensure that the information they submit for approval will get approved the first time and not refused or asked to go back and do otherwise costly amendments. 1

Thank you. Do you think it has also any place in promoting consistency and compliance with planning approvals?-- Yes.

Thank you. Can I then please ask you on another topic some - this doesn't relate to your evidence today, but do you recollect that on a previous occasion you were asked some questions about the Cansdale Street Yeronga development, are you familiar with the one?-- Yes. 10

You'll recollect that the essence of the concern was the more limited flood immunity in respect of the evacuation route from that site?-- Yes.

All right. Plainly enough the fact that it was inquired into reflects some concern about the construction of a facility for elderly people that has, in this case, a Q50 immunity evacuation route. Can you tell the Commissioners, please, whether in your opinion that was an appropriate use of that site and if so why?-- At the time we made the decision there were no other aged care facilities in the vicinity. Approving an aged care facility on a site that is largely surrounded by park on three sides, that meant the contemporary model for aged care in that you could go in there as a young sprightly 55 year old and live there and get the three stages of care that you might need and - still live as an independent and then with some assistance and then ultimately lots of assistance, was a good thing for that area. It was close to service and facilities that existed at the time, or still exist now, it was close to public transport, it enabled people to age in place, people living in that area, and that area had largely been developed since the 40s. It meant they could move out of their large home and still stay in the community, still go to the doctors and - without having to move to the outskirts of Brisbane, or elsewhere, they chose not to. They could live in their community and age in place, I think is the term we use. It is a relatively large site. It's industry that wasn't contaminated, and there's lots of areas in Brisbane where industry has been converted to residential successfully for other than aged care, but there's not a lot of aged care development in the Yeerongpilly area. So it enables - it didn't compromise the amenity of adjoining residents. It wasn't a three and a half storey, four storey building, height, bulk, adjoining exiting residents. It adjoined the park on three sides. So it meant that the amenity for the residents was at a premium, a higher premium because their outlook in three directions was over parkland which is quite extensive in that area, and we believe at the time and today probably with new design standards that the flood impacts from overland flow and from river flooding could be adequately managed. The other thing, too, is, I suppose, it had adequate, or it met the criteria for emergency access for the overland flow path, that was further to the east of the site, in fact, the applicant, the developer was able to do 20 30 40 50

improvements so it meant the water could run off quicker and didn't cause flooding further upstream to other residential areas, and if it was subject to a river flooding, that the warning time that you had to get there meant that if you used - if you said, "Well, we've got high risk clients here or residents that, you know, might take a little bit longer to exit off the site", there's plenty of warning time to exit the high risk category of residents on that site out, enable the more able bodied people, say, to go to higher level and sit out the couple of hours that the flood level is at that peak. Subsequent to the approval granted they've come back and sought amendments to raise the bits of the development that weren't constructed yet, because it's a not fully constructed, to a higher level and put in more flood resilient basement levels for the residents, the future residents on that site.

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And to have imposed a higher limit, say, for example, you know, to have ensured in that case an evacuation route of Q100 standard or better, what sort of impact, in your opinion, does that have on the ability to be able to find and economically develop suitable sites like this within existing suburbs in Brisbane?-- For aged care, particularly hard, and that's why council has had a task force for dealing with ageing, to try to get more accommodation provided, because it's one area of the market that council has identified that needs some assistance with development approval process, and we have a number of guidelines which assist providers of aged care accommodation in getting the sites that they can look at. Finding a site that met Q100 or greater, as the current standard is, would mean that you would limit it to areas that are smaller blocks, it would require a developer to, as we've seen, compile a number of house sites over time which means you don't get that aged care accommodation now. Recent examples have relied on disused schools and providing aged care there, or land, large land parcels owned by churches and out towards Morningside, bushland areas that people otherwise thought would be maintained as bushland reserves. So you tend to move out further to get the flood immunity, and higher up the land's more expensive and you're less likely to get an outcome immediately on the ground for aged care.

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Then if I can move to another topic and that's the topic of check lists which evidently is also a matter of concern. Have you given some thought since you last gave evidence about the extent to which check lists can be efficiently used in the area of planning with which you have responsibility?-- Check lists tend to be used to make sure that if we're sending something to neighbourhood planning that we've got the required number of forms, the required number of copies, that we've got all the plans. So it's like checking a process and to some degree check lists work for that.

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COMMISSIONER: Mr Dunning, can I tell you, I can't see myself delving into council processes at such a micro level I'm going to tell them they have to have check lists or not.

MR DUNNING: In that case, Commissioner, I won't - I was merely addressing it because-----



COMMISSIONER: I know you why you addressed it, but I'm just giving you that indication.

MR DUNNING: Very good. Well, I'll embrace it then, Commissioner. I've no further questions, thank you very much - sorry, Commissioner may I ask this: I heard discussion about Mr Kelly's last statement, did it get actually tendered?

COMMISSIONER: The 8th statement, 957.

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MR DUNNING: Thank you, Commissioner.

MS MELLIFONT: I have one question. Just with respect to Mirvac, did council actually ask the developer to consider building higher than the standard minimum habitable flood levels?-- Not that I recall, no.

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Thank you. Might Mr Kelly be excused?

COMMISSIONER: Yes. Thanks Mr Kelly, you're excused.

WITNESS EXCUSED

COMMISSIONER: That's it for the day, I take it?

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MS MELLIFONT: Yes.

COMMISSIONER: 10 o'clock tomorrow.

THE COMMISSION ADJOURNED AT 4.20 P.M. TILL 10.00 A.M. THE FOLLOWING DAY

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