

# Transcript of Proceedings

Issued subject to correction upon revision.

THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

MR PHILLIP CUMMINS, Deputy Commissioner

MR P CALLAGHAN SC, Counsel Assisting

MS E WILSON, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2011

QUEENSLAND FLOODS COMMISSION OF INQUIRY

BRISBANE

..DATE 28/10/2011

..DAY 53

THE COMMISSION RESUMED AT 9.31 A.M.

GRAHAM IAN DALE, CONTINUING:

COMMISSIONER: Yes, Mr Dunning?

10

MR DUNNING: Thank you, Commissioner.

Mr Dale, my name is Dunning. I appear on behalf of the Brisbane City Council. Can I start with a couple of matters - and you will excuse me if they are a little elementary, but we need them for the record. If I can get you to put your modest to one side for a moment, you are obviously a highly experienced insurer yourself?-- Insurer?

20

Sorry, you are highly experienced in the insurance industry?-- Yes, I have been a long time in the industry.

All right. And extensive dealings with solicitors over that time?-- On and off, yes.

Right. And a good knowledge of the work and operational policies?-- Yes.

And we see that in - for example, if I can get you to take up your second affidavit, we see that really from paragraphs 12 through to about 23 where you give us a rundown of the operation of the home and contents policies that RACQ had live at the time of the January flood, correct?-- Yes.

30

And if I've read that correctly, essentially the policies operated this way: the peril that RACQ insured was damage to home or contents, depending on the endorsement, caused by weather? Agreed?-- Yes.

40

There was an exclusion under that policy in the event that that weather damage was in fact the result of flood, as defined in the policy?-- Yes. The flash flood cover is a separate cover to - that's a separate peril. So it is not - it is not in there with storm and other things, but yes.

All right. So you see flash flood or stormwater run-off as being a separate peril?-- Yes.

All right. If we focus on that, that flash flood or stormwater run-off peril was subject to an exclusion in relation to flood as defined in the policy?-- The policy subject to exclusion for flood, yes.

50

Thank you. And there was, depending on the language you prefer to use, the proviso or an extension that you could in fact get flood cover if you specifically sought it?-- Yes.

And that's a fair description of how the policy operated?--  
Yes.

1

As an experienced insurer, then, you appreciated that the insured, or the onus or obligation of demonstrating they came within the peril, agreed?-- Yes.

The insurer, RACQ, bore the onus or obligation in demonstrating it could make out an exclusion?-- Yes.

10

And we needn't worry about the proviso because that plainly didn't become contentious. If you had the extension, RACQ paid, we're agreed?-- Yes.

Good. Thanks, Mr Dale. Now, it is right, isn't it, that the RACQ took its obligation in relation to these events seriously from the moment it became apparent in early January that serious damage, as a result of the heavy rains, was likely to occur?-- Yes.

20

And that the insurer itself would be exposed to considerable claims, agreed?-- Yes.

You engaged solicitors to advise you in that regard?-- In relation to policy coverage, yes.

Yes. And solicitors who were highly experienced in the field of insurance?-- Yes.

Thank you. Now, as a result of the seriousness with which the matter was taken, we can safely assume that important decisions were matters that you were a participant in?-- Yes.

30

Important communications with customers were a matter that you were a participant in?-- Yes.

So that included approving at least the style of letters declining cover?-- Yes.

And it also included more broadcast communication with customers like, for example, press releases and the like?-- I am not - we have an external, you know, media relations department that deals with that and what have you, but, yes, I was-----

40

But you would be-----?-- -----involved in, you know, communications from a claims' perspective, if you like.

And making sure the content was accurate?-- It wasn't my sole responsibility, but, yes, it was involved in-----

50

I am not saying it is your sole responsibility, but you are one of the people who had some responsibility for that?-- Yes.

Okay. Can I ask you, please, to look at this document for me, and I will pass copies to the Commissioners as well. I understand our learned friends have all got copies. It is an

RACQ press release of 2 August 2011. Needless to say, Mr Dale, you are familiar with this press release?-- Yes, I am.

1

All right, thank you. And given its context, it was a public announcement that a couple of hundred claims that had previously been declined by RACQ were now to be approved. Agreed?-- Yes.

Okay, thank you. Obviously enough, you saw it before it was released?-- Yes, I believe I did.

10

Okay, thank you. Can I take you, please, to the first paragraph - sorry, not in bold. The paragraph that starts, "The decision to pay the previously declined claims"?-- Yes.

I want to draw your attention to a couple of paragraphs. That paragraph you will see there is talk of release of new hydrological information?-- Yes.

20

And two paragraphs down we again see that you'd "finally received this new hydrological information"?-- Yes.

Again, in the next paragraph in the third line, and again in the next paragraph in the first line. And if we go over the page to the fourth paragraph, we'll see again reference to this "new hydrological information"?-- Yes.

And again in the next paragraph. It'd be fair, wouldn't it, Mr Dale, to say that you were intending to convey by the press release that at the time these claims had been declined in the past, the RACQ was not aware of the hydrological information of this nature but it later came to know of it? That's a fair assessment of it?-- Yes.

30

Can I then, please, take you to this conception of reassessment we also see. So, if we go to the third paragraph on the first page that doesn't have bold, so the paragraph, "We are very pleased to be able to reassess". Then we see in the next paragraph, in the third line, you were able to relook. And again if we go over - about the middle of the second page, the paragraph that starts, "We are confident that now", and the second line you talk about being "able to reassess due to this information"?-- Yes.

40

It would be fair, wouldn't it, to say that it was intended to convey by that that an absence of the knowledge of this hydrological information by RACQ had meant that once it came to know of it, it caused it to look again at its decisions and change the decision that it had made based on considerations that it was not aware of at the time it first made its decision?-- Yes.

50

Okay, thank you. Can I then take you, please, to the expression "finally" that you use in the first page, third paragraph. "We're very pleased to be able to reassess these claims after we finally received access to this new hydrological information." You would agree with me that that

was intended to convey the impression that the delay and the responsibility for it lay with other people?-- I agree that it creates that impression. 1

Thank you. Can I then ask you, please, to go to the second page, and about halfway down that page we see a paragraph, "We regret this occurred but we have acted as soon as possible on receiving this new information." Now, where you refer to "as soon as possible", I think you will agree with me, won't you, that it contended to convey that once the RACQ received this information, it acted as quickly as it reasonably could in the circumstances?-- Yes. 10

Thank you. And then, finally, can I please take you to the paragraph on the foot of the first page? "Mr Heath CEO said RACQ Insurance was sorry that customers had been forced to go through the months of heartache and the initial rejection of their house and contents claims." Now, you will agree with me that that paragraph, indeed, read with the rest of the letter, was intended to convey that the cause of the initial decision by RACQ to decline and the resultant delay was matters that the RACQ were not responsible for, nor matters it might reasonably have been aware?-- Sorry, could you say that again for me? I was just struggling to find the paragraph. 20

Sure. The paragraph on the foot of the page?-- Yes, thank you.

In particular, but generally in the context of the whole press release, but with particular emphasis on that, that the impression you were intending to convey was that the cause of the original decision by RACQ to decline, and its delay in altering that decision, were due to matters the RACQ were not responsible for, nor could reasonably have been aware of?-- Oh, I don't know that I would go that far. 30

You tell me how far you'd go then?-- My view is that it is saying that RACQ Insurance made an initial decision, as I said yesterday, based on the best information that it had, and it became aware of new information, ie new to RACQ Insurance, and reassessed claims when it got that information. And I agree that it is - it is stating there that we did things as quickly as we could once we got that information, and the bottom - the last paragraph on that is an acknowledgement, in my view, of the impact for customers of being in a period where a decision was made and then a decision reassessed. 40

Thank you. Can I ask you to have a look at this bundle of documents for me, please? It is a bundle of correspondence - and I have got copies for the Commissioners as well. Now, Mr Dale, you canvassed this exchange of correspondence in your second statement but the text of it and the detail of it I would like to take you to. Can we start, please, with the first letter there, which is a letter from your solicitors, Cooper Grace Ward, of 23 February 2011, and can I ask you, please, to - sorry, we can safely assume that letters like these are written on the instructions of the RACQ?-- Yes. 50

And that you were in, particularly at this time, effectively constant contact with your solicitors to manage what was a serious situation for the insurer?-- Yeah, I wasn't constantly sort of reviewing every letter they sent but I was aware that they were vigorously chasing this information.

1

Sure. And you were, in a contemporaneous sense, across all matters of substance that were occurring at the time?-- Yes.

Thank you. Can I then take you, please, to the last - second last and third last paragraph? You will see that on the 23rd of February 2011 Cooper Grace & Ward say, "Our client needs the model", being reference to the MIKE-11 model, "to assess a substantial number of claims it has received as a result of the recent flooding. Please urgently let us know if the model can be made available and, if so, when." Now, you will agree with me, I think, these things: the first is that by 23 February 2011 at latest, RACQ appreciated the importance of the MIKE-11 model to be able to assess these claims, correct?-- Yes.

10

20

Okay. You will also agree with me, won't you, that the significance of the MIKE-11 model would be to determine whether the policyholders in question came within the exclusion in relation to flood?-- Yes.

Okay. So ultimately this was information needed to - for RACQ to discharge its obligation of being able to show the insured came within the exclusion, agree?-- I said to you as it panned out, we made a decision based on a report with what I consider were reasonable conclusions drawn within that report in the absence of that. So I would say that it was - it was - as I said yesterday, it was clear that Water Technology believed that there may be stuff in this model that may help them in their considerations, and they were pursuing that.

30

Returning to my question this time, this was information that you realised RACQ required for the purpose of being - seeing whether it was able to establish a matter on which it bore the responsibility of determining whether it was a flood, a matter excluded by flood, or not? Agree or disagree?-- Sorry, I probably disagree on the basis that clearly we were after - or Water Tech was after that information because they believed it would help, but I don't think they knew exactly what might be in it or what the format of it might be, and other bits and pieces.

40

Can I stake you, please, to the next letter, which is the response from the Brisbane City Council. To put this into some context, you can take it from me that the first letter I've shown you on 23 February was sent on Wednesday. The response from the Brisbane City Council of 28 February is sent the following Monday, so it is sent three working days later. Can I talk you please - well, you have a read of the letter yourself. It is pretty short?-- Yes.

50

You will agree with me these things: the first is it in no way suggested that a refusal was likely?-- Yes.

It indicated that a time-frame had been set in which council would endeavour to get a response?-- Yes.

And it indicated that it appreciated the urgency of the matter?-- Yes.

Okay, thank you. Can I then, please, take you - sorry, before I take you to the next one, it would be fair to say that by Monday the 28th of February there was no reason for RACQ to believe that it was likely to be refused provision of the MIKE-11 by the Brisbane City Council?-- Yes, I think it would also be fair to say that it is saying that you can't take it from it that a response will in fact - that the information will in fact be provided.

10

Your point is a perfectly reasonable one, Mr Dale. You couldn't take from that that you were assured you would get it?-- Yes.

20

But what you did know was that it was being seriously and urgently considered by council?-- I agree.

Okay, thanks for that. Can I ask you then, please, to go to the next letter, which is a letter from Cooper Grace Ward of 7 March - and again to give you some perspective on it, this is the following Monday, so it is a week afterwards. It refers to the two earlier letters that I have taken you to, and then in the next paragraph, "As noted in our letter of 23 February 2011, our client seeks access to MIKE-11." Then if we go down a couple of lines, "to assess a substantial number of insurance claims it has received as a result of the recent flood events." And then you will see there is reference to the 20 day timeframe being insufficient for the urgency required. Do you see that?-- Yes.

30

Now, the response to that comes on Thursday the 10th, so only a matter of a couple of working days later. The Brisbane City Council come back and say, "It has been passed to the appropriate council area as a matter of priority", and they reiterate the urgency. So, again, you would agree with me whilst the RACQ couldn't be assured they were going to get it, there was nothing to suggest that they were going to be refused, and, plainly, council indicated they were approaching the matter with priority, agreed?-- Yes.

40

Right. No doubt the RACQ was very busy in the aftermath of the flood?-- Yes.

I don't think you will have any difficulty agreeing with me that Brisbane City Council were likely to have been every bit as busy?-- Yes.

50

Thank you. Can I then take you, please, to the - look, I can take you to the evidence if you need me to, but I think you will be familiar enough with the chronology. You will agree with me, won't you, that the first of these contentious claims started being declined on the 18th of March 2011?-- Yes.

Okay, thank you. And, indeed, there is some on the 18th and there are some, I can suggest to you, on the 29th of March?-- Yes.

Okay. Now, those letters declining occur within the period during which the Brisbane City Council had indicated that it would respond to you, don't they?-- Yes.

Thank you. And I can take you to the particular responses that you gave but I don't think - I think, again, you are familiar enough with the topic to be able to agree with me that the letters declining cover didn't refer either to the insuring clause or the exclusion, but, rather, referred simply to the definition of flood in the definitions of the policy. You agree with that?-- Well, flood is an exclusion.

10

Yes?-- So-----

Would you like to see one of the letters?-- Yes, please.

20

Okay. I will go on to something else while somebody from the Commission if kindly bringing it up. While we're doing that, Mr Dale, we will press on. Can I ask you, please, to go to the next letter, which is 4 April 2011? You will see that that is a letter from Cooper Grace Ward and it is indicating the 20 days have now passed, and that was, in effect, the 20th day, and seeks confirmation urgently whether the model will be provided. That accords with your recollection?-- Yes.

30

If you go then, please, to the next page, you will see that there's an email in response, so that by 5 February the Brisbane City Council has agreed to provide the MIKE-11?-- 5 April?

5 April?-- Yes.

It has agreed to provide the MIKE-11, and sent back to you the documents that are necessary to be signed to enable the MIKE-11 to be obtained?-- Yes.

40

There was nothing particularly onerous about those documents; they were part and parcel, indeed at the simpler end of what you'd ordinarily expect to access, that sort of intellectual property?-- I don't think there was, as I understand it. There might have been some discussion about who was the appropriate party to sign the agreements, but, yes, I agree with you.

Thank you. So that from 5 April, at least, 2011 there was no issue at the RACQ's end that they had access now to MIKE-11, agreed?-- They had - there was an undertaking of access. The access wasn't actually on the 5th of April.

50

No. But it would be fair to say that from 5 April the ball was in RACQ's court to do those couple of relatively straightforward things that they had been asked to do?-- Yes.



Okay, thank you. Now, you will agree with me that on the 7th of April further claims are rejected?-- I would have to look at the schedule but I will assume that you're looking at it and it is right.

1

Well, that accords with roughly - we're not going to quibble over a day or two - that roughly accords with your recollection of how events unfold, that you were declining claims around early April?-- Yes.

10

Now, if we assume that it is the 7th of April, in effect you're declining claims at a time when you now know that better information will be provided to you?-- We now know that we'll get information. As I said yesterday, what's not known is whether that information will change the conclusions in the original report.

Well, that's not right, is it? If we go back to the very first letter Cooper Grace Ward send on the 23rd of February 2011, they made it crystal clear of its importance. Go back, if you would, to the first letter in that bundle?-- Yes.

20

"Our client needs the model to assess a substantial number of claims it has received as a result of the recent flooding." It is pretty plain language, isn't it?-- Yes.

You will agree with me, then, that when it was decided to decline claims on the 7th of April and afterwards, they were acts by RACQ at a time when it knew that it could access if it wished this additional information that its solicitors had appreciated from the outset was important?-- Yes.

30

Thank you. And the RACQ continued to decline claims right through to the 30th of June, didn't it?-- Yes.

Thank you. Mr Dale, have you got a screen - you have got a screen in front of you, haven't you?-- Yes.

Can you see that letter there? This is a letter declining cover, 21st of the 4th?-- I can only see the very top part of the letter, so if you scroll down for me?

40

Okay. If we-----?-- Or up.

You will see there it says, "We have completed our investigation relating to your claim and determined it was caused by flooding." Then can I take you to the next paragraph? "We refer you to your household insurance policy Product Disclosure Statement, which state in part", and then sets that out?-- Yes.

50

Then it goes on, "As your policy does not include cover for flood, we must advise your claim has not been accepted."?-- Yes.

Now, I think you and I can both agree that that's neither the insuring clause, nor is it the exclusion clause in the policy, is it? I can take you to the PDS if you want me to?-- Yes.

Rather, it is a definition clause?-- Yes, it is a definition clause.

And certainly a more accurate way to have explained the situation to the customers would have been to have said, "You are insured for stormwater run-off but flood is excluded under the policy. We have determined that this was a flood event and therefore excluded." Agree?-- I am not quite understanding your point, but-----

Well, you understood well enough, didn't you, that when it came to demonstrating it was flood, that was your responsibility, not the insured's?-- Yes.

Now, you will agree with me that letter doesn't give a hint of that to insureds, does it?-- It is quoting a clause that says, "This policy does not cover flood unless we have agreed, and it is shown on your certificate of insurance." Then it is saying, "As your policy doesn't cover for flood, we must advise your claim is not accepted."

What it does is it quotes a definition in the policy rather than quoting the two operative provisions that actually determined the outcome; you would agree with that?-- Yes.

Thank you. Now, if we can return to, please, our movement through the documents? On the 5th of April, as we've seen, the Brisbane City Council said, "Subject to signing up to a user agreement and the payment of a fee", purely to access the are relevant data, "you could have it", you will agree with me that it took until the 17th of May for the RACQ to actually do that, agreed?-- Yes.

And you will agree with me that as soon as that was done, the Brisbane City Council immediately supplied the data?-- Yes.

1

Thank you. Then chronologically the next thing that happens is - that is after 17 May when Brisbane City Council supplied the data - is that your solicitors received the Water Technology's report dated 14 June 2011?-- Yes.

About a month later?-- I'm not sure when they received it. I know it's dated that date.

10

Dated that date, yes. Now, presumably that was something that you received at about the same time?-- 11th of July.

So, you say that on a matter as significant as this to the insurer and upon which had excited such public interest, you didn't actually see the Water Technology report for another month?-- I didn't see it until the 11th of July.

Well, the essential findings of it presumably were communicated to you well before then?-- Yes, there was discussion on the findings of the - or the remodelling and the - the ramifications of that.

20

Now, the ramifications were that you were not in a position to - you were never going to discharge your obligation of proving it was a flood is a fair way of summarising that ramifications?-- I don't know if - that's one way of expressing it. The ramifications of it were that a number of claims now would be covered under our flash flood and stormwater run-off provisions.

30

Yes, but that's not an orthodox characterisation of an exclusion, is it? The reality was it demonstrated to you that you were not in a position to avail yourself of the exclusion?-- Yeah. The thing I'm resisting is that we're looking for ways to decline claims.

I haven't-----?-- That's what I was-----

40

Mr Dale, I can assure you that if I want to make that suggestion to you, you won't be wondering whether I am making it to you?-- Okay.

At the moment I am just asking you to answer the questions. A fair characterisation of the Water Technology report is that it demonstrated to RACQ that it was not going to be able to make out the exclusion in relation to the flood?-- Yes.

Thank you. And that's something, then, that you must have appreciated at least in the days shortly after 14 June 2011?-- Yes.

50

Thank you. Now, you gave us a reference to a date of 11 July 2011 and that's the date upon which Cooper Grace Ward give you some advice and provide you with a copy of the report?-- Yes.

Okay. Thank you. And then the RACQ makes its decision on the 2nd of August and we have been through the contents of that?-- Yes.

1

Okay. Thank you. And I can take you through the arithmetic if you want me to, but what I can suggest to you is that from the first request to the RACQ - from the RACQ's solicitors to Brisbane City Council to provide this information through to the actual provision of it was about 41 calendar days and about 29 working days?-- What dates is that from to?

10

That's from the 23rd of February?-- Yes.

Through to the 17th of-----?-- May.

-----May. And can I suggest to you that upon the receipt of the information by Water Technology through to the decision on the 2nd of August was about 77 calendar days or about 55 working days?-- I will take your advice on the maths.

20

All right. Thank you. Now, I am going to return to those matters in relation to the press release that I took you to at the beginning. Now, you remember the first thing I asked you about and we agreed was these references to "new" we see throughout were intended to convey the impression that at the time of declining the policy the RACQ was not aware of hydrological information that later it later came to know of. You will agree with me, won't you, that from the 23rd of February, months before you finally make a decision on the 2nd of August, you appreciated the significance - that is the RACQ appreciates the significance - of access to this hydrological data; agree?-- The letter from - from the lawyers that you pointed me to suggests that. As I say, my view of it is still that the - the model and whether it had relevance was not known at that time.

30

All right. Well, I am going to suggest to you that to the extent it sought to convey this impression, the RACQ was not aware of this hydrological information that it later came to know of, the press release was really quite misleading?-- I don't believe it to be misleading.

40

All right. Can I suggest to you it's also misleading inasmuch as it nowhere identifies the fact that this was - this was and always was information that it was on the RACQ to be able to establish if it was ever going to decline claims on this ground, there's not a hint of that there, is there?-- No.

Thank you. The second thing you and I agreed about was that where we see these references to "reassess", it was intended to convey that it was the absence of this hydrological information that meant that once the RACQ knew of it, it caused it to look at the decision again - decisions made again on the basis of that hydrological information. Now, can I suggest to you again that was misleading because there was no reassessment involved, nothing new had happened in the sense that nothing had happened that the RACQ didn't fully expect to happen, did it?-- Oh, I don't accept that.

50

All right. And particularly from the 5th of April when it was made clear to RACQ's solicitors that this information would be provided and the RACQ kept declining policies, there was no element of reassessment on the 2nd of August, there was, rather, just a commercial decision to keep declining, notwithstanding it knew then it had available to it, if it wished, the additional information?-- Yeah, I'm not quite sure I understand your proposition.

10

Right?-- Sorry, if you could explain it to me again?

I would be happy to. You will agree with me to the extent that this suggests that something new happened for the RACQ's - something new that it hadn't realised existed caused it to reassess its position was misleading and particularly misleading after the 5th of April when the RACQ knows that the Brisbane City Council is willing to provide this information that it appreciates is significant?-- From my position on the - on the 5th of April, yes, we became aware that information was proposed to be provided. It appears to me that from the 5th of April through to the 17th of May that any delays in that regard largely rest with RACQ or its representatives, because if we had responded more - it seems to me, reading the information, that if we had responded more quickly to that then we might have got the information earlier, but the fact is we didn't, and until the 17th of May when the data was - the information, whatever it looked like, was obtained and then Water Technology had to do stuff with that to - in order to reach conclusions, that up until the 17th of May from my perspective we weren't - that's the date on which we became aware - not became aware - that's the date on which we received the information or the new information which was new to RACQ Insurance.

20

30

Presumably we won't have quite as much trouble finding agreement on the next two points. To the extent that there's this reference to "finally" and "acting as soon as possible", you'd agree with me that that isn't accurately borne out by the facts?-- Yes, I - I think the "as soon as possible" part of it, there's - as I have just alluded to, there's a clear - there's a clear - when I look back through the correspondence, there's a clear delay evident to me in between the 5th of April when it was proposed that we could get that information and our giving you the document or giving the Brisbane City Council the documentation in early May and then receiving it on the 17th of May. And, sorry, what was your other-----

40

The reference to "finally", that that's really the other side of the coin, that the delay had been at the hand of somebody else?-- Yes.

50

Okay. Thank you. Finally, Mr Dale, can I ask you, please, to go to paragraph 183 of your second statement? Can I direct your attention to the last sentence that starts in the fourth line, "I believe that had"? You'd agree with me in light of the exchanges that we have had that that's a position you can

no longer sustain?-- No, I wouldn't - sorry, I wouldn't agree with that.

1

All right. In what way wouldn't you agree?-- Well, I think from the letters and the things that I had reviewed - as I understand it, Water Technology drafted this model from three primary sources, Southeast Queensland Water, who in the end said, "No, we won't give it to you.", Ipswich City Council, who after going through the same process of sort of number of days and requesting information and those sorts of things in the end said, "We don't have it.", and we got it from the Brisbane City Council, which we were very grateful for, because that - whichever way you look at it, you know, that enabled us to reassess the claims, so we were grateful to get it from them, but I would - it would be my position that none of those three parties acted with urgency, should I say.

10

Well, what you say here, to focus on my question now, is that had the Mike-11 been available to Water Technology sooner, the claims that were accepted in August would not have been declined in the first place. So, I'm focussing on your decision to decline?-- Yes.

20

Now, critically you made a commercial decision to start declining things within the period during which you knew the Brisbane City Council was still considering your request; agree?-- As at the - as at the 5th of April, yes.

No, no, prior to that. We agreed that there was - there was some letters declining cover in March while you were still waiting the 20 working days?-- Yes, there were - but there was no - no certainty, as I said before, that we would-----

30

Get the-----?-- -----get the information-----

Okay?-- -----at - through that point.

So, you made a commercial decision to decline policy holders at that stage; agree?-- We made a decision based on the best information that was available to us as at that point.

40

But-----?-- It was-----

-----knowing there was better information available?-- There seems to be this - if you were sitting in my office in February/March, you know, those types of period, the pressure to make decisions in Ipswich and other areas was enormous. So, if the proposition is that we would wait until May or some time like that, I can't even imagine what that would have looked like.

50

Can I suggest to you that after the 5th of April when the Brisbane City Council has told you that it would provide this information, you continued to to make commercial decisions to decline, notwithstanding you now knew you could access better information?-- We continued to act on the basis of the best information that we had.

Well, can you explain, then, for me the decline in between the 17th of May when the Brisbane City Council provides the data and the 30th of when you declined the last policy holder? You have you then got the information or your agents have?-- Yeah, we were continuing to act on the basis of the initial report and its conclusions.

1

See, can I suggest to you a much more accurate characterisation of events is this: the RACQ appreciated by the end of February the need to access Mike-11; agree? You just tell me - I can run you through a series of things. Just tell me if you agree or disagree. Agree?-- We were asking for that information, yes.

10

Notwithstanding that, it was told its request, at least by the Brisbane City Council, was being urgently considered, it elected to reject policy holders; agree?-- Yes, except that as at the 4th of April, or whenever it was, when the Brisbane City Council comes back and says what it says, at that point we still don't know whether we are going to get the information and whether it's going to be relevant.

20

These are a series of questions you will be able to answer yes or no to really, and I'm still in - I'm still in that period before you had confirmation from the council. You made that commercial decision to reject these claims on the basis of something that ultimately you knew the RACQ would have to prove, not the insured, and that was it was a flood?-- Yes.

And in the face of knowing there was better information that was presently being sought?-- The possibility of better information.

30

All right. After the 5th of April, you continued to decline, notwithstanding the possibility of now being excluded from the scenarios I have just been putting to you because the Brisbane City Council were, in fact - had, in fact, indicated they'd give it to you?-- The possibility still existed that it wouldn't be relevant through until some time after the 17th of May.

40

And that was a commercial decision you made?-- You call it "commercial", I say that we made a decision based on the best information we had.

And after the 17th of May, you persisted with that commercial decision through to the 30th of June, notwithstanding your agents actually had the information?-- Yes, we continued to act on the basis of the report, yeah.

50

Mr Dale, thank you for your attention to my questions. Commissioner. That's the cross-examination.

COMMISSIONER: Thank you. Can I just ask you, Mr Dale, to help me with this: the period between the 14th of June when Water Technology gives its report, second report, and the 2nd of August where there's the announcement of the decision to accept the claims, what's going on there? That's about

seven weeks?-- I think - I think you can probably divide that period into two parts, the first period from the 14th of June through until the 11th of July when the report is given to RACQ Insurance with covering legal advice, and my understanding is that the - the ramifications of the investigations were still complex and that there was ongoing discussions between our legal advisors and counsel as to the ramifications of that in terms of the policy coverage, and that that-----

1

I'm sorry, there's discussions between who?-- Our legal advisors and counsel as to the ramifications.

10

Do you mean BCC council or counsel as in Mr Doyle type counsel?-- Sorry, Mr Doyle, and so that's what's going on in that period, as I understand it, through to the 11th of July, when I got it, and then in between the 11th of July and the 2nd of August I talked yesterday about preparatory measures that needed to be put in place to lead up to an announcement. We were very keen to not take a sort of a piecemeal approach to it, but to be able to make an announcement and immediately act on the basis of that announcement so we needed to put certain things in place.

20

Like what?-- I talked yesterday about making sure that we had reconciled and identified all of the claims so as not to miss any in that process. I had to come up with a claims strategy which I decided given that - those claims needed special attention because it was eight months since the - seven or eight months since the event and I wanted to make sure that our strategy in response to that was appropriate for the customers. So, I talked yesterday about we engaged our internal loss adjusting staff to go out and meet those people, I had to push resources across in order to make the phone calls in the immediate two or three days after that event, and the other thing that was going on in that space was that we communicated to our reinsurers a - the revised position, not for them to make a decision, but we communicated to them that we had new information and that we were going to accept a number of claims as a result of that information and we asked whether they had any comments.

30

All right. Well, presumably that just took a letter?-- That's a little - a little more complex than that.

40

Two letters?-- No. We go through a broker. The treaty arrangements have a number of reinsurers. We needed to get that broker to analyse some of the data themselves, as it turned out, and to talk to probably the top two, three, four reinsurers, I think - it's not my area - but talk to the two, three, four reinsurers at the top to make sure they were - that they didn't have a position which was different to ours.

50

I can see why those things might be going on in parallel with the determination of these claims, it's a little hard to see why it should extend the period necessarily of that?-- Sorry, Commissioner?



I can see you why you might need to do those things at the same time as you sort out the claims in the light of new information?-- Yes.

1

It's difficult to see why it should extend the period though?-- Well, it really - that - that - I can't recall how long that took, but from the 11th of July to the 2nd of August - I am not sure how many working days are in that period either - but the best I can say is that we had to go through that process and we had to - principally one of communicating with the reinsurers, and the other one of making sure that we had the processes in place and I believe we did that as quickly as we could within that timeframe to be ready to launch on the 2nd of August.

10

The other thing that puzzles me is you say that you didn't get the Water Technology report until the 11th of July?-- Yes.

It may not matter very much, but why wouldn't you want it straight away? Knowing that it existed and having some idea at least of what was in it, why would you not want to see it as of-----?-- Well-----

20

-----you know, the 15th of June?-- We might have been able to see it on the 14th of June but we wouldn't have been able to act upon it, because the policy coverage issues and the - it took some time for advice to be provided to us as to what that meant in terms of our - what the technical findings meant in terms of our policy coverage.

30

It just seems odd that even given a need for advice on it you just didn't want to see it as quickly as possible because it was so important. All right. You don't want to add anything?-- No.

Thank you.

MR DUNNING: Excuse me, Commissioner?

COMMISSIONER: Mr Dunning?

40

MR DUNNING: I perhaps should tender the press release.

COMMISSIONER: That's right. This bundle of correspondance?

MR DUNNING: And the bundle of correspondance.

COMMISSIONER: Sorry?

MR DUNNING: There was-----

50

COMMISSIONER: The media release. No, no, it hasn't got marking, you are right. The media release will be Exhibit 901 and the bundle of correspondance 902.

ADMITTED AND MARKED "EXHIBIT 901 AND 902"

MR DUNNING: Your Honour, if I can just identify for the record, the RACQ letter of 21 April 2011 that I took Mr Dale to is within Exhibit 134 to his second affidavit.

COMMISSIONER: Thank you.

10

MR DUNNING: Thank you, Commissioner.

COMMISSIONER: Ms Brasch?

MS BRASCH: Madam Commissioner, I have no questions, but can I invite the Commissioners to turn up the second affidavit of Mr Dale and, in particular, it's just been brought to my attention paragraphs 172 and 173 of that. I think it's probably fair to say there's some - a fairly unparticularised complaint, for want of another word, is made with respect to DERM and BOM. If the Commission wishes to pursue that, if the State could have an opportunity to provide either a statement or submissions on that? In particular, Madam Commissioner, for example, the last sentence, "In some cases, despite the requests, information data is not made available in full or even part." Now, it's a little hard to respond to that as it stands, but if the Commission wishes to pursue the matter the-----

20

COMMISSIONER: I think this is probably your opportunity, though, Ms Brasch. If you wasn't to know what Mr Dale is saying there, by all means ask him now.

30

MS BRASCH: I have no instructions on that. As I say it just been brought to my attention, these two paragraphs.

COMMISSIONER: Mr Dale, could you have a look at that, paragraphs 172 and 173 of your affidavit, and see if there's any more detail you are able to provide here and now? Does this concern Michael Evan or is it something else, do you happen to know?-- Something else.

40

Sorry, it does?-- It's something else.

Oh, something else. What is it, do you know?-- I'm not a hydrologist, but I will do my best to explain it. I understand that hydrologists, that a critical part of what they need to consider is rainfall and river gauge data, if you like, in order to help them with their conclusions. I know that I have seen exhibited to Bradley Heath's affidavit a pictorial representation of rainfall and river data - gauge data which was available as at the 17th of January overlaid with what became available as at the 11th of February and there was substantially more information available as at the 11th of February, which was, as I understand it, provided by DERM or BOM through to the ICA and Water Tech gained access to that from the 11th of February.

50

Is that the sole period you are talking about, up to the 11th of February in these two paragraphs?-- I understand the information was - that that information was subsequently updated periodically beyond then. I think - I think the point that's being made is that as at the - as at the 17th of January, if I recall the dates right, that the riverine gauge - the river and rainfall gauge data, which is critical to hydrology considerations, was limited and that a bulk of more information became available three weeks later - approximately three weeks later on the 11th of February.

1

10

Okay. But after the 11th of February you have no complaints; is that right?-- I don't really understand all the - all the - that's the part of it that I do understand and I understand there was subsequent information updated regularly beyond that period.

All right.

MS BRASCH: I am content to leave it at that.

20

COMMISSIONER: Ms O'Gorman?

MS MELLIFONT: Before Ms O'Gorman starts, I should - excuse me - I should just formally tender RACQ Insurance's submission to the Queensland Floods Commission of Inquiry, dated the 11th of May 2011.

COMMISSIONER: Does this bear on this in some way?

30

MS MELLIFONT: I understand there is to be questioning on it.

COMMISSIONER: By Ms O'Gorman?

MS MELLIFONT: Yes. Potentially.

COMMISSIONER: All right. 903 then.

40

ADMITTED AND MARKED "EXHIBIT 903"

COMMISSIONER: Yes, Ms O'Gorman?

MS O'GORMAN: My name is Kateena O'Gorman and I appear for Commonwealth, in this case, the Bureau of Meteorology. If we could just focus on paragraph 173 of your second statement? I take it you have had an adequate opportunity to read that paragraph or would you like to read it now?-- Yes.

50

It's correct, isn't it, that you reached your understanding as to the timeliness by which the government agencies provided data to Water Technology by reading the submission that RACQ provided to the Commission?-- No, it's - it's - it's correct

to say that the - the comment in there is to do with feedback from Water Technology in relation to delays that it experienced and that that - that that that led to comments being made in the submission on the 12th of May.

1

Right. So, were you privy to the comments that Water Technologies made as to the timeliness by which they received information?-- I knew that they were - at the global level that they were saying they were experiencing delays because of unusual - this is an unprecedented event, so I knew they were experiencing delays due to unprecedented demands, as it was expressed to me. The detail of that I didn't really know.

10

Well, I am just interested in your statement in the second sentence of that paragraph where you say, "I understand from correspondance referred to in RACQ Insurance's submission to the Commission", and then you go on, so I'm just interested in whether or not you read the correspondance or at least the correspondance referred to in the RACQ's submission?-- Yes, I believe it would have.

20

So, can I take you to page 62 of that submission, which I believe is Exhibit 890?

COMMISSIONER: Sorry, the submission just tendered or-----

MS O'GORMAN: No, the submission from RACQ to the Commission, which I believe was tendered yesterday, Commissioner.

30

COMMISSIONER: It's 903.

MS O'GORMAN: 903. I beg your pardon.

COMMISSIONER: The Suncorp submission was tendered yesterday.

MS O'GORMAN: Sorry, Commissioner.

COMMISSIONER: Or some time.

40

MS O'GORMAN: So, at page 62, Mr Dale, is it correct that your understanding is that on the 18th of January Water Technology's requested from the Bureau data concerning warnings and stream flow levels?-- Sorry, could you read that for me again? I was just scrolling and moving around while you were talking.

Certainly. Is it your understanding that on the 18th of January 2011 the Bureau - it was requested by Water Technologies that the Bureau provide data concerning wards and stream flow levels?-- Yes.

50

And if I could take you now to page 63, the next page? Is it also your understanding that on the 10th or by the 10th of February 2011 the Bureau had provided all of that data to Water Technologies?-- Through - through - yes, it is, but through the Insurance Council, through it being provided to the Insurance Council.

1

Certainly?-- Yep.

So, the Bureau provided that data to the Insurance Council of Australia?-- Yes.

Which was then made available-----?-- Made available.

-----to RACQ. And also referring to the correspondance referred to here, it's your understanding that the Bureau provided that data two weeks before Water Technologies made a request of Seqwater to make its hydrodynamic model for Brisbane available to it?-- Sorry, say that for me again?

10

20

30

40

50

Is it your understanding that the Bureau provided the data on the 10th of February which was two weeks before Water Technologies made a request of Seqwater to make the Seqwater hydrodynamic model available to Water Technologies?-- The MIKE-11 model?

Yes?-- Yes.

And is it also your understanding that the Bureau provided its data two weeks before Water Technologies requested Brisbane City Council to make that model available?-- Yes.

10

And is it also your understanding that the Bureau provided that data just under three months before Water Technologies filled out the application for that model from the Brisbane City Council which my learned friend referred you to?-- On the 4th of May, wasn't it?

Yes?-- Yes.

20

So, therefore, can I just take you back to the last sentence of paragraph 173 of your statement? Can I take it then that that reference is a reference to data that is being made available by government agencies other than the Bureau of Meteorology?-- It doesn't say that.

But Mr Dale, by reference to the fact that the Bureau provided its data to Water Technologies two weeks before Water Technologies made a request for similar data, can you - is it your position then that the Bureau's - the date by which the Bureau provided its information had no effect on the ability of Water Technologies to progress its investigations?-- I don't understand the relationship between what was being referred to here, which, to me, was rainfall, river gauge data and other bits and pieces, which was provided on the 10th of February, I think it was - I think you said.

30

Yes?-- And the information requested in the MIKE-11 hydrodynamic model. I don't understand the relationship between those two things.

40

Okay. Could I take you back to page 63, then, of the RACQ submission?-- Yes.

Is it the case that Water Technologies made a request from DERM to provide water level data three weeks after the 10th of February, namely on the 1st of March 2011?-- Yes.

So, returning back to your statement then - and, in particular, I'll take you now to paragraph 172 of that statement - if I could take you to the first sentence of that paragraph where you refer to Water Technologies' ability to progress the investigations?-- Yes.

50

Can you explain to me - or can you just tell me, first of all, whether or not your opinion, after having looked at the timetable of that correspondence - can you tell me whether or

not you think the date of the 10th of February, which was the date by which the Bureau provided its data, meant that the date - that the Bureau's provision of the data had any effect on Water Technologies' ability to progress the investigations?-- Yes, I believe it did. 1

And you believe that even though Water Technologies did not make a request of DERM for similar information until three weeks after the Bureau provided that data?-- Yes. 10

And can you explain to me how it is that you reach that understanding that the Bureau - that the date by which the Bureau provided the data had any effect on Water Technologies' ability to progress the investigation?-- As I said, I'm not a hydrologist. What I understood - and I don't quite understand the relationship between the two things that might be separate or might be similar or might be the same - but my understanding when I wrote this affidavit was that there were delays caused by - and it is only a three week period, I understand that - but there were delays caused by a lack of available rain and river gauge data. 20

Yes, but I'm just trying to ascertain whether the extent of your knowledge is simply the fact that Water Technologies made a vague and general statement about the Bureau and DERM or whether, in fact, you have any particular knowledge as to the effect that the date by which the Bureau provided the information had on Water Technologies' ability to progress the investigations. So, perhaps you could clarify with me whether the extent of your knowledge is simply the fact that Water Technologies made a vague and general reference to the date by which they obtained this particular data?-- As I understand it, Water Technology made a specific reference to the request for and the availability and the subsequent availability three weeks later of the rain and river gauge data that they were looking for. 30

And that is the-----?-- As I understand. 40

And is that the extent of the statement that was made to you by Water Technologies as to the delay with respect to the data?-- That's the position, as I understand it. 40

Thank you, Commissioner.

COMMISSIONER: Ms O'Gorman, can I just get your point clear? Are you saying that Water Technologies couldn't have been in such a hurry because it took them another couple of weeks to ask DERM for their gauge data? What's your point? 50

MS O'GORMAN: I'm not trying to reflect upon the urgency with which Water Technologies was acting, but simply the fact that the Bureau provided the data by the 10th of February could not have affected their ability to progress the investigations, given that they did not obtain the similar information from DERM - didn't make the request for that similar information until three weeks after we'd provided that data.

COMMISSIONER: Yes, that's what I understood you to be saying. 1

MS O'GORMAN: Thank you, Commissioner.

COMMISSIONER: Thank you. Mr Doyle?

MR DOYLE: I might deal with this one whilst it is fresh in our mind. Would you go, please, to the submission that you've just been taken to. Do you have a copy of it, by the way? Would you open it, please, at page 62?-- Yes. 10

And can I just draw your attention - before I ask you some questions - to the entry of the 17th of January where it says, "Water Technology requested all hourly rainfall from the Bureau of Meteorology for every gauge in Queensland on the 17th of January."?-- Yes.

And then there's a further entry request, I think to which our friends took you, on the 18th of January. Can you see those - two further requests?-- Yes. 20

And then the next two I want to direct your attention to, to which I think were not taken - Water Technology on 25 January requested water level and discharge data from DERM for gauging stations in the Lockyer - and then there's some further words - and the same day they requested stream level information for Condamine, Balonne, Brisbane, Lockyer and Bundaberg gauges, and DERM began supplying that information, and then on the 27th of January another request for DERM; you see all that?-- Yes. 30

And then the entry - and I won't take you through it - but I want to take you to the 10th of February entry to which our friend took you - the 10th of February, on the next page?-- Yes.

And I think in answer to the questions you were asked, you referred to some document in Mr Heath's affidavit?-- Yes. 40

Which I would like you to look at, please. Mr Heath's affidavit, your Honour, is - I'll give you an exhibit number in a moment, sorry - yes, Exhibit 824. And I want to go to, if you would be so kind, to Exhibit 8, which is at page 304. Now, you referred to some maps, I think?-- Yes.

Is that one of the maps you're talking about?-- Yes.

And can I ask you do you understand it to show with a red cross the Bureau locations for which information was provided on the 18th of January?-- Yes. 50

And with a green dot, those which were provided on the 11th of February?-- Yes.

And if we turn to the next sheet, which is 305, that's a South-East Queensland blow-up, if you like, of that data?--



Yes.

1

The same legend is the case - the red dots which - or the red crosses, I'm sorry, which we see, provided on the 18th of January, and the 11th - and those provided on the 11th of February are in the green dots?-- Yes.

And is that the document you had in mind when you were answering those questions?-- Yes.

10

And whilst you have Mr Heath's affidavit, will you turn back in the body of it, please, to page 18 - sorry, to page 17, paragraph 79?-- Yes.

And that's where there's a reference, you'll see, to that exhibit I've just taken you to?-- Yes.

And if you look across the page, you will see that it says that some 729 stations were provided on 11 February and added to progressively on 17 and 25 February, 30 March and 25 April?-- Yes.

20

Now, were you aware of those facts before answering our learned friend's questions?-- I was aware of the - as I referred to - that I'd seen some pictorial references comparing data availability as at one date and another date.

And have you been told anything by the Water Technology man himself that the provision of that data earlier would have assisted him to do things earlier?-- Yes.

30

Thank you, you can put that aside. Mr Dale, I want to ask you really about some broad topics. If, to answer me, you need to look at affidavits or documents, and if I don't show you them, would you mind mentioning them and I'll try to give them to you. Now, I want to start, if I may, with the Ipswich reassessment topic, okay? Now, we've seen some requests for information in relation to what's known to be MIKE-11?-- Yes.

And I want to take you to some documents about that. Sorry, I shouldn't have asked you to put Mr Heath's affidavit away. I want you to go to it again, please. Would you turn, first, please, to page 9-----?-- Yes.

40

-----where, commencing at paragraph 43, Mr Heath sets out a chronology of events?-- Yes.

Now, you've read that before now, I take it?-- Yes, I have.

And as far as you're able to say, it's accurate?-- Yes.

50

It refers to requests, broadly speaking, made to three entities. Seqwater - and I'll take you to the document if you need to - I think you say in your affidavit they ultimately were pretty clear and said "no"?-- Yes.

You also - also some requests were made to the Ipswich City Council?-- Yes.

And I'll take you to those in a moment. Were you receiving any encouragement from either the Council or the councillors to hurry up and make decisions with respect to claimants within Ipswich?-- No.

Were you being invited by them to move on and make decisions? Were you under any pressure from them?-- The pressure at that time was immense. Mr Pisasale and others were extremely vocal in the media around making statements like, "It all comes from the sky. What are they doing? You know, hurry up and make decisions.", and that's their job. You know, I understand that. He's there to represent his constituents.

10

All right. We'll start by looking to see how they responded to your requests for information, if you would. Would you turn, please, to page 121 of that bundle? Do you have that?-- Yes.

And we see the letter from your lawyers, similar to the one they sent to the Brisbane City Council the same day. Probably identical, frankly?-- Yes.

20

I want to leave some things out because it is all in Mr Heath's affidavit. Would you turn, please, to - now, if you would - to page 286. Have you read that before?-- Sorry, what was your question?

Have you read that before?-- Yes.

30

Have you seen that document?-- Yes, I have.

Would be fair to describe it as a hurry-up letter to the Council?-- Yes.

And if you would turn then, if you would, to page 290? Do we see the Council's response dated the 9th of March?-- Yes.

And it was to tell you that, "Now that you've made a Right to Information Application-----"?-- Yes.

40

"-----certainly things follow."?-- Yes.

I've left some things out, but you know at some point they told you, "In response to the first letter that I've sent you, that you've got to make an application under the Right to Information Act."?-- Yes.

And they told you in this letter that you - they would attend to it within 25 business days?-- Yes.

50

Of 10 March?-- Yes.

Now, dealing, if we can with the Council - that's the Brisbane City Council, I'm sorry - our learned friend took you to some documents before?-- Yes.

And if you still have that bundle, it is probably convenient

to do it by reference to that. Do you have that bundle of exhibits? If not, I can take you - that's sufficient. If you go to page 120 in that bundle?-- Yes.

1

I think our learned friend, Mr Dunning, took you to that as the first approach?-- Yes, he did.

In fact, I want to remind you that Mr Heath refers to some telephone approaches a couple of days earlier?-- Yes.

10

You're aware of those, I take it?-- Yes.

And this letter, you'll see, asks that the model - that they let you know urgently if the model will be available?-- Yes.

And you've been taken through it this morning. Did you, prior to the 4th or 5th of April, get a response from the Council which, in fact, said they would provide it urgently?-- No.

We'll just see what the Brisbane City Council told you. If you go to the next document, page 127, you will see that they tell you that they'll endeavour to provide a response within 20 working days. You see that?-- Yes, that's right.

20

Were you aware of that, Mr Dale-----?-- Yes.

-----prior to making the decisions you made on the 9th of March?-- Yes.

And then I think our friend took you to page 150. There's a hurry up letter from your lawyers. Did you ask that to be done?-- Yes.

30

And, again, when you came to make your decision on the 9th of March, you were aware of no change to that position?-- That's right.

Now, I'll come back in a different context to deal with this, but ultimately it seems in very early April the Council - Brisbane City Council, this is - tells you they'll provide whatever the MIKE-11 data is and our friend took you to the circumstance where you continued to make some decisions-----?-- Yes.

40

-----about claims in the Ipswich area, I assume?-- Yes.

Notwithstanding that offer?-- Yes.

When we come to the Ipswich report for WT Technology, I take it your you're familiar with it?-- Yes, I am.

50

And let me summarise it and tell me if this is the correct position: it's a report which deals with properties in a number of different areas within Ipswich?-- Yes, it does.

Including some in the Goodna area?-- Yes.

In respect of which Water Technology had told you that the

view they were expressing about the Goodna area was uninfluenced by the presence or absence of the MIKE-11?-- Yes, that's right.

1

Or the MIKE-11 model?-- Yes.

And the report also deals with areas upstream in the Bremer River where they were telling you, at least some of them, the view expressed by them was dependent upon their view of the MIKE-11 model?-- Yes, that's right.

10

When we go to - perhaps I'll take you to this now: can you take up your affidavit, please - your second affidavit - the exhibit number of which is 892, and I really need you to go to the exhibit, please - to the exhibit at page 407?-- Yes.

And if we scroll down, if you would, to the heading "Ipswich"?-- Yes.

We see there the decision dates for the dates when you declined - made decisions about acceptance or declining of claims; is that right?-- Acceptance and decline, yes.

20

I think the focus of Mr Dunning's attention was on the ones you declined. By looking at that table, are you able to help us, please, whether your decisions after - let's say the 7th of April, are decisions which relate to areas at Goodna or other areas which are the subject of the WT report in respect of Ipswich for which the MIKE-11 model is not relevant. Understand the question?-- Yes, I do, but I can't tell from the table-----

30

Well, let me put the question differently. Merely looking at the dates of decline, are you able to say whether the decision to decline is one based upon that part of the WT report that related to the MIKE-11 model?-- Not merely looking at that table.

Thank you.

40

COMMISSIONER: Presumably that's something that you could establish, is it?-- Yes.

MR DOYLE: Now, our learned friend, Mr Dunning - I'll come back to that. You've explained to us yesterday your thought processes when you came to make your decision in relation to Ipswich - at least parts of Ipswich-----?-- Yes.

-----on the 9th of March. And if you need to, to answer my question, see the Ipswich report, please tell me?-- Yes.

50

But Council Assisting asked you whether your thought processes were really this: "Looking at that report, can I sustain a decision to decline?" Do you recall that question?-- Yes, I do.

Was that your thought process?-- No, it was not, and yesterday I answered that with a very direct answer of "no",

because I took it from that there was some sort of suggestion that I sit in my office waiting to - or looking for ways to decline claims, and that's just not - that's not even close to the truth. You know, we've got customers - my obligation in this - in this process, as it is always, is to make the right decision based on the best information that I've got available, and that's the obligation. It's not about looking for ways to decline. If anything, RACQ Insurance probably has a philosophy of looking for ways to accept claims.

1

Well, I will show you, if I can, the first Ipswich report. It's in an exhibit to your second affidavit at page 1660. Now, Mr Dale, as I've just outlined to you, this report covers a number of different areas?-- Yes, it does.

10

I want to focus, if I can, on that part of the area which is influenced by what WT - Water Technology - used the MIKE-11 model for?-- Yes.

You know that to be aspects of the Bremer River and its catchment?-- Yes.

20

Would you turn, please, in that volume, to page 1681?-- That's a diagram, yes?

It is a diagram. We'll just wait until it comes up on the screen. Now, you've looked at this before, I take it?-- Yes, I have.

And you've read the report and you understand what this chart shows?-- Yes, I do.

30

It shows, obviously, an aerial photograph of that part of Ipswich with which we're concerned?-- Yes.

And someone has overlaid it with lines of two colours?-- Yes.

And you can explain to me what those two colours are?-- Well, the yellow line is indicating inundation based on the modelling of what it would look like if the Brisbane River was not in flood, and the blue line is indicating what actually happened.

40

All right. So, you understand the yellow line to be the model output which identifies what would have happened with the actual rain which fell in Ipswich or in the Bremer catchment, but for the elevated level of the Brisbane River?-- Yes.

And the authors of the report describe it as being largely contained within its banks?-- Yes, they do.

50

Is that the basis of the information that you proceeded on in making your decision?-- Yes.

Now, we've seen that subsequently, in the process which Mr Dunning has taken you through, you obtained the model - that is, you obtained-----?-- Yes.

-----the Brisbane City Council model?-- Yes.

1

And I take it that you asked WT - Water Technology - to do something with respect to it?-- Yes, we asked them to do whatever they needed to do - I don't really understand this hydrology stuff, but it was like, "Do what you need to do with that model and tell us what the outcomes of that are."

Why?-- Well, we - as I alluded to yesterday, we didn't know whether - I didn't know, from my point of view, whether they would get a model or what difference it would make if they ran it or whatever, but we continued to pursue the model and I wanted them to run the model and tell me whether it - you know, do what they do and tell me whether it changed any outcomes.

10

That's what I'm really asking you. You've had already a report upon which you felt justified to decline these claims?-- Yes.

20

Why did you bother pursuing the model which might give you some more information and, having got it, why did you bother to ask WT to do anything with it?-- If we made wrong decisions, I wanted to know about that so we could correct them.

Thank you. I'll show you the revised report that WT Technology produced. It's in the same affidavit at page 1872. I want you to go, please, to page 1873 where, just above the heading "Previous Analysis", you see they say since the preparation of their first report, they've been provided with-----?-- Sorry, counsel, whereabouts are you?

30

Just above the heading "Previous Analysis"-----?-- Yes.

-----they tell you that since their first report, they've received the Brisbane River MIKE-11 model and other relevant information. Just pausing there, do you really understand what they got?-- I've said many times I've learnt a lot about hydrology over the last six months, but I'm not a hydrologist, but I understand it was a model which had better data in it and it had some stuff around cross-sections of rivers and other bits and pieces and maybe stuff to do with bridges and other bits and pieces that might change the flow of water. That's probably the extent of my understanding of it.

40

That matches my understanding of it - and they report that the model has been used to further investigate the impact of the Brisbane River and the Bremer River flood levels as they go on to discuss?-- Yes.

50

Now, they set out at some length all the things they did, which I take it you've read before now?-- Yes, I have.

And they come to some conclusions about what all that means with respect to those parts of Ipswich that were initially thought to be affected by the Brisbane tail-water effect on the Bremer River. You understood that?-- Yes.

Thank you. Did you, perhaps in consultation with others, set out then to make some decisions about what that meant in respect of your claims that you received from Ipswich?-- Yes, I did.

And what did you seek to do?-- Look, in essence, you know, as I understood the report concluded, with the benefit of this revised model or information that they had, it effectively said that the impact of the Brisbane River tailwater was substantially less than what it was thought to be in the first analysis that had been undertaken, and we sought to review our claims decisions on the basis of that conclusion.

To what end though? To do what? To achieve what outcome?--  
To make the correct claims decision.

10

Thank you. Now, tell me, please, in between those two decisions of yours, the one in March and the one which took place in July at some stage - the date doesn't particularly matter-----?-- Yes.

-----you had declined these people in Ipswich?-- Yes.

We've seen in your affidavit reference to something called a compassionate fund?-- Yes.

20

Can you explain to me, please, what that is?-- The best way I will describe it is that there was a lot of discussion internally when it was - when these events happened and we knew that we would - we couldn't pay flood claims because it was just going to cost too much and we didn't have the necessary reinsurance in place. The mood in the place was that we knew we couldn't do that, but also doing nothing didn't feel right within the organisation. So there was a compassionate fund established which divided into two or three parts, but the insurance part of it was to be able to make a payment from that fund to customers whose claims we weren't able to accept. The terms of the fund were pretty similar to the Premier's Relief Fund, in that the kicking-in point was over-the-floor flooding in relation to the main living areas of the home, and once that kicked in, there was a payment of \$10,000 made in respect of the building, and two and a half thousand dollars made in respect of the contents.

30

In the course of answering me you said, "We realised we weren't able to pay claims that were flood" - you mean flood in the policy-defined sense?-- Yes.

40

I see. Are you able to tell us whether any of the 240 odd numbers of claims that were the subject of this reversal had themselves received payments from the compassionate fund?-- 197, from memory.

And when you made your reassessment in July/August, what did you do with respect to that payment that you had previously made-----?-- I discussed it-----

50

-----under the compassionate fund?-- I discussed that with my CEO, Bradley Heath, and I gave them some figures as to what the amount of that was, which from recollection was 1.9 million, or something, we had paid to customers who might be affected by this reassessment decision, and we made the



decision that although we could, we felt we were - you know, legally we could, we made the decision not to - we made the decision to leave that compassionate payment with those customers.

1

So that the Commission understands, those customers received not only the compassionate fund payment, but their entitlement under the policy?-- Yes, they did.

COMMISSIONER: The Commission is not that thick, Mr Doyle. I had gleaned it.

10

MR DOYLE: Sorry?

COMMISSIONER: I had gleaned that.

MR DOYLE: So that others, then, can understand, your Honour. Well. Thank you. I say now I am likely to probably raise many things your Honour has already gleaned, but I will press on.

20

COMMISSIONER: All right.

MR DOYLE: Also in the course of answering me you referred to reinsurance?-- Yes.

I want to ask you - and I am going to repeat a question - it was suggested to you that your thinking might have been "can I sustain a denial", back in March. Is the existence of reinsurance relevant at all to that, or at least relevant at all to your decision-making?-- It doesn't - it doesn't enter my thought process as the guy in charge of claims. You know, the company like all insurance companies, we have reinsurance arrangements in place which are adequate to cover the events that we have. So it doesn't really matter to me whether it is coming from our pocket or reinsurer's, or whatever. My obligation is around the policy and the customers. But, you know, if it so happens that you have to call on your reinsurance arrangements as a result of decisions that you make, well, that's the way it is and that's what those arrangements are in place to provide protection for.

30

40

All right. Now, we heard again this morning that in the course of the reassessment, you notified the reinsurers of-----?-- Yes.

-----what you were doing. Did you get any push back from them?-- No, we didn't.

Thank you. Can I move-----?-- I can just probably add there that the reason - one of the reasons that you might do that is that I think - I estimated the cost of this reassessment to be in the region of \$20 million. Now, in that light we just wanted to be 100 per cent sure that our reinsurers didn't have any concerns with the decision that we were making, so as - I guess as a confirmation that they will - that they don't have any concerns and that reinsurance will apply.

50

You may not know the answer to this and it may not matter, but are you aware of any other insurer who has reassessed the Ipswich flood - the Ipswich claims?-- I am not personally aware of any other insurance company who's reviewed them.

1

Can I move from the Ipswich reassessment to a different topic, and in the course of some of the answers yesterday, I think you spoke of the presentation or the preparation and presentation of these WT reports as being an interim process. Do you recall that?-- Yes.

10

I want to take you back, if I can, to Ipswich, not so much for its content, but help me, please, if you will, explain what you mean by the interim process?-- Yes.

Do you have the Ipswich report there? The initial report, of course?-- Sorry, what page was it?

It is in your second affidavit. Exhibit 74 at page 1,660?-- Yes.

20

I hope we're on the same page. You have what is in fact the first Ipswich report?-- Yes.

And we don't need to go to the detail, I think, but at the back we see various schedules. If you go to page-----?-- Yes.

Sorry, if you go to page 1,688 we see the commencement of schedules?-- Yes.

30

If this is put on the screen, this has people's information on it. And those go on for some pages-----?-- Yes.

-----or so, and the form of the report is that it identifies claimants as being in one of a number of possible schedules, which to understand what it means you'd look at the report?-- Yes, that's right.

Is that, broadly speaking, the form in which these reports have been prepared?-- Yes, it is. There were two exceptions, Toowoomba and Upper Lockyer Valley, and the other eighteen reports were all in this format.

40

Was the exception made for those Toowoomba and Upper Lockyer because it was clear the event was a flash flood and every-----?-- The mechanism was flash flood.

Okay. Without going to the detail again, do the schedules generally fall into these categories: that some claimants are identified as claimants where the mechanism is clear and it is flash flood or stormwater?-- Yes.

50

Some the mechanism is clear that it is flood?-- Yes.

And then others, the mechanism is unclear, or there is a need for further investigation for one reason or another?-- Yes, that's right.

And they are put on a schedule which is designated for people whose claims need to be further investigated hydrologically?-- Yes, that's right.

Then if we turn to the next exhibit, Exhibit 75, do we see another report that relates to some properties within the Ipswich area?-- Yes.

And I probably don't need to dwell on the detail. Again, does this one concern the people who are in schedule A of the first report?-- Yes, it does.

10

And is the process that as further investigations are conducted, Water Technology provided further reports which made it clear whether the claimants whose claims were on the schedules identified as requiring further investigation were moved to a schedule that identified them as one where the mechanism is clear, be it flash flood and stormwater run-off on the one hand, or flood on the other?-- That's correct, and that's effectively what I was referring to yesterday when I said it was an iterative process.

20

Is it also the case, Mr Dale, that as you go along, more people were making claims, that is people who are not themselves identified on the schedules in the initial report?-- Yes, that's correct.

And are they then identified in subsequent Water Technology reports allocating them to whatever particular schedule-----?-- Yes, they are.

30

-----might be relevant? Well, can we just for the moment look at Ipswich? We have one on that page of the 14th of March, and we see that both in the body of the report itself, but in the schedule there is identification of some particular properties?-- Yes.

Can you turn to Exhibit 76? We have got another Ipswich report, where all of the information is contained in the schedules-----?-- Yes.

40

-----essentially? Is Exhibit 77 another Ipswich report?-- Yes.

And is it your recollection that in fact there are about a dozen such reports for Ipswich?-- Yeah, a dozen or more, yeah.

Of that order of things?-- Yeah.

50

I will take you through them if you like. We can all do that, I suspect. Is that what you had in mind by describing to her Honour yesterday the iterative process?-- Yes.

Now, I suppose I should ask you - Ipswich might be thought to be fairly complex - was the same process one applied across all the other regions but for Toowoomba and Upper Lockyer?--

Yes, it was.

1

With variations depending on the number of claims, and so on?-- Yes, that's right.

Thank you. Now, can I ask you then, please, some questions about another topic now, and that is the processes you applied upon making or in relation to making decisions to decline inundation claims?-- Yes.

10

Okay. Now, you deal with these in your affidavit, and I would like you to turn - that's your second affidavit - I would like you to turn it up, please. If you go to, please, page 25, paragraph 130?-- Yes.

You explain in earlier parts of your affidavit this proposition: that you would have made a decision about the causation mechanism-----?-- Yes.

-----based upon the legal advice and Water Technology reports. And then as a consequence, you provide schedules of claimants to officers under your control?-- Yes.

20

And I want to pick it up at that stage; after you've made the mechanism causation decision, and have activated whatever follows?-- Yes.

You refer in the first, that is in paragraph 130A, to a review of the claim information?-- Yes.

30

Can you explain what that means and why it is done?-- I am making a determination based on the hydrological information and legal advice on the causation of the claim. If I were to say to my claims team, "I'm making a decision on the claim", so "I'm instructing you to decline", then that would prevent them the opportunity of looking at the claim at the individual level and understanding whether there are any other considerations which they need to take on board before - or consider before making that decision to deny the claim.

40

Can you give us some examples, or not?-- Look, it may well be that the customer may have presented additional information, it may well be that - you know, there is a lot of claims and a lot of volume going around, so it may well be the claim number is wrong, or there could be a bunch of administrative sort of things around that.

Assuming that review throws anything up out of the ordinary, what happens?-- What happens is that that - you know, from that point on we've made a decision as to causation, but if there were other things that needed to be considered then, you know, they would be considered by the customer services officer and escalated to team leaders or managers as the case may be-----

50

Let's assume-----?-- -----for consideration.

Assume that's not the case here. The next thing you refer to

is consideration and preapproval of eligibility under the special fund. Is that the compassionate fund?-- Yes, it is.

1

We needn't trouble about that. Then you've got the next tempered personal contact with customer. How is that effected?-- That's effected by our people ringing the customer.

A phone call?-- Yes.

10

All right?-- Sorry.

Why did you do that and not simply send the letter?-- It is part of our standard process when we decline a claim. It is, in fact, one of the ones I introduced, where I just don't believe in sending letters to people as the way that they find out about a claims decision. So the - there was two purposes - probably a number of purposes of it. One is it is the right thing to do to talk to someone when you reach a claims decision. The second part is they might introduce new information at that particular point in the conversation which may need further consideration around that, and I guess the third part of this was that I felt it was important at the same time as delivering that information to advise the customer of their eligibility for the payment under the special fund and the stuff that went with that. So, in other words, reinforcing to them that they could still challenge the claim even if they accepted the payment, those types of things.

20

30

All right. And are these - do you know are they very quick calls or do they take time?-- They were very long calls, and they involved a lot of emotion, and we needed to be very careful through this process that we had appropriate support measures in place for our staff because they were - these were very taxing.

You say elsewhere in your affidavit that there were times when you diverted members of the dedicated response team from a particular function to some other function. Were the making of these calls, on the occasion when you did that, diverted to people from other tasks?-- Yes, it was, as was the preparation leading up to it. So the consideration of a compassionate fund payment, that's a process that in itself, by having to look at the claim, having to get that payment signed off by a team leader, that in itself would take an estimated half an hour per claim as well as part of that process.

40

All right. The next thing you say is in that initial telephone advice, you talk about the compassionate payment. I don't think I need trouble you more about that. And then you provide what you describe as a formal letter of advice to the customer, and I want to take you to that now, if I may?-- Yes.

50

Could Mr Dale be shown, please, his ninth affidavit? That's Exhibit 898 at page 190?-- Sorry, what were those numbers

again?

1

I almost certainly got some of them wrong. You should have your ninth affidavit?-- Yes.

And I want you to turn to Exhibit 17 of it at page 190. You were shown this yesterday. You may have been shown this morning?-- Yes, sorry.

Okay. Now, putting aside the variables such as the person's name and the claim numbers and their addresses, was it generally a standard form letter?-- Yes.

10

And would you turn, please, to the second page of it? It says, "If you have any queries or need more information, please call us", and you give them a number?-- Yes.

And in this case identified the customer service officer?-- Yes.

20

Were they all in that form?-- Yes.

And accompanying that letter was some information - sorry, I should have drawn your attention to this. You say, "We have enclosed a customer information sheet"-----?-- Yes.

-----which outlines the process by which they can make a complaint?-- Yes, that's right.

About your decision?-- Yes.

30

Okay. I won't bother showing you that. I take it that was a standard form as well?-- Yes, it was.

We heard yesterday that - and I am going to come back to this topic in a moment - that you did not provide initially either hydrological reports or the information sheets with this letter?-- That's right.

And it was your process initially, I take it, that if someone rang up and asked for more information, they would be sent the information sheet - assuming it was-----?-- If they were requesting hydrological information, that's what they would be sent. If they asked for copies of loss adjustor's reports, or copies of phone calls, we would send them that.

40

Okay. Well, I will just show you, if I can, still in that affidavit, if you go to exhibit 18 - you haven't been taken to this before - this is an instance where you are sending someone some information - the information sheet. Do you see that?-- Yes, it is, Mr Gourley.

50

And he identifies - and I draw your attention to the second paragraph - "We enclose a report by RACQ on the flooding which occurred in your region. The report outlines the conclusion that RACQ Insurance has reached in relation to hydrological issues relevant to the region which we have applied to your particular property and claim." Do you see that?-- Yes.

If you turn then to the next page, do we see the information sheet that this particular insured received?-- Yes.

This one happens to be Brisbane?-- Yes.

Recognising this is Brisbane and not Ipswich or Toowoomba, whatever. Let's concentrate on this one?-- Yep.

You obviously - sorry, let me start again. Were you at least in part responsible for either preparing or approving the forms of information sheet that went out?-- Yes, I was.

10

The latter? Approving or preparing?-- Preparation and approving.

With what in mind? That is, what criteria did you apply in deciding what information was to be set out in these sheets?-- Look, I wanted to give the information in a - in a - simplistic is a strong word, but in plain English I wanted to explain to the customers the fact that we'd undertaken investigations, what the results of those investigations were, and what the impact was on the application of the policy, and, in essence, provide them further information which had led to the decision to decline their claim on the basis that it was flood.

20

All right. Just looking at that one which is a Brisbane one?-- Yes.

30

Reading it now have you satisfied yourself that you achieved that; that you set out in plain English the relevant aspects of the hydrological investigation which caused you to make your decision it was flood?-- Yes, I believe I did.

Is that your belief in respect of all of these information sheets?-- Yes, it is.

All right. Now, I want to ask you a slightly different but related question. You have been asked various questions really about the practicality of personalising the phone call, the phone call that's made to the claimant, to tell them they are declined, the initial letter of decline, or the letter providing the hydrological information. Let's put to one side, for the moment, whether you give them the hydrology reports. I will come back to that. In other words, you have been asked why didn't you do it, and it would be more helpful, and so on. Can you explain, please, what your thinking at the time was?-- There was - there was a lot of pressure, as I have already discussed, in relation to the timeliness of decisions and making decisions, and, effectively, the first letter does that. The conversations leading up to it and the letter effectively confirms it in a formal sense. So that is communicating the claims decision. If in that process the - you know, I had to try and go into more detail in the letters around the particular things in relation to individual properties, then we would have gone from sort of one sort of standard letter into multitudes of letters that would have

40

50

needed to all be different. And so in my view that would have had a substantial impact on the timeliness with which we would have been able to confirm the decisions.

1

Just in your answer then you spoke about the impact if you had to personalise the letter. I also asked you about the phone call, the initial phone call?-- It would have been exactly the same thing, and the customer services officers who are talking to these insureds with the decision - remembering that I said before that those phone calls at the moment went for - you know, it wasn't uncommon for them to go over half an hour, three quarters of an hour, those sorts of time periods - I would - that just would have added again to the complexity of the whole exercise, and I wouldn't have the confidence that - you know, my staff have done a great job through this, right, but to ask them to have a conversation with a customer which gets into detailed sort of hydrological or those types of things, it is just not something that I would expect of them. It is not their area of expertise in what's a very complex area.

10

20

We saw yesterday some scripts that were prepared?-- Yes.

You were ultimately, I think you said, responsible for approving?-- Yes.

And they included, or some of them included a note about not referring to hydrology reports. Why is that?-- It is the same reason I said yesterday. When you look at the iterations of reports, you can see instances where we have multitudes of reports. So it is around - it was based on that. It is based on the fact that in the vast majority of instances, because of the nature of the reports, there isn't one report that you can go to that says, "There is the report in respect of your individual claim."

30

All right. Now, one of the things that the Code of Conduct contemplates is for catastrophes-----?-- Code of Practice?

What did I say?-- Code of Conduct, I think you said. Code of Practice?

40

Sorry, that's the one I mean, anyway. Sorry, yes, Code of Practice. That the regime which applies to business usual claims need not apply in the case of catastrophes?-- Yes.

Rather, you are to do something yourself?-- Yes.

Had you set about to personalise the calls, or the letter, or information sheet - make that sort of hypothesis - what impact would that have had upon the progress of-----?-- It would have been massive.

50

You have got to let me finish my question?-- Sorry.

I know I am ponderous, Mr Dale. What impact would that have had on your company's progress of your dealing with the claims that have been made?-- It would have been massive. It would



have completely slowed - well, a process which was already a very long one and which was - which was already - you know, the customers had waited for decisions for considerable periods of time because of the nature of the investigations that we had to undertake. I made those decisions - you know, those types of decisions around scripting and the format of the letters and those sorts of things in the context of, you know, unprecedented events, and, you know, I had to be very conscious of communicating well with our customers, but also doing so, you know, as efficiently and effectively as we could in the context of these events that were going on.

1

10

All right. Now, can I move to a related topic of the release of the hydrology reports? We can look at any one of them for these purposes-----

COMMISSIONER: Actually before you do that, shall we take a morning break and come back at quarter to?

MR DOYLE: Thank you.

20

THE COMMISSION ADJOURNED AT 11.29 A.M.

30

40

50

THE COMMISSION RESUMED AT 11.45 A.M.

1

COMMISSIONER: Yes, Mr Doyle?

MR DOYLE: Thank you. I want to move now to the topic concerning the release of the hydrology reports?-- Yes.

We heard yesterday your evidence that they were, you believed, subject to legal professional privilege?-- Yes.

10

Is that the case?-- Yes.

All right. Have you or did you prior to their ultimate release consider whether the Code of Practice or the Terms of Reference themselves required the release of this kind of data, even if privileged?-- Yes, I did.

And what view did you come to?-- I came to the view that they were not required to be released under the terms of the Code of Practice.

20

Very good. Can I ask - or the Terms of Reference?-- Or the Terms of Reference.

I will show you the Code of Practice, please. It's Exhibit 587. I will ask you to start, please, in part 3, albeit that's a section that is displaced if required for catastrophes, but can you tell us, please, if there's anything in that part that you rely upon for the view you have just expressed?-- Under 3.4.3 it talks about customers having access to information upon which we've relied upon and it further talks about, "In special circumstances we may decline to release information or reports but we will do not so unreasonable." There's a footnote down the bottom that says that, "Such as where information is subject to privacy laws or where information is protected from disclosure by law."

30

And is that the part you have in mind?-- Yes.

40

Thank you. If you turn, then, to part 4, which is concerned with catastrophes. There's nothing - I will tell you there's nothing particular in there. You know that, Mr Dale?-- Yes.

If you turn then to part 6, that's page 11, which is headed, "Complaints Handling Procedures."?-- Yes.

There's a similar reference to the one you have just referred us to?-- Yes.

50

6.1.4?-- Yes, there is.

Now, are those the things you had in mind?-- Yes.

Thank you. And the Terms of Reference, which I won't for the moment trouble taking you to, are concerned with complaints which become elevated to a complaint to FOS?-- Yes.

And the Terms of Reference govern the provision of information and so on for FOS to make decisions about things?-- Yes, they do, amongst a number of other things.

Of course?-- Yes.

Many other things. Now, I want to show you, please, a letter which is in Mr Heath's second affidavit, which is Exhibit 900, and it's Exhibit 3 of that affidavit, page 65?-- Yes.

10

We may have gone to this - that is you may have been taken to this before - but you will see it's a letter date the 15th of June 2011 to your lawyers from Mr Price, the general insurance ombudsman?-- Yes, it is.

And it refers to some letters he'd received from your lawyers, dated in May and June?-- Yes.

And I will tell you that they contain assertions that these documents were privileged, the hydrology reports were privileged-----?-- Yes.

20

-----with reasons given. That's the sort of context of it?-- Yes.

Do you recall if you read this letter roughly around the 15th of June or thereabouts?-- Yes, I know that I did.

Can you I draw your attention, please, to the top of the second page?-- Yes.

30

Where it says, "FOS accepts that its Terms of Reference cannot compel a party to disclose information to either FOS or the other party if it is protected by LPP.", which I think we can all infer is - in fact, it tells us on the first page - legal professional privilege?-- Yes.

And at least at the time of receipt of that letter, was that your understanding, that FOS accepted that its Terms of Reference could not compel-----?-- Yes, it was.

40

-----production of privileged documents?-- Yes, it was.

Now, there were at that time complaints or disputes on foot between insureds and RACQI before FOS, that is being considered by FOS?-- Yes.

In connection with those disputes, at least if they concerned hydrological issues, were you providing hydrological evidence to the ombudsman?-- Yes, we were.

50

And I want to show you, and it's convenient to do it first in that affidavit, to one at page 238. It's part of Exhibit 4 to that affidavit?-- Yes.

And the name of the applicant's been deleted. I don't think it matters for these purposes. Do we see there an affidavit

or a statement, sorry, of Mr Clarke?-- Yes, we do.

1

Is he the director of Water Technology who was responsible for your hydrological reports?-- Yes, he is.

And he sets out at some length in this document evidence in support of your position in relation to the particular dispute that was the subject of the complaint to FOS?-- Yes, he does.

Have you done that in relation to other complaints before FOS which involve hydrological issues?-- That has been part of the standard process to provide a statement like that in relation to every one of those.

10

Thank you. We notice, if you would be so kind as to look to the last page of the affidavit, that it's sworn on the 27th of June and no doubt provided, you tell me, to FOS?-- Yes.

Thank you. And just for completeness, I wanted to show you one other. I will do it on the screen to save you pulling a document out?-- Yes.

20

It's Mr Dale's ninth affidavit, which is Exhibit 898. You may even have the ninth affidavit, with you, Mr Dale?-- I don't have the exhibits to it.

Okay. Don't worry about it. I would like to go to Exhibit 35 of that to page 414?-- Yes.

Right. We have a similar kind of statement by Mr Clarke in relation to, in this case, the dispute by Mr Gourley?-- Yes.

30

All right. Just excuse me. And do you know where Mr Gourley's property is? Is it Jindalee?-- Yeah, it's in Jindalee.

This relates to the Brisbane aspects of the hydrological investigation?-- Yes, it does.

All right. Thank you. Now, that one, though, you will see is dated more recently, in September?-- Yes.

40

You had a meeting, I think you told us, with Mr Price-----?-- Yes, I did.

-----in early July?-- Yes.

Did you make notes of that meeting?-- Yes, I did.

I will show you those. They're in Mr Heath's affidavit, Exhibit 900 at page 88. That doesn't look like them. I'm sorry, I might be at cross-purposes. Is that page 88 of the exhibits? I am at cross-purposes. Just excuse me. Mr Heath's second affidavit. Sorry. That's it. Now, are they your notes or the notes you made of that meeting?-- Yes, they are.

50

Thank you. And it's a meeting attended by yourself, Mr Heath

and Mr Price?-- Yes, it is.

1

And was there a discussion about whether or not RACQ should publicly release the hydrological reports it had obtained?-- Yes, that was the purpose of the meeting.

Thank you. And did you - did Mr Price express a view about that?-- He was adamant, as I say in my notes, that there must be - the full hydrological reports must be released as a fundamental principle.

10

Did you tell him in that meeting that you took the view they were privileged?-- Yes, I did.

And what was his response to that?-- His response to that was that RACQ Insurance could take that stance should it wish to. However, if we took that stance then, in essence, the Financial Ombudsman Service would assume that we weren't releasing the reports because information in those reports would be prejudicial to our position and they would find adversely against us.

20

Did you discuss with Mr Price whether it was sufficient for the purposes of the disputes before FOS to rely upon the kinds of statements of Mr Clarke that we have just taken the Commission to?-- We had already provided a number of statements in the form that we referred to before to the FOS as part of our submissions and Mr Price reinforced that - that he required us to release the full hydrological reports and, as I say in my notes there, his explanation of that was that the FOS couldn't be sure that the affidavits that we were providing were independent and not a hired gun report which had been prepared without independence.

30

Right. Did you discuss with him whether the author of the statement was the same person as the author of the reports?-- Yes, I believe we did.

Right. Thank you. I just want to direct your attention to, I think, the passage that we have just been referring to. On page 89, the fifth dot point, is that the reference that you just made to-----?-- Yes, it is.

40

All right?-- Yes, it is.

Now, her Honour, I think, asked you yesterday - suggested to you - that, in effect, Mr Price was saying to you something like this, "Show us your evidence or we will assume you don't have any."?-- Yes.

50

Do you recall that being asked?-- Yes, I do.

And is it the case in respect of - at least to that point, that is the 4th of July - in respect of all of the disputes that have been made to FOS where hydrology was an issue, you had been providing evidence in the form of a statement signed by the director of Water Technology?-- Yes, we were.

But should we infer Mr Price was insisting you do something beyond that?-- He was insistent that we release the full hydrology reports.

1

In the course of this meeting, did he identify any provision of the Code or the Terms of Reference which entitled him to require that if they were privileged?-- No, he did not.

Thank you. What did you do after that meeting in relation to the release of the hydrological reports?-- We released them.

10

Right. And how did you go about doing that? Sorry, did you release them to lawyers, to FOS, what-----?-- Yeah, we released them to - we released them to the FOS, we basically just bundled them all up together, put them on discs and released them to them, and then we went through a process of identifying - there was some legal providers who at that stage weren't representing people across all of the regions, so we had to go through a process of identifying which regional reports and information and iterations of the reports they needed to get, so we had to go through that process, and effectively - the effect of that was to provide legally represented - to those legal representatives, sorry, the reports that related to their clients.

20

Right. What did you provide to the ombudsman?-- We provided the ombudsman with all of our reports.

All right. Now, we have seen in respect of Ipswich there was an initial report and then a series of supplementary reports, I suppose it's fair to describe them as?-- Yes.

30

Further iterations. Were all those provided to FOS?-- Yes, they were. I am - just don't know whether the 14 June report has been provided, I just can't recall that, but certainly up to that point they were, and also when the Ipswich reassessment decision was made I corresponded directly with the ombudsman to let them know this process was happening.

That is the second Ipswich report?-- Yes.

40

Thank you?-- The one of the 14th of June.

Now, I will come back to some of that later, I think, but I want to ask you this: I asked you earlier about the practicality in the course of dealing with notifying insureds their claim had been declined of providing a personalised letter and a phone call and so on?-- Yes.

I want to ask you, assume for the moment that you waived privilege, assume for the moment-----?-- Yes.

50

-----that you waived privilege. What would be practically involved in providing the insureds with the hydrological reports that related to them in the course of the assessment of your claim and in dealing with the declining of the claim?-- It would be - be a massive task. If you take, I think, for example, Mr Sharp, who I have provided an affidavit

in respect of, his property starts in Ipswich, there's a number of iterations of the Ipswich report in which his property features, then he moves to middle Brisbane, and there's a number of schedules and updates where his property features again, and in order to provide, you know, that customer with the information - if the requirement is to provide them with all - you know hydrological reports, then effectively you have to tell them the end to end story through all of those reports and iterations as they go through, and you would also have to redact those reports for information which isn't relevant to that customer, and you would have to do that on individual customer by customer basis.

1

10

Just with Mr Sharp, and I will take you to his actual reports in a moment, one of his complaints was delay, you might recall, and I think you say in your affidavit that a good part of the explanation for the time it took to resolve this claim was the need to obtain hydrological information?-- Yes.

So, that would it be right to say that to provide, if you were, information to him in the form of these reports which not only told him what was being done but the time it was being done, you would need to provide him with each of these iterations?-- Yes, it is.

20

Can you go, please, in your second affidavit to the first Ipswich report, which is Exhibit 74, page 169?-- Yes.

I will just wait until it's on the screen. Do we see at the very top of that page the reference you have to Mr Sharp?-- Yes, we do.

30

One of these schedules?-- Yes.

Now, we will come back to it later, but it's on a schedule which suggests there's a need for further hydrological investigation?-- Schedule B, that's right.

You can assume that for all of the schedules I take you to except for the last one where it's resolved. Next can we go to page 1718 and at about .8 of the page we have Mr Sharp again?-- Seven or eight from the bottom, yes.

40

And that, I will tell you, is a report of the 20th of March. I will tell you that. You can accept that from me, Mr Dale?-- Yes.

Next is a report of the 29th of March, which was at page 147 - sorry, 1740?-- Yes.

50

About .7 of the page he's there again?-- Yes.

Still on the schedule requiring further investigation?-- Yes.

Next is a report of the 6th of April, page 1788 - sorry, it might be 1758. It is, 1758?-- Yes.

Still Mr Sharp. It might be sufficient if I just read these

out. I am sure you are familiar with them?-- Yes, I am.

1

14th of April, he's there on page 1798 - sorry, 1778; 19th of April, page 1797; another 19th of April, page 1813; the 4th of May, page 1998; the 11th of May, page 2004; and then finally the 19th of May?-- Yes.

Now, if you were to provide - he might be in a sense one of the more extreme ones, I don't know, but there would be many, you'd understand, which - in respect of which there would be multiple iterations of reports which affect them?-- Yes, I think from memory there was something like a thousand properties on Schedule Bs and what have you through the reports, so a lot.

10

All right. Well, again, I want your comment, please, on the impact it would have had on the ability of RACQ Insurance to deal with claims in a timely, efficient, professional and compassionate way - that's the test that we're told we're to address - if they were to provide to the insureds redacted forms of all these hydrological information, excluding other people's entries, but just dealing with their own?-- Well, the time commitment would have been massive. Just looking at something - if I take Mr Sharp as an example, my estimate of how long it would take to review all of the reports, ascertain which was ones he was in, make sure he had the information right, redact it, you know, that looks to me like a - a couple of hours work and multiply that by at least - and multiply that by large numbers of clients, because you'd have to do it individually for every client, the time would have been massive, as would the - with that would come a capacity for error, I would think.

20

30

You mean human error?-- Yes.

Right?-- In the process.

Thanks. Now, we will use Mr Sharp there as an example. We will see a multiple number of reports and we need to go to the detail, but in each case WT was saying to you further investigation is required of people in various schedules?-- Yes.

40

What instructions did you give in relation to doing that?-- Whenever a further investigation was required, they were always instructed to do it.

Right?-- And it wasn't - it wasn't necessarily in every individual case that we gave them a specific instruction, it was - it was the process that we were going through, so naturally if something was on Schedule B and was unresolved at that point, it needed to progress through the schedules into a resolution.

50

For what purpose?-- In order to make the right claims decision and get it right for our customers.

All right. Thank you. Now, I want to ask you now some



particular things about particular claimants who have provided information to the Commission and for some you may need to go to your affidavit, and I will take you to them. There's one, Mr Byron, you might recall, who was paid, I will remind you, Mr Dale. He received a cash payment instead of you performing the work that is-----?-- That's right.

1

Do you remember that?-- Yes, I do.

Okay. I take it that kind of thing is not unknown?-- No, it's not unknown, it's our preference to - I don't believe that when people buy a home insurance policy and their house is damaged that what they're really - they're - what they're really buying is, "Well, here's a cheque and off you go, do with it what you will." For the majority of people they are looking for us to manage along with them the reinstatement process of bringing them back to normality, getting their house back in order. It isn't unusual, though, for clients to - sorry, for customers to request cash settlements, and where they do, after we have discussed through them - the advantages and disadvantages of that generally, you know, we will - we will provide them with a cash settlement, because that's the customer preference.

10

20

All right. Well, you may have answered. What is RACQ's preferred possession?-- RACQ's preferred position is very much to get the rebuilding work done for the customer.

All right. Do you give-----?-- To facilitate that.

30

Is there a practice of giving them advice to that effect?-- Yes, there is.

Next I want to take you to something that Mr Sharp has said. We have just been to some of his reports. His was a claim which we have seen was in respect of a property at Fernvale. Do you recall that?-- Yes, I do.

And ultimately declined?-- Yes.

40

He gave some evidence which I have asked you to read previously, you know?-- Yes.

I want you to go to it again, please. It's in the transcript at page 4167. It starts at 4166. I'm not sure, Madam Commissioner, whether you will have that available to you.

COMMISSIONER: I will in just a moment. I am not sure if it can be brought up on the screen.

50

MR DOYLE: I can make copies available.

COMMISSIONER: I'm sorry, you said 4167?

MR DOYLE: Then I went back to 4166.

COMMISSIONER: And the date was?

MR DOYLE: Day 48, the 18th of October.

COMMISSIONER: Thank you.

MR DOYLE: The passage I asked you to read commences at line 45, "Now, if we can go to paragraphs 11 and 12?", and I want you to read across to page 13 (sic) on the next page. The proposition I want you to deal with is really his scepticism, if you like, that he's saying to himself at least, "Well, did they get a hydrologist's report in that sort of didn't go their way and now they're trying to get another one." See that?-- Yep.

10

Do you have a comment about that?-- It is just - it's just so far from the truth. We were - you know, I would have loved to have given customers decisions earlier. I did everything I could to try and expedite that process, but, you know, we - the reason that it took time was we needed to make the right decisions and if you look at his property, you know, in Fernvale, the reality was - and even when we - when we got it into the Fernvale schedule, in Fernvale there was a flash flood in the morning, there was a flood in the afternoon, and some properties in the Fernvale were affected by both, some were only affected by the floods, some were affected by flash floods, so it was complex, and you know I - we need to get the decisions right. So, that's the driver. I am not sitting in my office, sitting there going, "Well, how do I decline claims?", or looking for some sort of report that suggests, you know, that I can. That's not - that's not what we're about.

20

30

40

50

COMMISSIONER: But, Mr Dale, you might be missing the point a bit, because Mr Sharp's complaint seemed to be one of communication. Somebody had said to him, "There's a hydrologist's report.", and then they said, "We haven't got the hydrologist's report.", and that's more or less what happened, except it became fairly clear that there were hydrologists' reports in existence but more precise material presumably was being got?-- Yes.

10

So his issue was more about it just not being made clear to him what was going on, I think?-- I accept that that was a - you know, from my review of this statement and the transcripts and other bits and pieces, I certainly accept that communication was an issue, and I've already acknowledged in my affidavit that I would like to do better in terms of communication, so I accept that as an issue and I think-----

Well, what can you do about it with your call operators to make sure at least at claims manager level you'd think that they'd be able to explain a bit better that - well, it makes it hard for them, doesn't it, if you keep saying, "Don't mention the hydrology reports."? Clearly somebody did here?-- Look, I think that's - you know, that's part of what we're reviewing at the moment to understand. It's gathering the feedback, understanding, yeah, our communication with our customers could have been stronger, and that's something we'll work hard to do to get better in the future. This was an unprecedented event for us and it put an awful lot of pressure on us in terms of our management of it.

20

30

Yes.

MR DOYLE: I won't revisit Mr Sharp's evidence about what he was told, but I do want to raise one of the things with you that he did talk about - and he's not the only one - the suggestion that when they ring up, they can't always get through to the same person - you know Mr X - Tez - or whatever it might be?-- Yes.

40

And it might be said that's a deficiency in your processes. Do you have a comment about that? Now, if you need to go to Mr Sharp's instance to example it, please do so, but otherwise-----?-- No, I don't need to. Look, over my 30 years experience in the industry, I've seen a lot of different operating models in relation to providing customer and claims service. A lot of that is dictated to - you know, by your brand and your systems and other bits and pieces. Generally, the best one, from my point of view, is that when the customer rings up, what they want is they want to talk to somebody who knows what they're talking about and they generally want an answer to their question at that time, and, you know, we have systems and processes in place which are really about - we have one view of the claim and one central computer system so any of our staff can see that at that particular point in time, and we believe it is better for the customer to be given an answer if they can and it is better for - if they ring up with an inquiry, rather than continually try to get hold of

50

somebody who might be on leave, at the toilet, on a lunch break, on an afternoon tea break, whatever that may be - it is better for the customer and more efficient for us to drive a process which tries to see the person who answers the phone within that team providing the answer to the insured.

1

All right. Now, again, one of the things that I think Mr Sharp and some others have commented upon is the time it takes to get through?-- Yes.

10

You know, waiting time, if I can put it that way?-- Yes.

Do you have any help you can give us as to what, in fact, were the waiting times-----?-- Yeah.

-----on average, and what, if anything, you can do about it?-- Yeah. Look, we - I think in January, from memory, it might have been 220 seconds to answer the phone in our teleclaims department, 246 in February. We got it down to 136 seconds in March, and from April through to October, it's been within our targeted level, which is to answer the calls within 60 seconds. We did have - our normal call volume into there is 35,000 calls a month. That's what it was in 2010.

20

In January, we had 60,000 calls into there and, in February - you know, that's the month when the Cyclone Yasi happened as well, we had 70,000 calls into there. Now, those levels are just totally unprecedented in our history, and what we have done is - you know, we do the RACQ - the Club helps us with, you know, the engagement of - we teach staff so that they're able to help us with the insurance inquiries and we moved staff over into there to help support that process. We had 30 of those people in response to those events. We've increased that number to 40. We have forward recruited again in relation to this summer storm season coming up, and I'm also looking at whether there are any outsourcing type opportunities that we might be able to take advantage of.

30

Now, the times you gave us of numbers of seconds-----?-- Yes.

-----are they averages?-- Yes, sorry, I should have made that clear. Those are the average speeds of answer.

40

On a day or a month?-- On a month.

So, it's obvious you'd accept that there would be higher and lower figures throughout the-----?-- Yes, I would do.

And is it right during the day that there would be busier times than others?-- Yeah, there's peaks during the day.

50

Thank you. Now, I wanted to take you next - only briefly - to some aspects of - sorry, before I leave Mr Sharp, you'll recall that in his evidence and his statement he expressed some concern about - my words, not his - about a discriminatory process because someone else in the adjoining street had originally been told they were declined and then that was reversed, whereas his decision was not reversed. I can name the street if it helps you?-- Nardoo Street.

Nardoo Street. That's the one. And you've investigated whether that's so or not?-- Yes, I have.

And?-- And there's one claim in Nardoo Street which was accepted after all of the investigations that we undertook because the cause was determined as flash flood.

Was there an occasion when it was declined and then accepted?-- No.

10

Next I want to take you to this affidavit you provided in response to some concerns by people called Cameron, which is exhibit - sorry, it's your 7th affidavit, Exhibit 897.

COMMISSIONER: You don't need to worry about the exhibit numbers, really, Mr Doyle. If you tell us which number affidavit, that will do, thanks.

WITNESS: Yes.

20

MR DOYLE: Do you have that? I want you to go to paragraph 46, please, where you advert to the claim being declined because it was flood and then you give some background to that?-- Yes, I do.

And I'll paraphrase some of the background until we get to the part I want to ask about, if I can?-- Yes.

Were these peoples' homes in Goodna?-- Yes, it is.

30

Which was the subject of reporting in the Water Technology Ipswich Region Report?-- Yes.

And initially their property was identified in a schedule which said there needed to be some further investigations as to whether they were affected by stormwater run-off?-- Yes.

They conducted some further investigation, and they provided you with a report of the 14th of March, which concluded that it was unlikely they were inundated by stormwater run off?-- Yes, that's right.

40

But rather they were likely to be flood?-- Yes.

And that report excepted from that view four other properties in the same street as the Camerons?-- Yes, it did.

Now, you've received that report, you tell us, on the 15th of March, and what I want to ask you about is what you say in paragraph 51 - what you then did?-- We went through our internal claim records for claims in the area to ascertain whether there was any suggestion from customer information or the loss adjustor reports or anything else we had on our records which suggested that there might be stormwater run-off.

50

Yes. And did what?-- We referred it back to Water Technology

for further investigation.

1

So, is this an - I think we - you were asked yesterday about instances where you - I'll misuse the word - were proactive and referred something to WT for them to conduct an investigation, even if their own report suggested their investigation had been concluded for that property. Is this one of those?-- Yes, that's one of those.

Okay. And did you ask them to carry out further investigation?-- Yes, I did.

10

And they did?-- Yes.

With the result that you got a report on the 6th of April confirming that it was - the mechanism was not one covered by the policy?-- That's right.

And in your affidavit you refer to - I think you use the expression an "audit"-----?-- Yes.

20

-----being conducted by RACQ Insurance in relation to things which may lead you to referring something back to Water Technology?-- Yes.

Can you explain, please, what that means - what you did?-- One of my information support people, I got them to - they were constantly reviewing records to make sure that there weren't claims that we had missed through - because the process was still subject to some human error if the loss adjustor got it wrong or failed to lodge a report or something like that - that was still subject to that - so I was having them review our internal records for completeness, and also if they identified things where, you know, they felt that further - you know, there was further evidence of something else which the hydrologists needed to look at more closely, then we would refer those as well.

30

MS WILSON: All right. Thank you. Just excuse me, please. I won't worry about that one. There's been a suggestion, I think, made by Mr Sharp and maybe one or two others of at least some of your staff - I'll put it neutrally - not being as helpful as they could have; that is, being impatient, or that kind of thing; is that right?-- The staff - I think I alluded to it earlier - we moved our underwriting area away to a different site and, effectively, the dedicated event response team was established on the same floor as me. So, I was amongst them every day and I had meetings with my team, as I say, every second day as well - with my operational managers. I couldn't be more proud of the staff, of the job my staff have done. They faced some very difficult circumstances and, you know, from a mixture of my own personal observations of what I saw on the floor and, you know, the information that I was getting from my team leaders and my managers and what have you, I believe under difficult circumstances our staff did the very best job they could, and, you know, in difficult circumstances, they held their composure and they - from my observations and those that are

40

50

available to me - they were courteous and friendly and tried to be helpful, although sometimes that was difficult for them because they didn't have the hydrology outcomes. They tried to be helpful.

1

Very good. Now, I know there were - sorry, I will start again. The floods that we're talking about of December/January - and no doubt there were times when things became busier than others-----?-- Yes.

10

-----in terms of your management of claims and making decisions and notifying people and so on - was the period from - in March and April - a quiet time, or as quiet as can be, or a busy time?-- It was a very busy time. At that point, we were getting a lot of hydrology outcomes back and that meant a lot of communication with customers and a lot of the processes that had to be done to support things like the payments we were making to them.

Our learned friend Mr Dunning sort of quizzed you about the delay between when Council, in early April, told you they would release something to you, and when you said, "Yes, please.", five weeks later or thereabouts?-- Yeah.

20

Can you explain why that is - why that took place?-- Look, I believe in that timeframe Water Technology delivered to us 15 or 16 reports during that period, and it was just an incredibly busy time and our focus was very much on understanding those reports and making claims decisions and communicating those to our customers.

30

All right. Now, the press release to which you referred talks of you acting as soon as possible, and I think it is fair to say he wanted to challenge you that wasn't so, because you had this period of delay at least when you didn't ask for the report. Was the - were the other things which were occurring such as to inhibit your doing anything with respect to the Brisbane City Council offer of information?-- It was an extremely busy time for us.

40

Okay. I want to ask just one more thing about that: someone - I think it is either you or Mr Heath - said that when the Brisbane City Council version of MIKE-11 was obtained, it contained something of a surprise. Do you recall that?-- Yes.

What was it?-- I know personally I was surprised, because I sort of expected the information, as I understood it that we were looking for, would most likely be in the Ipswich sort of area, so I think there was a pleasant surprise when, in fact, we got the information from the Brisbane City Council that included that.

50

The "that" being, what, the details of the Bremer catchment?-- Yes.

I see. Thank you. Just excuse me. Thank you. I have nothing further.

COMMISSIONER: Ms Mellifont, any re-examination?

MS MELLIFONT: Briefly, please. I just need you to compare two documents and help me to understand how they interrelate. If we can have up on the screen, please, Exhibit 23 to your second affidavit, and if Mr Russo could provide you, please, with Exhibit 2 to Mr Heath's affidavit, Exhibit 824. I ask this just to clarify an answer in response to my learned friend, Mr Doyle, that you couldn't discern from the table at Exhibit 23 to your second affidavit - which dates applied to the Ipswich claims, which were the subject of the reassessment - can you tell me how the column "Date Causation Decisions Made" - sorry, how that column relates to the dates in Exhibit 2 to Mr Heath's statement, the column "Original Decision Date"? How do they interrelate? And if we could go down to the Ipswich page on the screen, please?-- I haven't checked through them all, but I believe that the attachment in Mr Heath's affidavit - the original decision date - would be the date at the individual claim level that corresponds to this table.

10

20

Right. So, there's not necessarily a direct correlation between the "Original Decision Date" column in Mr Heath's statement and your "Date Causation Decisions Made" column?-- Sorry, you're asking me - you're suggesting there isn't or are you asking me whether-----

30

Whether there is-----?-- -----whether they are directly related?

Are they directly related?-- Yeah, I believe that they are.

So, they should match?-- Well, I haven't looked through all 247, but looking at a quick glance, the dates that I'm seeing popping out on the right-hand column of Mr Heath's table are sort of corresponding with the dates that I'm seeing on the screen.

40

Right. So you expect them to match, subject to human error?-- Yeah, yep.

All right. Can I just take you to the 11th of July entry in the document which is up on the screen? You see there's 248 accepted and then minus 248 declined. Is that sort of a reconciliation of the earlier declines?-- What that's doing is it was felt important to the context of the document to show the original decisions, if you like - so, the time taken to reach those - and, effectively, you will see that the 11th of July is the date that the report was received by me for the Ipswich reassessment, the 2nd of August is the date that we announced the decisions, and the 248, minus 248 is effectively correcting the numbers above. It's - does that make sense?

50

Yes, and the 248 is because there was actually 247, but one of the properties was doubled up?-- One was a duplicate as it



turned out, yes.

1

And just a couple more questions: in answer to some questions from Mr Dunning, you spoke of being under pressure to make the decision in Ipswich. Can I take you, please, to your sixth affidavit, paragraph 87 - 86 and 87. It's up on the screen. Give yourself a moment to read those two paragraphs?-- Sorry, 86 and 87?

Yes?-- Yes.

10

So, you see on 22 March 2011 you decided to stop processing decisions to decline claims in respect of properties at One Mile and Churchill so as to allow further hydrological investigations to be carried out. Can I ask you why you were prepared to defer One Mile and Churchill decisions but not other parts of Ipswich?-- What effectively happened was that the hydrologists went - as it states there - went and looked at - we already had a report that said "decline these claims", and the hydrologist went and looked at - we had just been given that, from memory, a couple of days before - one day before - and the hydrologist then went and looked at this property at 67 Old Toowoomba Road and saw some things which caused him some concern, obviously, and he then communicated, "Look, you'd better hold fire on One Mile and Ipswich because" - I'm assuming that's because of something that he saw at this property, and effectively we did that, and-----

20

And was that-----?-- Sorry, so that was the advice that I had at that time. It wasn't "halt all of Ipswich", it was "halt One Mile and Churchill because of something that I've seen at this particular property".

30

And was the further investigations that the hydrologists identified as being required ones that could be done by the hydrologist based on information accessible to the hydrologist or did he have to wait for the BCC material?-- I'm not sure whether he had to wait or not. I know that, as it turned out, I believe he used the information in that model to help determinations at One Mile and Churchill.

40

Well, do you know whether the MIKE-11 data was data they wanted to have for One Mile and Churchill?-- I don't know.

In your answers to my learned friend Mr Doyle, you spoke of the immense pressure that you were under at the time of the Ipswich decision and you mentioned in that context adverse comments about insurers being made publicly by Mayor Pisasale. Are we to understand from that answer that the pressure of such public comments in the media caused you to make the decision to decline claims in Ipswich earlier than you otherwise would have?-- No, we're not.

50

Why mention it in that context?-- I was trying to reenforce the environment within which we were working.

Why? Why in the context of a decision to decline at that point in time rather than wait? Why mention it in that

context?-- Because that's the environment we were working in.

1

But if you say there's no connection between your decision to decline at that point in time and that climate, why connect the two?-- There was tremendous pressure to make decisions, all right - to communicate those decisions to customers.

Yes?-- If I'd been faced with a scenario where I wasn't comfortable with - that I had a report with reasonable conclusions, I wouldn't have reached a decision to decline those claims, but I was comfortable with the report that I had, but there was - I was just saying, the environment was one of intense pressure.

10

Well, without those public comments being made, might you have waited longer?-- No.

I have nothing further. Thank you.

COMMISSIONER: All right. Do you want Mr Dale excused?

20

MS MELLIFONT: Yes, please.

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

WITNESS EXCUSED

30

MR DOYLE: Thank you, your Honour.

COMMISSIONER: Thanks, Mr Doyle. Yes, Ms Kefford?

MS KEFFORD: Your Honour, the next witness is Nicholas White. I call Nicholas John White.

40

50

NICHOLAS JOHN WHITE, SWORN AND EXAMINED:

MS KEFFORD: You may have a seat, Mr White. Is your full name Nicholas John White?-- It is.

And you live at 28 Hume Street, Woodend?-- I do.

10

You have prepared a statement for the Queensland Floods Commission of Inquiry, and can I ask you to have a look at a copy of this document, please? Is that a copy of your statement?-- Yes.

I tender that document.

COMMISSIONER: Exhibit 904.

20

ADMITTED AND MARKED "EXHIBIT 904"

MS KEFFORD: Now, in your statement you make reference to a number of pieces of correspondence, and I've been provided with two other pieces of correspondence that appear to relate to similar issues. I'll just ask you to be shown those other letters. One is a letter from the Minister for Finance and Arts - sorry, from the Premier of Queensland to the Minister for Finance and Arts dated the 12th of April 2011, and the other is a letter from the Office of the Premier to yourself dated the 7th of September 2011. Have you seen those documents before?-- Yes, I have.

30

And do they relate to the matters you deal with in your statement?-- They do.

I tender a copy of those documents.

40

COMMISSIONER: Exhibit 905.

ADMITTED AND MARKED "EXHIBIT 905"

MS KEFFORD: Now, your house is located - where you reside is located on the western bank of the Bremer River?-- That's correct.

50

And your property was inundated during the 2011 floods, was it?-- The property was. The house wasn't itself.

And, in your statement, you raise concerns with the development that is occurring on the other side of the Bremer

River - that is, the eastern side?-- That's correct.

1

And, in particular, it's the development that's occurring on the Old North Ipswich Railway Yards?-- Yes.

Madam Commissioner, there have been two statements prepared by Ipswich City Council officers that respond to Mr White's statement with respect to the Riverlink development. If I might, at this stage, tender each of those? First is the statement of Brett Davey dated the 26th of October 2011, and he is the Development Team Coordinator, West Team, from Ipswich City Council.

10

COMMISSIONER: Exhibit 906.

ADMITTED AND MARKED "EXHIBIT 906"

20

MS KEFFORD: And the second is a statement of Gary Stephen Ellis dated 25 October 2011 and he is the Engineering and Environment Manager of Ipswich City Council.

COMMISSIONER: Exhibit 907.

ADMITTED AND MARKED "EXHIBIT 907"

30

MS KEFFORD: Now, if I could just show you, Mr White, a copy of a Disaster-Affected Properties Map produced by the Queensland Reconstruction Authority, and ask you to identify - have a look at this map and identify a number of features of it. Firstly, do you see on the map where there is a small area marked - ringed in black with the initials "NW" nearby?-- I do.

40

And does that mark the location of the property where you live?-- That's correct.

50

On the other side of the river there is a property that's ringed and marked with the letters RLSC. What is that?-- That's the current Riverlinks Shopping Centre development.

And in terms of the land on the other side of the Bremer River about which you express concern, is it then the balance of the Riverlinks development that's marked with the numbers 53, 54, 55, as well as 51 and 52?-- Yes, it is.

I tender that map.

COMMISSIONER: Exhibit 908.

ADMITTED AND MARKED "EXHIBIT 908"

MS KEFFORD: In your statement you express a number of concerns about the development that's occurring on that land known as the Riverlink development? You have to-----?-- Yes

Yes. And you attach a number of documents that are related - that also express concerns that you hold?-- That's right.

If I could just clarify a few matters with respect to your statement? At paragraph 7 of your statement you explain that you received a copy of the flood study, and that is attachment 5 to your statement?-- That's correct.

And in paragraph 8 you identify a number of areas where you think the flood study is deficient?-- That's correct.

Those deficiencies that you refer to in paragraph 8, are they the same concerns that you are referring to in paragraph 18 of your statement where, about halfway through the paragraph you talk about a Cardno flood study which you believe is flawed, inappropriate modelling tools?-- There were two Cardno studies, one was a macro study that was based more on the flow of the Bremer River itself. The other study was to do with storm run-off from lot 55. That particular storm run-off comes through a large duct that is actually directed at our property from the other side of the river, that is the eastern side of the river.

So in terms of paragraph 18, are the concerns that you have about the adequacy different to those expressed at paragraph 8?-- I think I am attempting to include both of those concerns, the scouring from the stormwater and the reprofiling of the riverbank which has to do with lot 54.

So the extent of your concerns are set out there in paragraph 18?-- Indeed.

At paragraph 10 of your statement you refer to an operational works application that was approved by council and you attach

a copy of that. Now, that approval authorised filling of land on lot 54, is that correct?-- Correct.

1

And the filling allowed a platform to be created some 19 and a half metres above the river height?-- That's right.

Now, if I could take you to attachment 1 to your statement which contains some photographs showing the eastern side of the Bremer River, is that correct?-- Attachment 1?

10

In just a moment it should come up on the screen in front of you?-- Yes, thank you.

Could you just explain those photographs to us?-- These are fairly old photographs taken of the development site back when the railways workshop was a going concern. I think probably late 80s, early 90s. Those are a series of shots of the entire bank from lot 54, almost down to the Riverlink Shopping Centre.

20

And have you seen more recent photographs of the same area, ones that were taken by police employed by the Flood Commission?-- Indeed, yes, I have seen those.

If I could show you a copy of this photograph, please?-- Thank you. Yes, that's almost the current situation. The build-up's actually been slightly more in the last couple of days.

I will just wait a moment and then the relevant photograph will be on the screen. Perhaps if I could tender a copy of that photograph?

30

COMMISSIONER: By all means. Exhibit 909.

ADMITTED AND MARKED "EXHIBIT 909"

40

MS KEFFORD: And so if you could just explain to us, now that it is on the screen and others can see it, can you just explain to us the fill - is that the area of brown that can be seen-----?-- That's correct. The brown material is capping which has been one from the site. It is a clayish kind of capping. Below the clay capping is the contamination from the ex-Queensland Railway site, and the old gasometers that were stockpiled from the Riverlink Shopping Centre.

50

And in that photograph we can see two sort of shades of - one is more a sandy colour and one's a darker colour. Are both quantities of soil there part of the filling, do you know?-- I think the top one's the clay capping and the bottom one is probably material from the stockpiles.

Thank you. I have no further questions.

COMMISSIONER: Mr MacSporran?

1

MR MacSPORRAN: I have nothing, thank you, your Honour.

COMMISSIONER: Mr Flanagan?

MR FLANAGAN: Thank you. Mr White, may I take you to paragraph 3 of your statement? You state there that in January 2010 you became aware of an operational works application for land directly across the Bremer River from your house at the southern end of North Ipswich Railway Yards. How did you become aware of this operational works application?-- We were interested in this entire development quite intentionally, so we did monitor PD Online and it possibly came that way.

10

So at all times were you aware that you could access these applications and their supporting material from the Ipswich City Council website?-- From time to time.

20

And you will see in paragraph 4 that you refer to reviewing material that was available online which proposed the shifting of contaminated soil and stockpiles. Do you see that?-- Yes.

All right. Can I just then take you to paragraph 18 of your statement? You will see in the fourth line that you state, "The obtaining of applications and other supporting documents was difficult." Do you see that statement you made there?-- Yes, I do.

30

Given that all the applications soon after lodgement are publicly accessible on the PD Online, can you explain the difficulties that you actually experienced in relation to receiving or obtaining material?-- This specifically refers to the Cardno 2008 study-----

40

I see?-- -----which was not online and it required a direct request to the planning department to be able to view that.

Did you actually view other Cardno studies on line?-- I believe I did.

All right. And could there have been, perhaps, a delay in getting a particular study in support of an application online?-- There may have been.

50

All right. If you look at paragraph 7 of your statement, we understand that you requested a copy of the Cardno Flood Study, is that correct?-- That's correct.

And a Mr Aaron Katt, the Senior Engineering Officer, sent you a copy of that study on 27 August 2010, is that right?-- Yes.

Mr White, can you recall when you first requested that Cardno

study from Mr Katt?-- No.

1

All right, thank you. In any event, you accept, don't you, that when you made a request to the Ipswich City Council for material which you couldn't otherwise access for whatever reason on the PD Online service, that material was sent to you?-- Yes.

Now, do you also accept that in the course of the processing of these applications, not just the works operational application but in relation to the material change of use applications, you and Ms Tilbrook were able to phone directly the planning officer who was dealing with the application for material change of use, Mr Brett Davey?-- Yes.

10

Do you recall how often you spoke to him?-- On several occasions.

All right. Have you had the opportunity to read Mr Davey's statement that was just recently tendered?-- I haven't had the opportunity.

20

That's all right. But in any event, Mr Davey was able to give you information and talk to you about your concerns, particularly in relation to the peak flows, flooding and adverse impacts on the natural environment which were your concerns in relation to this particular development application, is that right?-- That's true. If I may, my experience of this part of the river comes from having a fairly large boat in it. We're very sensitive to flooding, and because of that, especially having read the Cardno 2008 report where it mentioned flow rates of, say, two metres a second, having had the experience of having a large boat in a flooding river, I know that the hull speed of that boat is six knots or so, and that's far in excess of two metres a second. So what I'm observing is something very, very different to what I'm reading in the report.

30

Quite. Could I say no part of my cross-examination seeks to undermine your concerns in any way. I am more interested in the process to ensure that the information was available to you and that the process with the council was acceptable to you?-- I have no complaint about the process that council was involved in in our communication. Sometimes maybe a little tardy is the only comment I can make.

40

All right, thank you. That will take care of most of my questions. Can I just ask you some questions about the development itself, though? Were you aware from your own research that this development, in terms of preliminary approval, that is the combined approval application 68203, was given in 2004?-- Yes.

50

And were you also aware that the preliminary approval application was the subject of a ministerial call-in on 3rd of June 2004?-- I was.

And it was actually approved by the Minister for State



Development and Innovation on the 1st of July 2004?-- I understand that. 1

Is it fair to say one of your main concerns in relation to this development, given that it used to be a railway - and you have shown us photographs of when it was a railway - is in relation to contamination?-- Yes. But also because of the structure - the bulk earthworks structure that is being built - well, has been built now - the change of flow regime in the river is going to be extremely marked and it is going to jeopardise the properties on the other side of the river. 10

But dealing with contamination, do you appreciate that that is actually within the jurisdiction of the relevant State department and not in council's jurisdiction?-- I understand that.

All right. Have you raised your concerns in relation to contamination with the State department as well as with the Local Government?-- I certainly have, yes. 20

Yes, thank you. In relation to your concerns about flood modelling, you'd appreciate that some of these applications are code assessable and some were impact assessable, is that correct?-- That's right.

Right. Even in relation to the code assessable applications that you don't have a legislative right to make submissions, it is the case, isn't it, that you and Ms Tilbrook gave or made submissions by way of an objection on the 20th of January 2010 and a further submission on the 5th of February 2010?-- I will take your word for the dates. 30

All right. It is in your statement, so accept that for the present moment?-- Okay.

Even though you didn't have a legislative right to object to the particular applications, do you accept that you received a fairly fulsome response from Ms Jo Pocock, the planning officer from the Ipswich City Council, on the 8th of June 2010?-- I can recall that response. 40

All right. And then having read that response, you saw that there was a Cardno Flood Study in relation to the particular development?-- Once again, there are two Cardno flood studies that you could be referring to.

All right. Do you recall writing to the council and saying, "I have some specific concerns about the Cardno Flood Study"?-- Yes. 50

And you outlined those concerns in an email?-- Yes.

And that email is actually attached to your statement, is it not?-- I believe so.

All right. Do you accept that having received those concerns, the Ipswich City Council passed those concerns of yours on to

Cardno and requested, in fact - well, requested of Cardno to do a supplementary report specifically identifying and answering your concerns?-- That's correct.

1

And that subsequent report was provided to you and Ms Tilbrook?-- That's correct.

And you were happy with that process through the council?-- The process was fine. The content of the report was debatable.

10

Quite. Again, I don't wish to question you in relation to your concerns, or whether your concerns were answered by Cardno, but, in any event, you received what was expert advice back in relation to your concerns?-- That's correct.

Thank you. Would you accept that the Ipswich City Council at least took your concerns in relation to the flooding seriously by requiring a further report from Cardno?-- Well, I certainly considered that they could have gone one step further and included a third party review of the Cardno study. The original part in the Cardno study referred to modelling on a 50 year ARI event and I considered this not appropriate at all.

20

Can I then take you to paragraph 18 of your statement? You will see there the words start, "In summary, we believe that the whole process with regards to the approval of the Riverside Central development did not involve or take into consideration the residences on the bank of the Bremer River." In making that statement, you don't seek to be critical at all of the process as undertaken by Ipswich City Council?-- Well, insofar as - how can I express this? Insofar as practical knowledge of the situation goes, it seemed to me very, very plain that a development like this would directly affect the residences on the other side of the river, and, therefore, there is either a problem with process or there is a problem with execution.

30

You will appreciate that the expert reports that the council had, which they analysed themselves, basically said that the site and the development wouldn't have any effect in terms of increasing the flood levels for neighbouring properties?-- Yes, I understand that.

40

Is your concern that you simply don't agree with that conclusion from the expert hydrology report?-- You could characterise it like that.

All right. Would that be a fair characterisation?-- I think the models used are inappropriate, or a swiftly flowing stream, such as the Bremer is in that particular reach, I think a MIKE-11 model is completely inappropriate.

50

We certainly heard evidence about that this week. May I take you then to the other paragraph - or the other sentence in paragraph 18? You say that you weren't given the opportunity to make a public submission concerning the developer's

proposal - sorry, you say that that opportunity was limited.  
Do you see that?-- Yes, I do.

1

Right. Would you accept that in relation to application 2727 of 2010, which was the combined application for reconfiguring of land into three lots and making a material change of use for 18 units, it is the case that that combined application was impact assessable?-- That particular application was.

And you took your - exercised your legislative right to make a submission in relation to it?-- That's correct.

10

And that's still the subject of a negotiated decision phase - or it is in the negotiated decision phase?-- I believe so.

And you have all your rights as an objector under the Sustainable Planning Act?-- Yes.

But in relation to the code assessable applications, it is the case that you still made objections which were dealt with by the - or at least responded to in the way we've described by the council, is that correct?-- That's correct.

20

Thank you. You accept from your own research that all the units that are going to be built, the 118 units that are going to be built on lot 55, which is the only lot that's been the subject of these sorts of unit development applications, they are all above the Q100 line?-- They are all above the Q100 line.

30

Right. And you know from your own knowledge that the Q100 line and the 2011 flood line basically coincided, for practical purposes?-- No, I don't agree with that.

You don't agree with that? Would you say they were relatively close?-- In that particular part of the reach of the river, I'd say there would probably be up to a metre difference.

All right, a metre difference, but your main concern is in relation to the 1974 flood, is that correct?-- Well, yes.

40

All right. Now, we accept - or we appreciate that there are in fact four lots here, lots 51 to 55, is that correct?-- That's correct.

And it is only 55 that's going to have - a unit development has been approved for present purposes, is that correct?-- So far, yes.

Yes. And that's presently under a - the decision - sorry, the mediation phase, if you like, but in relation to lots 51 to 53, you appreciate that any application for development of units on those lots have to be assessed now in relation to the temporary planning instrument flood line?-- That's correct, which is in force for one year.

50

Quite. But if they are assessed in relation to that line, you appreciate that that means it is assessed in relation to

whatever is the highest of the lines, whether it be the 2011 flood line, the Q100 or the 1974 flood line?-- I am aware of that.

1

So under the present temporary instrument, lots 51 to 53 will be assessed in accordance with the 1974 flood line if it is the highest flood line?-- Yes.

Right. Thank you. Thank you, Commissioner.

10

COMMISSIONER: Ms O'Gorman, did you have anything?

MS O'GORMAN: No questions, thank you.

COMMISSIONER: Mr White, I am curious about your background. Are you just very well informed or do you have some qualifications in hydrology or planning?-- I have been pretty passionately concerned with a lot of catchments and rivers in South-east Queensland. I've been one of the forming members of the Bremer Catchment Association; I've been on the Bremer Steering Committee; I've done time in Western Catchments Group, Natural Resource Management in South-east Queensland; and I'm currently a member of SEQ Catchments Members Association.

20

All right, thank you. Any-----

MS KEFFORD: No further questions. Might Mr White be excused?

COMMISSIONER: Yes. Thanks for your time, Mr White. You're excused.

30

WITNESS EXCUSED

COMMISSIONER: We'll take the lunch break until 2.30.

40

THE COMMISSION ADJOURNED AT 1.07 P.M. TILL 2.30 P.M.

50

THE COMMISSION RESUMED AT 2.29 P.M.

1

COMMISSIONER: Yes, Ms Kefford?

MS KEFFORD: I call Brett Davey.

BRETT JOHN DAVEY, SWORN AND EXAMINED:

10

MS KEFFORD: Is your full name Brett John Davey?-- That's correct.

And you're the development team coordinator, west team, at the Ipswich City Council?-- Yes.

20

And you have prepared a second statement for the Commission dated the 26th of October and that statement addresses a statement by Mr Nicholas White with respect to the Riverlink site at North Ipswich?-- Yes.

Can I ask you to have a look at this document, please? I apologise, this statement has already been tendered this morning, Exhibit 906. In terms of your statement, do you have a copy there with you?-- There is one here.

30

If I could ask you to go to attachment 15 to that second statement, which should be the first attachment, I understand?-- Yes.

That attachment shows the site that is the Riverlink development site; is that correct?-- Yes.

And in terms of the Riverlink site, it consists of lots 51 to 55 on that plan?-- Yes.

40

And that site, being lots 51 to 55, it is - is it the subject of an existing combined approval, preliminary approval, to override the planning scheme?-- Yes, and the approval extends to the existing Riverlink Shopping Centre.

And since the preliminary anywhere approval was granted, which I understand was by the Minister following a Ministerial call-in, there's been a number of subsequent development permits with respect to this land?-- Yes.

50

And those subsequent development permits are dealt with in your second statement?-- Yes.

COMMISSIONER: What were the circumstances of the Ministerial call-in, do you know? Can you give me a summary?-- No, I wasn't involved with the - that process at the time, Commissioner.

All right. Thank you.

1

MS KEFFORD: In terms of the application for material change of use for 100 units, in your report - in your statement you attach at attachment 18 an assessment report for that development application, and if I could direct your attention to page 5 of that document where you say in the paragraph starting straight under that heading - do you see the paragraph, "Owing to the effect"?-- Yes.

10

Can I just ask you to briefly read that to yourself? That paragraph refers to the fact that - refers to the existence of the preliminary approval and says that, "As a consequence, the proposal is not assessable against the current Ipswich Planning Scheme." Can you just explain that concept to us in a bit more detail?-- In this instance, because of the existence of the preliminary approval, subsequent applications can be made pursuant to that. So, what that means is when you're assessing the level of assessment for a particular application, you have to look at that preliminary approval, rather than the planning scheme.

20

And in terms of the codes against which the further applications get assessed, are those codes stipulated by the preliminary approval?-- That's correct. The preliminary approval includes a reference to what you would actually assess future applications against. So, specifically one of the early conditions, I think it's condition number 3, specifies that you would assess it against the Ipswich Planning Scheme.

30

So, that's condition number 3 of the preliminary approval?-- Yes. I could check if you have got a copy handy.

I do have a copy handy. I have just been provided with a copy over lunch?-- Yeah, it is condition 3.

And so am I correct in my understanding that as a consequence of condition 3 of the preliminary approval, the subsequent development application for a material change of use for 100 units was required to be assessed against the Ipswich Planning Scheme codes?-- That's correct.

40

And so it was required to be assessed against the Development Constraints Overlay Code dealing with flooding and urban stormwater flow path areas?-- That's correct.

And that is why we see that the development application included a flood study?-- That's correct.

50

Because of the need to assess against that code?-- Yes.

I will tender a copy of that preliminary approval.

COMMISSIONER: It will be Exhibit 910.

ADMITTED AND MARKED "EXHIBIT 910"

1

MS KEFFORD: Now, the decision notice for this application for a material change of use for 100 units can be found behind attachment 19 to your statement. If I could ask you to have a look at condition 20G? And it provides that the construction of buildings is not permitted below the flood level associated with an ARI of 100 years. This was the only condition with respect to flooding, wasn't it?-- Yes.

10

And the absence of other conditions that reflect provisions of the Overlay Code, can that be explained by reference to the fact that there was to be no built structures below the one in 100 flood line?-- Yes, and the fact that their flood study had nominated a flood line of 18.31 metres and the proposed unit sites as referenced in their flood study again would be 19.2 metres, so there was a significance freeboard - so significant freeboard between those two levels.

20

And so that would obviate the need for any conditions, for example, requiring construction materials to be used that would withstand flooding?-- Yes. However, in retrospect, it would have been important to include additional conditions to make it very specific that all the flood - all the floor levels had to be a certain elevation above flooding as well to make 100 per cent certain that it was understood.

Thank you. I have no further questions.

30

COMMISSIONER: Mr MacSporran?

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

COMMISSIONER: Mr Flanagan?

MR FLANAGAN: No questions.

MS O'GORMAN: No questions, Commissioner.

40

MS KEFFORD: Might Mr Davey be excused?

COMMISSIONER: Yes. Thanks, Mr Davey. You are excused.

WITNESS EXCUSED

50

MS KEFFORD: Madam Commissioner, I call John Stephen Adams.

JOHN STEPHEN ADAMS, ON AFFIRMATION, EXAMINED:

1

MS KEFFORD: Your full name is John Stephen Adams?-- Yes.

And you're the city planner for Ipswich City Council?-- Yes.

You have responsibility for overseeing Ipswich City Council's planning and development activities; is that correct?-- Yes.

10

And you prepared two statements for the Queensland Floods Commission of Inquiry. If I can show you a copy of the first of those statements, which was provided in response to a requirement dated the 10th of August 2011? Is that a copy of your first statement to the Commission?-- Yes.

I tender that document.

COMMISSIONER: Exhibit 911.

20

ADMITTED AND MARKED "EXHIBIT 911"

MS KEFFORD: And you have since provided a second supplementary statement to the Commission. Can I ask you to have a look at the document you have now been handed? Is that a copy of your second statement?-- Yes.

30

And it's dated 25 October 2011?-- Yes.

I tender that statement.

COMMISSIONER: Exhibit 912.

40

ADMITTED AND MARKED "EXHIBIT 912"

MS KEFFORD: If I could firstly ask you a few questions about your first statement? At paragraph 12 of your first statement you make the point that the Ipswich City Council Local Government area is affected by significant development constraints, one of which is flooding. Do you know in ball-park terms what - to what extent the Ipswich City Council Local Government area is affected by the flooding constraint?-- I don't know if I have that actual figure to the top of my head. I think it's something like - total constraints in the City is something like 86 per cent is 900 and something square kilometres. I am pretty sure that figure is in my statement but I can't recall the exact figure for the flooding constraint. I know in the former Ipswich City area I have got some figures about that prior to

50



amalgamation.

1

And are you able to say off the top of your head what the former Ipswich area - to what extent it was affected by flooding?-- Yeah, in the 1974 flood it was only 122 square kilometres from memory, and I think it was about 35 per cent, and about 14 per cent of the city, I think, was affected by the one in 20 flood level.

So, a significant part of the Local Government area?-- A much lesser percentage on the new Local Government area.

10

Yes. Now, you say that the planning scheme sets criteria for the impact of development constraints where appropriate to be managed through design of developments so that land's not sterilised. In terms of flooding, is that done through the development constraints overlay Code?-- Largely. It's also looked at through the allocation of zones where possible when the scheme is put together.

20

In terms of the allocation zones, what's taken into account and what types of development is considered appropriate where there is potential flood effect?-- When you are normally formulating your planning scheme and looking back to the 2004 scheme having the advantage of the State Planning Policy coming into force, the 1/03 just before that, one of the first thing you try to do is not intensify residential development within the flood affected areas. Unfortunately, it wasn't a clean slate, the city's a very old historic city, originally developed somewhat as a river port, so there were a number of areas where there were existing development already in place, there were a number of areas that already had existing zones for medium density housing, for instance, in place. So, what council tried to do was firstly allocate the new growth areas, particularly for the residential intensification out of those areas and into the areas above the one in 100 flood level, and any new industrial/commercial areas where possible simply being allocated outside, but, again, there were development commitments already in place for those areas as well. So, it was important to try and de-intensify the amount of development inside the flood affected the areas.

30

40

COMMISSIONER: Mr Adams, can I get you to make sure you take it fairly slowly?-- Oh, sorry.

Because you speak all longish sentences. Every word is being taken down, so if you just pause occasionally to give the Reporter a chance. Yes?

MS KEFFORD: In terms of development commitments, that's a topic that I want to explore with you, and if we could do that by looking at the Overlay Code, Overlay Constraints Code? I will get a copy handed to you. And ask you to turn particularly to paragraph 11.4.7(1)(a) of that Code?-- Yes.

50

And that deals with or specifies specific outcomes for land situated below the one in 20 development line for residential uses. You just have to answer?-- Yes.

That Code obviously doesn't apply to existing developments, does it?-- No. Under the Sustainable Planning Act and the Integrated Planning Act any existing use has existing use rights that can't be further regulated by the planning scheme.

And that's because planning schemes are forward-looking documents?-- Primarily, yes.

They don't seek to, as a consequence of the legislation that you were just referring to, they don't seek to further regulate development that already exists?-- No.

10

And the Code is only triggered - the application of the Code is only triggered when a development application is made?-- Yes.

Can you see in 11.4.7(1)(a) and then over the page on page 11.25 subparagraph (iii), it says there, "Where a development commitment based on former zoning provisions allows additional dwellings to be sited within the areas affected by significant flood flow, such dwellings are designed to be capable of withstanding", certain loads. Can you explain to us what is meant in that provision by "development commitment based on former zoning provisions"?-- There was a number of those in place. There was quite a deal of land that was actually zoned residential low density and the assessment table in the scheme that goes with this showed that land between the one in 20 line and the one in one 100 line, those dwelling would be self-assessable so this wouldn't apply. There would have been a few instances where there might have been historic multi-density zones where this would have applied. Between the one in 20 and the one in 100 level there was not a lot of development particularly in intensified zones below the one in 20 line. So, you will see in section 11.4.7 there's a number of different flooding criterias and land use packages in there. So, it's not just one complete or one singular provision, there's essentially four break-ups in it.

20

30

40

So, in terms of the development commitment, what's being referred to there is not one of these existing lawful use rights where the development already exists; is that right?-- No. What would have been allowed under the zone itself.

So, is that what would have been allowed under the zone in the previous iteration-----?-- Yes.

-----of the scheme?-- Yes.

50

And so the council sought to continue rights that existed under the previous scheme?-- Yes, council have concerns and would still have concerns that if it's significantly changed or down-zoned property or changed the yield of those properties, it might be liable for compensation, and I think there's still an ongoing issue with SPA as it stands at the moment.

So, that explains the context of this provision-----?-- Yes.

1

-----a concern that to impose stricter requirements, that might prevent development because of the location between a Q20 and a Q100 line might trigger compensation. Instead, the council elected to regulate the development in other ways, such as requiring the dwellings to withstand dynamic loads?-- Yeah. There was probably two issues that would come in there. One is a fairness issue in terms of people that, for instance, had brought a block of land was simply zoned residential and it was of a size - the only thing it could be used for was a house, to try and continue those use rights, and then the other issue was the compensation effects, if land had - there was a number of different sized accumulative compensation aspects or if it was one very large high value site, what that would mean in terms of dollars.

10

Do you know whether there are many properties that would fall into that category where that provision will be triggered?-- I think there would be very few below the one in 20. There would be a lot more between the one in 20 and one in 100. It would take me a bit of time to sort of work that out exactly.

20

How do you see this type of provision fitting with the strategic framework provision in the scheme that's referred to in paragraph 14 of your first statement, that residential uses are with the exception of existing development or current existing approvals generally located in areas to avoid identified development constraints?-- It needs to be read in context with - the strategic plan is probably a more aspirational document and then the zoning provisions and the code provisions come in in terms of more operational approach to it, but I don't see any conflict between them when they're read in that context together.

30

The phrase "development commitment" is also a phrase that appears in the State Planning Policy 1/03?-- Yes.

And if I could explore the use of the term in that document with you, so if we could have a look at the State Planning Policy 1/03 and a copy will be provided to you, and if I could take you to page 6 of that policy? Can you see in the grey box there reference to outcome 1?-- Yes.

40

And that is one of the outcomes that the State Planning Policy seeks development to comply with?-- Yes.

And it contains an exception?-- Yes.

And that exception - one of the exceptions where development doesn't have to be compatible with the nature of the natural hazard is where the development proposal is a development commitment?-- Yes.

50

You can see that. And "development commitments" are a defined term in the State Planning Policy. Were you aware of that?-- Yes, I am.

And if we could go to that definition, which-----?-- Probably towards the end is it? 1

Yes, towards the end in the glossary at page 10. In terms of definition of "development commitment", there's four limbs to the definition there. The first bullet point, do you accept that that's what you would generally understand by use of the word "development commitment", that being an existing valid approval?-- Yes, that's one of the criteria. 10

Then in terms of - I'm particularly interested in the second limb, "'Development commitment' includes a material change of use that is code assessable or otherwise consistent with the requirements of the relevant planning scheme." Now, keeping in mind that this is an exception, the code assessable nature of an application under an existing planning scheme is an instance where outcome 1 would not need to be complied with?-- It probably is a bit broader than that. There is also what - "self-assessable" and "exempt" which are listed as consistent uses and in our scheme we actually have - we parcel those up and show the consistent uses and the inconsistent uses. 20

And is that how you construe the - or otherwise consistent with the requirements of the relevant planning scheme?-- Yes.

Do you think that phrase, "or otherwise consistent", has the potential to also capture impact assessable development that is considered consistent with the planning scheme?-- Yes, it may do that and, again, our scheme actually gives you an indication of that. Some forms of impact assessable development are listed as inconsistent. 30

So, the consequence of that definition of "development commitment", would you accept that there's a large number of development applications which even if the State Planning Policy was triggered would not need to demonstrate that they are compatible with the nature of the natural hazard?-- I could see how someone could mount that argument. I think we were able to put ourselves in a better position in the way we set up our assessment tables that we could call various types of development - whilst we couldn't prohibit it, we could potentially call those developments up to be further regulated through the scheme. 40

And do you see that as being a consequence of the way Ipswich chose to draft its scheme or a consequence of the application of the State Planning Policy?-- What I have just outlined is probably more the way we drafted our scheme.

And so if instead the council had triggered application of the State Planning Policy by simply providing flood hazard area maps and then relied on the outcomes in the State Planning Policy, would you agree that there's large scope for exceptions to outcome 1 in that scenario?-- I can see the debate occurring like you have suggested, yes. 50

Do you think that's a deficiency with the State Planning Policy that ought be addressed?-- I think it

could do with some clarity.

1

What type of things do you think should be the subject of a development commitment definition and an exception to the outcome?-- I suppose I come at it a slightly different way. What I'd suggest for the Commission to have a look at would be that definition - the issue about potential compensation for something like amending a scheme in the context of a natural disaster and I think that could assist more in terms of closing down the amount of developments that you may not want to have post one of these events in the area, rather than sort of playing with the definition as much.

10

Do you see that as a means of giving the council more scope to chose the zones?-- Yes.

And the development of the zones?-- Yes. As I said, there's, like, two issues that are very strong in my mind and I think council's as well, the issue about fairness to people that had bought, for instance, the block just to put one house on as opposed to something that was more a development interest where a natural disaster came along and there was a real question mark about the value of that land before the flood event and what should or could be done on it after the event. I see them as two different issues.

20

Thank you. If I could briefly ask you some questions about the Commercial and Industrial Code in the Ipswich Planning Scheme and I will have a copy provided to you. That part that I'm interested in directing your attention to is on 12-96 and it's specific outcome 12.7.4. It's at paragraph 5(c)(ii)?-- Sorry, I am a little bit lost.

30

Page 12-96?-- Yes.

Up the top of the page there's a (c)?-- Yes.

And a (ii)?-- Yes.

And this is a specific outcome that applies to development applications for commercial or industrial type developments?-- Yes.

40

And it seeks that where there is potential for stored material to escape and pollute nearby waters, that outdoor storage areas are located above the adoptive flood level?-- Yes, where possible, yes.

In terms of that provision, would you accept that it puts significant reliance on the accuracy of the adopted flood level?-- Yes, it does, but most of the provisions in the scheme that referred to flooding put a lot of reliance on the adopted flood level.

50

In terms of the adopted flood level, there are obviously events that would, even if the adopted flood level is corrected, there's the potential for events that exceed the adopted flood level?-- Yes, there are, but that then becomes

very hard to regulate.

1

The State Planning Policy guideline included a probable solution which specified that there be storage structures - sorry, structures used for the manufacture or storage of hazardous materials involved a design to prevent the intrusion of flood waters. Do you know whether any consideration has been given to including that type of mechanism rather than a mechanism that relies on the accuracy of the line or the flood level as a specific outcome in the Ipswich scheme?-- I think we have somewhat similar provisions in section 11.4.7 but the problem is always where do you start and where do you stop, and that's where the line is so crucial, that you do need to start - a starting point and a finishing point where you would bring these provisions in place.

10

In terms of the line being so crucial, do you have a view whether, moving forward, the use of a single line is the best way to regulate the planning as opposed to, for example, zones of risk?-- I'm putting my mind to that. It's been something that's been sort of concerning since the event happened in 2011. In Ipswich we did, in fact, have two lines, we had a lot more rigour with development below the one in 20 line and then we took what was in the State Planning Policy, being the one in 100 line as our - our upper level. I think we need to think a bit beyond that going forward. I am not sure what the right answer is at this stage.

20

In terms of the one in 20 line that you referred to in the Ipswich scheme, in the Ipswich scheme it uses the words "one in 20 development line". Is it what was regarded as a Q20 or something different?-- Yes, it was. We use the term "development line" because it wasn't like a sophisticated computer modelled one in 20 flood line, it was the best information we had available from the 1976 Ipswich Planning Scheme was where it came - and the drainage problem by-law. There was work done through hand surveying, et cetera, of where that line was, so it didn't meet the rigour necessarily of the State Planning Policy with the more sophisticated flood modelled line, so we use the term "development line" to distinguish that.

30

40

50

If I could just move on to ask you a few questions about conditions packages used by the Council and reference in conditions packages to flood studies that are provided as part of a development application. When the Commission was sitting in Ipswich, Mr Ellis addressed in his evidence the fact that there was no reference to the Master Plan Flood Study for the Citiswich site in the decision notice for that development, and he suggested that the Council practice might be more recently to include such conditions in decision notices that get issued with respect to developments. Do you know whether that is the practice of the Council now?-- Well, the Citiswich development is relatively fairly new. I agree with that idea of Mr Ellis'. I think that that cascading effect of the master study going through to the focus stage flooding studies would be a really good thing to do and we'll be reviewing our conditions packages to do that.

10

And so do you anticipate that, moving forward, where a flood study is provided as part of a development application and where Council is satisfied with that flood study, that there'll be reference in the decision notices to the flood study and a requirement to comply with the measures referenced in that study?-- Generally, yes, but sometimes you don't necessarily have to repeat the flood study if the relevant information was in there - has been properly encapsulated in the development plan that you've done. Sometimes it might be just simply adequate to condition that development plan, or various conditions that come off of it, but certainly it's an important part of the conditioning package in terms of getting that information in place.

20

30

You've just referred to one instance where you considered that it wouldn't be necessary to refer to the flood study in the conditions package. Are there any other instances that immediately spring to mind?-- Probably the one that straightaway came to my mind was if you had a development site where, say, the back part of the site was flood-affected and that could be - that was going to be a recreational area and the front part was clearly flood-free, so you had an escarpment line or something like that - there was clearly two different sort of site levels - one was far above and one was below - and if you approved a development plan that matched that level, I don't think you'd necessarily need to go back and call up the flood study. So, that's the sort of simple example that readily comes to mind.

40

If I could move now to a broader issue of the plan scheme's compliance with the State Planning Policy? Are you aware of the evidence of Mr Gary Mahon with respect - he's the Assistant Director-General, Strategic Policy Division in the Department of Community Safety and has provided a statement to the Commission about comments made by the Department of Community Safety to the Department of Local Government and Planning about the Draft Ipswich Scheme and its compliance with the State Planning Policy?-- No, not off the top of my head.

50

Okay. Do you know who might be able to assist with that type of information?-- I'm not sure. Was Mr Mahon suggesting that there was an issue with the Ipswich Planning Scheme and its compliance? 1

Well, perhaps if I - Mr Mahon attached - Mr Mahon's statement attached documents which indicated that the Department of Community Safety had passed comments back to the Department of Local Government and Planning about the codes in the Ipswich scheme - Draft Ipswich Scheme - having not fully reflected the performance criteria contained in the draft - at that time - State Planning Policy, and I was simply curious as to whether those comments had been passed on to Ipswich Council at the time that the scheme was being prepared?-- I'm not - I was - in my role as Strategic Planning Manager, I was actually responsible for the oversight of the 2004 scheme and I can't recall those sort of comments. What I can recall is the Department of Local Government and Planning being very happy with the scheme, the Minister signing off on it and we actually got a really nice letter sort of congratulating us for the fact that it had a lot of rigor and technical competence and that it met the State Planning Policies, so the statement you've just told me is quite surprising to me. 10  
20

Okay, thank you. In terms of the Temporary Local Planning Instrument, Ipswich Council has adopted a Temporary Local Planning Instrument with respect to flooding, and would it be fair to say that the changes introduced by that TLPI create generally stricter controls on planning than existed prior to its introduction?-- Yes. 30

Were any of the changes introduced through that Temporary Local Planning Instrument considered prior to the January 2011 event?-- No.

On Wednesday of this week, there was an expert panel which gave evidence with respect to Bremer River flooding, and the expert panel expressed a view that the Temporary Local Planning Instrument for Ipswich should remain in place until the flood study that they recommend be undertaken for the Ipswich local government area - until that flood study is available. A Temporary Local Planning Instrument only has a life of 12 months; is that correct?-- Yes, as far as I'm aware. 40

Do you know whether any investigations - or there's any consideration by the Council to extending the life of its Temporary Local Planning Instrument through other mechanisms?-- Yes, and that's a real issue for us, and I read with interest that recommendation from that group. I think there is a real issue in terms of the ability for us to go forward with our - a new development line, given the fact we've only got a 12 month window of opportunity in our Temporary Local Planning Instrument. 50

And what about that issue is being looked into or what would you like to see occur in terms of that issue?-- We've been looking at two options: whether we can simply carry on with



an additional time period for our Temporary Local Planning Instrument - whether that can be done under the legislation - or whether we can fast-track what would be an interim amendment to the planning scheme that would last - but it would have to be done, I suppose, as a permanent amendment - until we had the new study completed. I think that's really important.

1

COMMISSIONER: Is it practical for you to continue with the TLP levels? Is that any problem?-- Yes, it is Commissioner, very much so, but I'm really concerned we've only got this 12 month window of opportunity - which is 19 June next year - when, theoretically, it falls over.

10

So, it's not the three years, it's just how you manage to spin the existing TLP out for three years?-- Yes, it puts us in a really good position going forward until we have better information in place.

Thanks.

20

MS KEFFORD: And in terms of the interim amendments and fast-tracking an interim amendment, do you know whether - or do you have a view whether the current state of the legislation would allow you to do that, or would you - would you like to see legislative amendment to allow the TLPI to be in place for a longer period?-- There's a window of opportunity that we're looking at in conjunction with the QRA. Their temporary State Planning Policy - which is fairly new - and I'm still getting my head around that fully - that might give us a go-forward mechanism where we can fast-track an amendment to our scheme that might parallel what we've got with the Temporary Local Planning Instrument, but if that is not - if that's not able to be done, then I would ask for some legislative amendment that the TLPI provisions can, perhaps with the Minister's agreement, be rolled forward each year. We might have to come back and justify that needs to be done, but I think we need that interim protection in place for longer than just the 12 months until June next year.

30

And this is because - is this because the Council would like to take up the recommendation of the panel of experts on flooding to obtain a study within the next approximately three years?-- Yes, yes.

40

Now, you're obviously-----

COMMISSIONER: Three years is by no means set in stone, you understand-----?-- Yes, I understand that. The sooner, the better.

50

Right.

MS KEFFORD: In terms of the joint expert statement that was prepared with respect to the Bremer River, can I take you to paragraph 46 of that statement? It's Exhibit 882. And can you see there that it says that, "The incremental consequences of exceeding the flood planning level are more severe than

commonly encountered in other flood plains."?-- Sorry,  
which-----

1

It's in the second line, the sentence actually starts, "In particular"?-- Sorry, yes, I see that. I'm not familiar with too many flood plains. Certainly I'm familiar with Ipswich.

And are you familiar with the concept that in Ipswich there's a large variation in flood levels?-- Yes.

10

Given that potential for large variation in flood levels, do you see it as important for the Ipswich Council to have in place ways to deal with a greater than Q100 flood?-- I think the first thing would be to get as good a handle as we can on what the real Q100 flood might be and the full impact of the dams. The 2011 event was very different to the '74 event - dams were in place now, they weren't previously - and I'm not sure at this stage what the right planning framework is going forward, but we did use the 1 in 20 and 1 in 100 and maybe there's some other iterations we need to look at as well.

20

And you haven't turned your mind further to that at this stage?-- I've probably been sitting back seeing what's going to come out of this inquiry and see what we can learn from that, but we certainly have started looking at other possibilities for maybe different uses, different levels of immunity.

If we could go now to your second statement and in the second-----

30

COMMISSIONER: Just while we're on that, sorry-----

MS KEFFORD: Yes.

COMMISSIONER: -----the experts say that the notion of a Q100 as being the sort of gold standard of anything is really a bit out of date and not a particularly good approach. Do you have a view?-- I suppose there's a nice sort of arithmetic to the 1 in 100 - a 1 per cent annual sort of probability that we probably all latched onto-----

40

It is more a matter of what you do with it, I suppose?-- Yes, and it is really the whole risk assessment and what - you know, levels of danger, different sorts of uses. I think we probably put too much emphasis on the magic 1 in 100. There's probably a better way to do it, but we have to be really careful we don't sterilise a lot of really valuable land by going to something like a probable maximum flood that may never happen. I think that's too far to the other extreme. There's probably something which I haven't quite got my head around yet in between which is the right balance, and it really is a balancing approach, I think, that will give us the best result.

50

Thanks for that.

MS KEFFORD: In terms of that balancing approach, the

Commission has heard, for example, that in Bundaberg, a - for river flood, a Q50 line is adopted, and that's because the circumstances of the flood involve quite a significant amount of warning time. Do you see those factors as coming into the equation more so than just the levels?-- The problem we've got in Ipswich, because it is such an historic city is we have development below most levels that we would pick, so we have to work out something to be done which it not a town planning outcome necessarily but a community resilience evacuation sort of outcome for those. I wouldn't like to see us intensify development - in terms of residential development - below the 1 in 100 line. I wouldn't like to go down to 1 in 50, for instance. Maybe - actually, no, I would like to at least stay at the 1 in 100 level.

1

10

And in terms of between 1 in 100 and a greater event, does the risk involved with the levels come into play, do you think, moving forward?-- Yes, it does, and the balancing and the sterilisation. There's also the issue about the type of flood: is it a flash flood, is it back water, is there any velocity involved? I think we need to get a better handle on that. Essentially what we've got from the modelling that was done back in 2002 and '98, whenever the studies were done in Ipswich, is an idea of a level, but I think we need more sophistication about what those levels mean in terms of velocity, amongst other things.

20

Now, in terms of your second statement, at paragraph 4 you deal with review - a review of the State Planning Policy - what you think a review should encompass. If I could ask you a few questions about the suggestions that you make there? Firstly, you say that the planning schemes must be made - in the second line, that, "Planning schemes must be made consistent with State Planning Policies." In terms of that requirement, I'm certainly familiar that in the earlier iterations of the Integrated Planning Act there was a requirement for planning schemes to be amended to reflect the State Planning Policy. I wasn't able to find a similar provision in the Sustainable Planning Act. Do you have a particular provision in mind, or was that just a general understanding-----?-- General understanding. I haven't prepared a plan under the Sustainable Planning Act because our current scheme is still in force, but I was very aware of how it was done under IPA.

30

40

And certainly - probably at the time the Ipswich scheme was done - there was such a requirement in the Integrated Planning Act. Do you think that type of provision is an important provision where the State Planning Policy deals with matters relating to disasters?-- Yes, I do. I think it's important. That's one of the key checks the government should do - is that we deliver on these important matters of policy, not just flooding, but other ones as well.

50

Now, at paragraph (b)(i), you outline the notion of balancing the different objectives of ecologically sustainable development and the need to avoid sterilising flood affected land. Is sterilisation of flood-affected land a particular

problem in Ipswich?-- Oh, it might be if, for instance, the state mandated it had to be probable maximum flood, and you really couldn't have any development of urban purposes below that level. That would be a problem. Whereas what we've got at the moment, I think we can get a balanced outcome for. We just probably need to look more thoroughly at what the lines are and what they mean in terms of things like velocity, et cetera.

1

In terms of a problem, is it a problem as a consequence of the locations which might be sterilised in Ipswich? Are they not locations which could be used for farming or something of that nature or-----?-- Yes, and that's probably the difference with Ipswich. Because of its history, there is a lot of urban development in areas that if you had a greenfield site, you might take a higher line to start your city. Our forefathers didn't do that, for probably what were very good reasons at the time. That's still very good land now and shouldn't be sterilised, as opposed to a completely greenfield site. Can I just add, though, even with a greenfield site, it's still important that you create the right distances joining your urban form together and don't have them too far apart - again, if you pick, like, a ridiculous flood level, for want of a better term.

10

20

Do you think that there might be circumstances in which the risk of flooding and the nature of the flood hazard means that land should just not be developed?-- Yes.

In what type of circumstances do you think that situation arises?-- Something that was prone to flash flooding and was quite dangerous, I think you'd probably really just want to use that for either rural purposes or maybe some very low-intensity linear open space.

30

And so that example highlights the need to understand not just the level of the flood, but the nature of the flood; is that a fair summary?-- Yes, yes.

In terms of paragraph 4(b)(ii), you suggest that provisions for flood plain management should include an appropriate suite of both planning scheme and non-scheme measures to deal with existing land uses, existing development commitments and infill development. Do you have an opinion as to where the regulation of such matters through a planning scheme should end and emergency management measures begin?-- I suppose one of the issues is that the planning scheme can't regulate existing land uses, so that's clearly one mind.

40

And in terms of proposed land uses, is there a role for the planning scheme to play, do you think, in assessment of the appropriateness of the use, given proposed evacuation procedures, or is there some role for evacuation measures to play in the assessment of development applications-----?-- Yes.

50

-----on flood-prone land?-- Yes.

What type of role do you think-----?-- Again, it's the nature of the flood, it's the nature of the urban form that it fits in. We're fortunate in Ipswich again that most of the existing developed areas are on a grid street network which gives you multiple escape opportunities. If we had some of the more cul-de-sac-style developments where flood-affected areas had more sort of focused road hierarchy, had limited ways in and out, that could be a real issue in terms of evacuation routes. It normally isn't too big an issue in Ipswich because most of the flood-prone areas, there's an uphill route that you can easily use to get away in the event of a flood, and most of our floods aren't flash flooding. Different in other areas. Those two factors could be a real issue.

1

10

Do you think it is necessary when considering evacuation routes and the like to consider the nature of the use in combination with the evacuation measures?-- Yes.

And so there'd be some uses where the evacuation measures might not be sufficient; would you accept that?-- Maybe.

20

And the Ipswich Planning Scheme - does it currently have any provisions that would require consideration of these type of issues?-- I think there's a number of references in different areas, and under the TLPI I think we've got some mention of different evacuation situations. We've even mentioned there about sports fields and major concentrations of people, needing to ensure that they - normally you would want to see a sports field actually in a flood-affected area because it is a good use in terms of it's not normally affected badly by flooding, but if there were large concentrations of people and you couldn't get out of the area quickly, that could be an issue. So, we have other examples like that.

30

Now, in paragraph 4(c), you ask that consideration be given to whether standard criteria should be developed, but outline the circumstances where a defined flood event higher or lower than the one per cent annual exceedence probability is appropriate for residential land use planning. What kind of criteria do you envisage being relevant - particularly (c)(iii)?-- I suppose it is the intensification. Normally we would not want to see residential development below the 1 in 100 level.

40

Do you think that the type of residential use, not just the intensity of it, but the likely occupants also come into play. What I have in mind is, for example, aged care facilities where there might be lesser mobility?-- Yes. But with aged care - like, I'm now over 50, but I think I'm a very active over 50 - that's very different to someone in a nursing home.

50

Nursing home, yes, that's what I had in mind?-- And we have quite a few lifestyle active over 50s areas, and we've got carports and garages and they don't really need any special attention, but a nursing home does.

And obviously not residential development, but in terms of commercial developments, would you accept that facilities such

as child care centres have constraints in terms of mobilising the occupants of the site to evacuate them?-- Potentially, yes, but then that issue of flash flooding is very important in that context as well.

1

So once again we come back to the idea that it is not necessarily just the level of the flood, but the nature of the flood risk?-- Yes.

In your second statement, you also address some matters about filling that occurred on the Citiswich site and filling that has occurred on a number of other - you identify a number of other sites in Ipswich where filling has occurred as a consequence of the Ipswich Motorway Upgrade project, and at Attachment 1 to that second statement is a letter from the Council to the Project Manager of the Ipswich Motorway Upgrade which addresses the matter of fill from the State Road Projects particularly. If I could just address the Citiswich site specifically? Have you - or are you aware of any other Council officers having had specific discussions with the Department of Transport and Main Roads about fill that was placed on the Citiswich site?-- Not so much in relation to the Citiswich site. I mean, I haven't had those involvements. I know a number of my staff have had discussions about this issue, and it's really, I think, an issue in terms of the Sustainable Planning Act in the exempt provisions, whether it is perhaps not so much the department but their contractors and the people who obtain the fill claiming the exempt status, and that can be a real issue when it can be very far away from the actual road corridor works themselves.

10

20

30

And you make some recommendations - or you state an opinion at paragraph 15 of your second statement that any exemption for earthworks associated with State Government projects, particularly large transport projects, should be clarified to ensure that the exemption only applies where that fill is being placed within the construction site for those projects?-- Yes, I do. I think that's an issue I would like to see resolved.

40

Is that because you think there's a need for Council to have the ability to consider and assess the placement of fill?-- Yes, it's become a bit of a learning for us, with the magnitude of the Ipswich Motorway works, to see so much soil being moved around the city, and there's a number of things happened: there's community concerns about what they perceive to be unauthorised filling activities, and I think there's an issue that comes through when it ends up on other blocks of land, what that means in terms of development potential for those blocks and if the local government is not involved in that decision, it creates a cascading problem.

50

In the - sorry to go back to it - but in the letter that was Attachment 1 to your second statement, the Council asked the Department to advise those within the Department and the Department's contractors and recipients of fill to contact the Council before fill is placed on land, and this letter is dated the 30th of July 2010. Do you know whether that process

has been occurring?-- No, I don't. I couldn't answer that with any degree of exactness.

1

Do you know who in Council might be aware of whether contact is being made before placement of fill?-- It could be people in my development planning branch, it could be some of our people in our works, parks and recreation area.

Given that the letter is quite general in terms of asking that contact be made with the Council, do you know whether at the Council's end there has been any information given to officers if they are contacted as to centralising that information that's provided - a central point of contact?-- Normally it would come through to the development planning area and it would be dealt with either by the team coordinators in the planning area for the geographic area concerned, or it would go to my engineering and environment branch, if it led to subsequent development activity.

10

And you're not sure whether that's been happening?-- Yeah, that's sort of detailed operation stuff that I tend not to get involved in.

20

Now, if I could just ask you a few questions about the contents of the South-East Queensland Regional Plan?-- Yes.

You're familiar with that document?-- Yes, I am.

And one of the provisions in the South-East Queensland Regional Plan stipulates that, for Ipswich, the subregional narrative stipulates - acknowledges Ipswich City, Springfield - and Springfield as principal regional activities centres?-- Yes.

30

And Goodna and Ripley as major regional activities centres?-- Yes.

The Goodna Major Regional Activity Centre - that area comprises an area of which 34 per cent is below the Q100 line, I think you tell us?-- Yes.

40

And 42.7 per cent was affected - of the Goodna area - was affected by the January flood?-- Yes.

In light of the risk of flooding in Goodna, do you think the requirement in the South-East Queensland Regional Plan that the Goodna area be a major regional activity centre produces difficulties for the Council in achieving that while balancing the flooding risk?-- To some extent, but can I just elaborate on that a bit?

50

Certainly?-- I think it is important that Goodna not be changed from its designation as a major regional activity centre because the geography means that there is a need for a major centre in that area. I can recall when I was at university in the late '70s, there was a Moreton Region Growth Strategy Investigation that came out after the 1974 flood and they recognised the importance of Goodna as a major regional

centre. What I think Council needs to do in the next iteration of its scheme review is to look at the footprint of the centre and there is ample land to the south and west where we could grow the centre that might greater flood immunity. I think we need to look at that.

1

Is that land that was not affected by the 2011 floods?-- And nor the 1974 flood as well.

On another topic, in your second statement, at paragraphs 36 to 39, you address the topic of what information can be provided to the public about conditions placed on flood-affected land?-- Yes.

10

And you make some suggestions as to how the public can obtain or could potentially obtain information about conditions. One of the things you refer to is standard and full planning development certificates which can be requested by members of the public for a fee for any identified parcel of land. In terms of those types of certificates, the legislation provides a timeframe to the Council within which they must provide the standard certificate?-- Yes.

20

30

40

50



And, from memory, was that ten business days, I think, something of that order?-- Look, I'm sorry, I can't recall that off the top of my head.

Do you know whether council commonly receives requests for standard planning and development certificates during a typical conveyance?-- Yes, we do but it is more the limited ones that are the bulk of the requests that we get.

10

And the limited planning and development certificate, that type of certificate doesn't provide information about what conditions attach to the land, does it?-- No, no, it doesn't. It is the standard that does that, standard certificate.

Do you think that where conditions relate to flooding, that those types of conditions should be included in a limited certificate?-- It is quite difficult to work out what conditions you would take out of a standard certificate - out of a development approval and put in a limited certificate. Perhaps that could be done. There is often the debate you should - if you are going to give some information, you should give all the information. That's the problem of sort of just taking flooding out because there could be mining issues, there could be a range of other issues as well. That's why it is probably useful to have a limited certificate for the basic information and then a standard certificate for the more complex stuff. The limited certificate would normally give you all the constraints information. It certainly does in the Ipswich context. It will tell you whether you are flood affected or mining affected, as an example.

20

30

So it would tell you you are flood affected but wouldn't flag any conditions that you need to comply with as a consequence of that flood affect?-- No.

And you would need to obtain the standard certificate-----?-- To get those conditions.

40

-----to get those conditions?-- They are also on PD Online as well for the more modern - more contemporary applications, since - in our instance, about 2005, I think it is.

Thank you, your Honour. I have no further questions.

COMMISSIONER: Mr MacSporran?

50

MR MacSPORRAN: Thank you, Commissioner. Mr Adams, just a couple of matters. Firstly, you have worked for the Ipswich City Council since 1981?-- Yes.

Is that in the role of a planner?-- Yes.

So you've been a planner for a very long time?-- Yes.

And you've been Deputy Chief Planner at Ipswich for about 20 years?-- I think I had that title for a while. I have had a number of different titles.

But you've had a senior position for a long time in Ipswich?-- Probably since - yeah, probably since about 1990 something.

And you've been Chief Planner since 2008?-- Yes.

10

So you are a planner with vast experience?-- 30 years, yes.

You are familiar with the work of the Queensland Reconstruction Authority?-- Yes, I am.

And I understand that Ipswich has its own sophisticated planning scheme and flood study data that supports that scheme, but have you recently had a presentation from the QRA?-- Yes, I have.

20

And have you had sufficient time to become aware of what their work involves, and what it seeks to achieve?-- Not fully, because it was only a couple of days ago, but I've certainly mulled over some of the ideas that were put forward.

Have you had, in that couple of days, the opportunity to assess generally the merit of the approach the QRA have taken to their work?-- Yes.

Can you tell us in brief summary what your view is about the worth of their work?-- Oh, I think they are to be applauded for some of the work they're doing. I think for local governments that have no mapping and no code provisions at all for flooding, it would be a great step forward. I certainly congratulate them on that.

30

And, again, just briefly, can you describe how it would be of benefit to councils of the type you've mentioned?-- Well, it provides at least some level of understanding of areas that are flood affected. It is not as sophisticated, nor is it intended to be sophisticated as the sorts of studies that Ipswich did back in the year 2002. It provides some very useful code provisions, I think there are some really good diagrams in there. That's certainly the stuff in there that I'm interested in looking at to put into our scheme as well, depending on what mechanism we go through in terms of amendments.

40

And it is particularly valuable for councils that are - lack the resources to conduct flood studies that might otherwise assist them to construct their planning scheme?-- Yes, it is, and they can be quite expensive those studies.

50

Now, can I read this to you and ask whether you agree with this proposition about the work the QRA has done: "The production of the Interim Floodplain Maps by the QRA is a significant step forward for flood management in Queensland."?-- Yes.

"Whilst the maps are a desktop exercise, based on remote data sets and do not provide any AEP, they are a significant step forward for low-growth councils where no better or any mapping exists."?-- Yes.

"Appropriately, the maps are titled 'interim'. This is important and reflects their genesis and intention to be upgraded over time. They are also not to be used to affect levels of assessment, which is appropriate."?-- I might disagree on levels of assessment but-----

10

The general concept?-- Generally, yes.

All right. "In the absence of more accurate information to determine a DFE, the QRA Interim Floodplain Maps are suitable for mapping purposes in planning schemes."?-- Yes.

That's the real benefit of them, is it not?-- That's what I would think.

20

They act as a trigger to alert councils that there may be an issue with development applications in a particular area, effectively?-- And if you've had no other information to go by, that would be a step forward.

And that's the case with many small Queensland regional councils?-- I understand that would be the case.

So the work they've done is a step - an innovative step in the right direction?-- Yes.

30

All right. Now, can I take you to one other topic in your statement? It is page 7, paragraphs 8 to 15?-- Which statement?

I am sorry, your second statement?-- Thanks. Could you give me those-----

Yes, it is page 7, paragraphs 8 to 15 inclusive?-- Yep.

40

This is the issue of fill-----?-- Yes.

-----you have spoken of. Now, do I take it that as the Chief Planner you would not have personal knowledge of most of the matters you raise in these paragraphs; that you've acted on advice from officers within your council?-- Largely. Some of them I received phone calls over myself as well.

Okay. Now, you say in paragraph 8, "Across the City of Ipswich, fill sourced from the Ipswich Motorway Upgrade Project has been placed on land without approval" from your council?-- Yes.

50

That's a fairly wide-ranging general statement?-- Yes.

Do you mean to convey in that paragraph that fill has been placed by the Department of Transport and Main Roads without

council approval, or are you talking more generally?-- More generally. It could well have been contractors. I am not sure how much this would have been actually by the department.

1

Okay?-- And the approval is approval under the planning scheme.

Yes, all right. Now, wherever the fill comes from, and wherever it is placed, if it is placed on a - on land which is subject to a development application approval, the development can't go ahead without the conditions of that approval being complied with, can they?-- No, but often there is no approval in place in some of the ones we've sighted. The fill has just turned up.

10

Okay. And then the application for development is made after the fill is placed there, is that what you mean?-- Yeah, it could be.

Okay. Now, the ones you've set out in paragraph 10, in particular (a) to (f), do you know which category they fall into? Paragraph 10(a) to (f), those particulars sites that you have nominated there?-- I am not aware of any development application over (a), there is an existing club there; (b), we had an application, I believe, in the system prior to that; not aware of any activity on (c) or (d); (e) I think is the site office for - or one of the depots or something associated with the Motorway, and (f) the Citiswich Estate, we have had applications over that.

20

Okay. If I can just take you through them in terms of the Department of Transport and Main Roads' involvement in any of these sites - firstly, do you know whether there has been involvement by the department in any of those sites?-- No, it is just the fact there was no town planning approval given for the fill that's occurred.

30

Okay. For completeness, can I just take you through them very quickly? That with (a), that's the Boonah road site, the site of the Swifts Rugby League Football Club, there was no spoil from the Ipswich Motorway placed on that site at all?-- That's not what I've been informed of.

40

You have had different information?-- Yes.

But you have no personal knowledge yourself about that?-- No, but I've been advised by my officers and other people who followed through on it that was the source of the fill.

Your files would reveal the sources of that information and so forth?-- I imagine they would.

50

You would, no doubt, be prepared to speak with any officers from the department who wanted to-----?-- Yes, absolutely.

-----have clarification about what your information is?-- Yes.

Number (c), which is the Riverview site, that's in fact owned by the Department of Transport and Main Roads, that block, do you know - that land?-- No, I'm not sure. That's one of the ones we had community complaints about.

1

Okay. That's a department-owned piece of land and is used as a temporary storage site for spoils from the Motorway?-- Well away from the Motorway, though.

But that's a storage site owned by the department?-- I will accept your-----

10

Okay?-- -----analysis on that.

COMMISSIONER: Mr MacSporran, what do you think the chances would be of actually liaising with the council and working out some sort of schedule of what's where between you?

MR MacSPORRAN: Yes, well, that's - can I indicate this, Commissioner: there is a requirement currently in, which is due Monday, for a statement from the Director-General of the department. These issues are being addressed in detail. I thought I'd give Mr Adams-----

20

COMMISSIONER: Certainly do that.

MR MacSPORRAN: -----a chance to - yes.

COMMISSIONER: But if there is further checking needed, perhaps-----

30

MR MacSPORRAN: It can be done certainly.

COMMISSIONER: -----give us the product of it.

MR MacSPORRAN: Certainly, yes.

COMMISSIONER: Go ahead with this.

MR MacSPORRAN: Again, just briefly, Mr Adams, just in terms of the liaison between your council and the department over the Ipswich Motorway project generally, there was an officer of your department or your council employed by the project, wasn't there?-- Yes, there was.

40

A fellow called Gavin Heuer?-- Yes.

And that was an initiative of the department to provide some liaison between the council and the department during the course of the upgrade project?-- Joint initiative. Council also requested that.

50

And the issue of fill and where it was going was the subject of discussion between Mr Heuer, and the departmental officers on site?-- I am not aware of that, particularly fill offsite.

Okay. But it could be the case; you are simply not aware of it?-- I am not aware of it.

Okay?-- Mr Heuer, though, wouldn't have - neither would I have - authority to give an approval to put fill on other people's blocks of land when they go through a planning process. The council would have to-----

Certainly?-- -----do that.

But it would provide the council, in theory at least, with knowledge of where the fill was going, what the proposal was as to where the fill was going?-- It may do if that was followed.

10

Yes. One of the purposes of having such an officer liaison liaising between the project and the department was for that very purpose, wasn't it, to be aware of these things?-- No, I think the main purpose was to try and coordinate some of the local issues immediately adjoining the corridor, some of the engagement of the local community, some of their sort of interface traffic issues. I don't think it was about the fill issue. I think that's come up as a-----

20

As a separate issue?-- -----separate issue.

Okay. But necessarily, fill has to be placed somewhere during the course of the project?-- I imagine it would.

It is an ongoing thing?-- Yes.

Now, in paragraph 10 item (c) - I beg your pardon, item (e), that's in fact a council waste site, is it not?-- No.

30

A former waste site?-- No, I think you've got the wrong location.

Have we?-- I think the reference was to the Woogaroo landfill site. It is a couple of hundred metres on the other end, western end of the street.

I see. So this corner of Church and Woogaroo Streets, Goodna is a separate locality to the landfill site?-- Yes.

40

Okay. Fill from the Ipswich Motorway Upgrade Project was sent to the landfill site? Are you aware of that?-- No, I am not aware of that.

If it went there you would expect it to have been with the knowledge and consent of the council?-- I am not sure because I am not aware of it.

50

All right. (f), the Citiswich, you have told us about that. Can I suggest there that the fill that went there was - went by way of contractor, by contractual arrangements between the department and the developer of the site?-- Yes, that's what I'm aware of. I was advised that was a contractor, but the source was from the Motorway and the exemption issue occurred as a result of that - potential exemption issue.

That's one of the difficulties that you foreshadowed that despite what the department may say or put in place by way of conditions of cartage and where it should go and the conditions under which it should be dumped, it relies upon the contractor obeying those conditions?-- I suspect it is an unintended consequence of the way the legislation is worded and the exemptions in there. That was the point I was trying to make with the unintended consequence, and the ramifications of that for council.

1

You simply want something put in place to make sure that everyone's aware of what's going on and everyone can assess-----?-- I think we have to have a look at that exempt provision, I think it is just too broad, and that people could use it in a way, you know, that the department necessarily didn't want to cause an issue through contractors, et cetera.

10

Thank you, Mr Adams. Thank you, Commissioner.

COMMISSIONER: Ms O'Gorman?

20

MS O'GORMAN: No questions, thank you, Commissioner.

COMMISSIONER: Mr Flanagan?

MR FLANAGAN: Just one point. You were asked by Counsel Assisting in relation to the temporary planning instrument and the fact that it only lasts for 12 months, is that correct?-- Yes. As far as I am aware.

30

That's section 104 of the SPA?-- Thank you.

That's all right. The temporary planning instrument doesn't amend the scheme itself, does it?-- No, it doesn't. It puts the rest of the scheme in abeyance for a period.

In relation to your second option of amending the planning scheme, ordinarily you would need to go through the entire process under Chapter 3 Part 5 of the Sustainable Planning Act, is that correct?-- And that's two staged reviews. Public notification, it could be 12 to 18 months.

40

You think that process alone could be 12 to 18 months?-- That's been my experience. It has become quicker in recent times but it can take that long.

Following that process, it could well be that the temporary planning instrument expires before that process is completed?-- Yes. It has been a real concern to us.

50

Now, in relation to the Queensland Recovery Authority, they have proposed a draft new State Policy, is that correct?-- Yes.

And have you seen that draft?-- Yes, I have.

All right. Now, in relation to that draft, does that have the effect of permitting, if you like, a temporary planning instrument to have effect beyond 12 months without necessarily - sorry, does it have the effect of permitting the amendment to the scheme to happen without the two-stage process, including public consultation?-- Potentially, but that's one of the things I'm having a very close look at, to see if we can mirror and piggyback with that.

1

Yes. But in relation to that draft, could you inform the Commission of the concerns you have as to possible loopholes of that draft that might stop you being able to amend the scheme in a timely manner?-- Probably not loopholes. If I could explain it like this: I think the provision was designed to help the smaller councils who have no provisions at all, and I think it is really laudable in that direction. Where it creates difficulties for us in Ipswich is we have an assessment table already in place that's really valuable for flood-affected land. It hasn't got that provision associated with it. And we have more details in terms of specific outcomes, for better outcomes in terms of the flooding situation in Ipswich that aren't called up in that document. It is more simplistic, and probably necessarily so, in its original intent for western, rural, more remote councils. They are the things I am sort of having concerns about whether we can fully match up with it.

10

20

Thank you, Commissioner.

COMMISSIONER: Ms Kefford?

30

MS KEFFORD: No further questions. Might Mr Adams be excused?

COMMISSIONER: Yes, thanks, Mr Adams. You are excused.

WITNESS EXCUSED

40

MS KEFFORD: Mr Adams was the final witness for today, so might we adjourn to Monday, the 7th of November?

COMMISSIONER: Monday the 7th at 10 a.m.

THE COURT ADJOURNED AT 3.46 P.M. TILL 10.00 A.M. ON 7 NOVEMBER 2011

50