



CORKS
CHAMBERS
WESTCARTH
LONDON

Statement of Brett Draffen in response to the requirement to provide statement to Commission of Inquiry dated 19 August 2011

I, Brett Draffen, of 60 Margaret Street, New South Wales, will say:

- 1 I am employed by Mirvac Limited in the position of Chief Executive Officer, Development. I have been employed by Mirvac since 2001 and have held my current position since July 2008.
- 2 I report directly to Nicholas Collishaw, Managing Director of Mirvac. Reporting to me are the key executive team for the Development Division including the following roles: Chief Executive Officers of NSW and Victoria, Queensland and Western Australia, the National Practice Director of Mirvac Design, National Financial Controller, National Industrial Development Director and National New Business Manager. I am also a member of the Executive Leadership Team for the Mirvac Group which includes the Managing Director, the Chief Operating Officer, the Chief Financial Officer and Chief Executive Officer Investments.
- 3 I hold a Bachelor of Business and am Fellow of the Australian Property Institute. I am the President of the NSW Property Council of Australia and National Board Member of the Property Council of Australia.
- 4 Prior to my appointment as CEO Development, my previous roles with Mirvac included other senior executive positions including State CEO roles in NSW and Victoria.
- 5 In my capacity as CEO Development, I am responsible for overseeing Mirvac's Development Division. The core business of the Development Division is the creation and delivery of medium to high-end residential apartments, prime infill housing, large master-planned communities as well as commercial projects across Australia.
- 6 I have caused to be made extensive enquiries of Mirvac employees in relation to the history of the development at Tennyson Reach (the Development) up to and including the January 2011 floods. This statement is a collection of matters known to me personally and also matters that have been collated from various people but that I understand to be true.

SECTION 1 - CHRONOLOGY OF THE MIRVAC DEVELOPMENT AT TENNYSON

- 7 The Mirvac Development at Tennyson Reach is located at King Arthur Terrace, Tennyson and consists of:
 - (a) the Queensland State Tennis Centre, which was completed in December 2008;
 - (b) the Softstone and Lushington residential apartment buildings, comprising 115 apartments, which were completed in April 2009 as Stage 1 of Mirvac's residential development;
 - (c) the Farringford residential apartment building, comprising 92 apartments and 2 commercial dwellings, which was completed in March 2010 as Stage 2 of Mirvac's residential development; and
 - (d) parkland.



- 8 The site was formerly occupied by the State owned Tennyson Power Station and comprised 12 hectares of land, which has now been subdivided between the components of the development outlined above. The site has a frontage to the Brisbane River of approximately 550 metres.
- 9 In relation to the property at paragraph 7(d), Mirvac had initially proposed to construct a further three residential apartment buildings at the site. However, on 30 June 2011, it completed the sale of that land to the Brisbane City Council (BCC), who will use that land for additional riverside parkland.

The Mirvac Model

- 10 The Tennyson development was a substantial project for Mirvac and employed a number of internal Mirvac divisions and numerous external consultants, who worked as a coordinated team to deliver the project over the last seven years.
- 11 Mirvac adopted its standard approach to large property developments throughout this development.
- 12 The Mirvac model with respect to projects of this type involves the following steps:
- (a) First, Mirvac's senior management and acquisitions team identifies opportunities and, subject to appropriate due diligence and internal approvals, secures land suitable for development.
 - (b) Post acquisition, management of the project shifts to Mirvac's development delivery team which oversees the conceptual design process by Mirvac's design team in conjunction with relevant external consultants.
 - (c) Mirvac then employs external town planners to prepare development applications and liaise with Local Government in order to meet the requirements for development at the site. Ordinarily, the town planners appointed by Mirvac communicate directly with relevant authorities with input, where relevant, from the Mirvac Development team. In addition, Mirvac Development team and the town planners, appoint relevant expert consultants to prepare reports and other material to support Mirvac's development applications.
 - (d) Once concept design approval is obtained from the relevant planning authority, Mirvac's development, construction and design teams employ further external consultants to turn the concept designs into detailed designs and plans necessary to obtain Development Approval.
 - (e) Once Development Approval has been obtained from the relevant planning authority, detailed designs and plans are developed by Mirvac design and construction utilising, where relevant, external consultants and sub-contractors. These designs and plans are then submitted to the relevant planning authority for Building Approval before construction commences.
 - (f) Towards the end of the detailed design/pre-construction phase, Mirvac's sales and marketing team generally become involved to progress a strategy for marketing and selling apartments off the plan prior to and during construction.



CORRS
CHAMBERS
WESTCARTH
LONDON

- (g) Once necessary pre-sales are achieved, a final internal sign off is then required to commence construction. Once internal approval is obtained, Mirvac's construction team project manage sub-contractors who construct the development. At relevant stages of the construction process certification is required that the building is constructed in accordance with the permits, plans and approvals.
- (h) Upon completion of the project, Mirvac begins settling off the plan sales of dwellings.
- (i) The sales and marketing team continue involvement in the project until all apartments are sold.

The Tender Process (Sections 1(a) – (d))

- 13 I understand that a number of years ago Tennis Queensland was seeking to have a tennis stadium, capable of hosting international quality tournaments, built in the city of Brisbane. One of the Tennis Queensland Board members at that time was Chris Freeman. At that time Chris Freeman was the Chief Executive Officer of Mirvac Development Queensland. Tennis Queensland were looking at options for the possible location of a centre and how such a development could be viable as either a government project or with the involvement of the commercial sector.
- 14 I understand that the proposal was canvassed widely in government and ultimately support for the construction of a tennis stadium was adopted by the government.
- 15 The government, through the Department of Sport and Recreation, had responsibility for the proposal and took it to the open market.
- 16 In mid 2003 the Department of Sport and Recreation called for expressions of interest for the construction of a State Tennis Centre and a riverside development at the Tennyson site. The State requested that interested parties submit a statement of their capabilities with respect to such development.
- 17 Mirvac submitted a capabilities statement in late 2003 in response to the State's call for expressions of interest and was selected on an initial short list of five developers. That short list was further trimmed by the state to three developers who progressed to Stage 2 of the State's tender process and were asked to prepare a Detailed Development Proposal in response to a Project Brief issued by the State. My understanding is that the other two developers short listed were the Devine Group and Mark Stockwell.
- 18 Mirvac's acquisitions team worked closely with the Mirvac internal design team in order to create concept designs for the proposed State Tennis Centre and a residential development.
- 19 Mirvac submitted its Detailed Development Proposal in August 2004, which was then the subject of extensive review by the State.
- 20 Following the State's review of the Detailed Development Proposal, Mirvac engaged in a competitive bidding process with the two other short listed developers, which involved extensive negotiations with the State regarding details of Mirvac's proposal which the State was seeking to improve. All of these negotiations and discussions were conducted by way of formal meeting with representatives from the State. The Probity Officer appointed by the State attended these meetings.


 CORRS
CHAMBERS
WESTGARTH

- 21 In June 2005, Mirvac was selected as the State's preferred developer for the delivery of the State Tennis Centre and residential development.

The Development Application and Approval Process

- 22 Given the land's historical use as a power station, the land had been zoned for Community Use (CU8 Utility Services) under the Brisbane City Council's Brisbane City Plan 2000.
- 23 This meant that Development Approval was required from the Council, in the form of a Material Change of Use Permit, in order to build the development.
- 24 Mirvac commenced the preparation of an extensive Development Application soon after it was appointed preferred bidder in respect of the site. Mirvac engaged town planners Brannock and Associates to lead this process and coordinate communications with the Council. Overarching control of the process was the responsibility of Mirvac's internal Development team.
- 25 Brannock and Associates coordinated a team of consultants in order to prepare the Development Application. Designs were provided by Mirvac's in-house architectural team, HPA (now known as Mirvac Design), which coordinated a separate team of consultants who advised in relation to components of that design. Reports in relation to the proposed development and compliance with Council's controls and guidelines were prepared by Brannock and Associates, as well as consultants including:
- (a) Lambert & Rehbein Engineers in respect of Ecological Assessment; and
 - (b) GHD in respect of Flooding and Stormwater Quality Management.
- 26 Mirvac submitted its Development Application to the Council in November 2005. The final Application comprised the following seven volumes:
- (a) an Overview of the Project in Volume 1;
 - (b) an Impact Assessment Report in Volume 2;
 - (c) a Design Report in Volume 3;
 - (d) a Transport Traffic Report in Volume 4;
 - (e) an Engineering Services Report in Volume 5;
 - (f) a Flooding and Storm Water Quality Management Report in Volume 6; and
 - (g) an Ecological Assessment in Volume 7.

A copy of Mirvac's Development Application dated November 2005, has been produced to the Commission of Inquiry.

- 27 As part of the process, the Brisbane City Council issued an Information Request to Mirvac in February 2006 to ask questions arising from Mirvac's Development Application. Again, Brannock and Associates coordinated Mirvac's response to the Information Request and drew on the expertise of Mirvac's architects and external consultants to answer the Council's queries. A copy of Mirvac's Response to Information Request has been produced to the Commission of Inquiry.
- 28 The original proposal for the State Tennis Centre did not include a roof for the stadium. This was a later requirement imposed by the State and necessitated



variations to the design and construction. Further questions and answers were passed back and forth between Brannock and Associates and the Council. Mirvac submitted a changed application to Council in July 2006. The bulk of this changed application related to the roof design for the State Tennis Centre. A copy of this document had been produced to the Commission of Inquiry.

- 29 On 9 October 2006 Mirvac received a formal Negotiated Decision Notice from the Council granting it Development Approval. A copy of that approval has been produced to the Commission of Inquiry.
- 30 As is normal in any large scale property development, there were a number of variations to Mirvac's initial development approval after October 2006. These matters continued to be negotiated with the Council through Brannock and Associates. Copies of a further amended Development Application dated December 2006 and amended Decision Notices have been produced to the Commission.

Building Approval

- 31 Once Mirvac had obtained development approval with respect to the site, Mirvac's design and construction teams and the consultants employed by those teams engaged in a process of turning Mirvac's high level designs, which were the subject of development approval, into comprehensive plans for the construction of the development. Consultants appointed by Mirvac to assist with this process included:
- (a) Hydraulic Consulting Engineers, Thomson Kane;
 - (b) Electrical and Mechanical Consulting Engineers, Lincoln Scott Associates (LSA), who are now WSP Lincoln Scott;
 - (c) Structural Consulting Engineers, Qantec McWilliam, who are now Opus Qantec McWilliams; and
 - (d) Civil Consulting Engineering, Lambert & Rehbein.
- 32 The comprehensive building designs and plans prepared by Mirvac and its consultants were submitted to CERTIS, who had been engaged as certifier for the purposes of the *Building Act 1975* (Qld). This role required CERTIS to review the proposed construction of the development to certify compliance with the conditions of Mirvac's development approval and the *Building Act 1975* more generally.
- 33 Mirvac required formal building approval from CERTIS before it could commence construction of the development. Indeed, CERTIS approved Mirvac's plans and granted building approval in the following stages:
- (a) the base of the State Tennis Centre was approved on 14 March 2007;
 - (b) the stadium component of the State Tennis Centre on 17 July 2007;
 - (c) the in-ground works up to the podium slab of the Softstone and Lushington buildings were approved on 27 August 2007;
 - (d) the Softstone and Lushington towers were approved on 2 November 2007;
 - (e) the in-ground works for the Farringford building was approved on 24 October 2007;
 - (f) the Farringford tower was approved on 20 February 2008; and



CORRIS
CHAMBERS
WESTGARTH
Lawyers

- (g) an amendment to the approval for the Faringford Tower was granted on 28 March 2008.

Copies of the building approvals listed above have been produced to the Commission of Inquiry.

Construction

- 34 Mirvac commenced construction of each stage of the development after building approval had been obtained in respect of the relevant stage.
- 35 Mirvac retained its team of consultants to assist with construction and ensure continuing compliance with the development approval and plans approved as part of Mirvac's building approvals.
- 36 Mirvac held regular meetings of the Project Control Group (PCG). The PCG consisted of representatives from Mirvac's development, design and construction teams, representative of the State of Queensland and, where appropriate, consultants. The purpose of the PCG was to discuss progress of the development including compliance with the requirements of approvals issued with respect to the site. The State Tennis Centre was the particular focus of these meetings.

Certification

- 37 Upon completion of each stage of the development, Mirvac's consultants and sub-contractors prepared compliance documentation in respect of elements of the development which required final certification by CERTIS that they had been constructed in accordance with Mirvac's development and building approvals.
- 38 CERTIS reviewed all aspects of the development requiring such assessment and issued Compliance Certificates and Certificates of Classification to certify that Mirvac had built the State Tennis Centre and the Sofstone, Lushington and Farringford buildings in accordance with the requirements of the development and building approvals. Copies of the Compliance Certificates and Certificates of Classification issued by CERTIS have been produced to the Commission of Inquiry.
- 39 Mirvac addressed flood issues through the advice of their expert consultants. They were advised by GHD. GHD provided a report headed "Flooding and Storm Water Management Report". This was included as Chapter 6 of the Development Application.
- 40 Mirvac relied on the contents of that report and its conclusions.

Conditions Imposed on the Development with respect to Flood

- 41 The fundamental condition imposed on the Tennyson development under the development approval issued by the Brisbane City Council which concerned flood was as follows:

"Design and Construct all proposed buildings in accordance with Council's 'Subdivision and Development Guidelines' to ensure that minimum habitable floor levels are 500mm above the 100 year (ARI) flood level (river and creek flooding) or 500mm above the 50 year (ARI) (overland flow level) whichever the greater.

CORRS
CHAMBERS
WESTGARTH
LAWYERS

- *Minimum non-habitable floor levels are to be not less than 300mm above the 50 year (ARI) or 100 year (ARI) flood levels (whichever is the greater)."*

- 42 This condition was required to be satisfied prior to lodging an application for Building Works. Accordingly, Mirvac and its consultants ensured that its designs for the each of the State Tennis Centre, the Softstone building, the Lushington building and the Farringford building complied with these requirements. CERTIS was satisfied that this condition had been complied with and granted Building Approval to Mirvac.
- 43 Mirvac complied with the requirements of the Q100 flood level of 7.9m (ARI), which had been advised by Council at that time in respect of the site, throughout the development process.
- 44 The flood level imposed by the Council was considered to be a fixed constraint. Council advised the Q100 flood level for the site and Mirvac went ahead and designed and constructed all habitable floor levels to at least 500mm above that height.
- 45 It was understood in the development industry that the Q100 flood levels derived by Council were calculated taking into account the lessening of the flood level resulting from the construction of the Wivenhoe Dam. While the resulting Q100 levels were below the 1974 flood level the construction of the Wivenhoe dam was assumed to have addressed the issue.
- 46 Mirvac was required to assess the impact on flood storage and flood conveyance at the site as a result of the development. As noted above, Mirvac appointed GHD to address this requirement.
- 47 There would have been numerous meetings between Mirvac and all their consultants with the Brisbane city Council and the State of Queensland in finalising the arrangements for the major development at Tennyson. However, the meetings with the State of Queensland were held either prior to the awarding of the tender, where such matters were fully minuted and attended by the State's probity officer, or were held post the tender through the meeting of the Project Control Group. Those meetings led to the awarding of the tender and secondly dealt with construction issues. The dealings between Mirvac and the State of Queensland did not relate to development controls. Such matters were within the authority and responsibility of the Brisbane City Council for this development.
- 48 In relation to the discussions and arrangements with the Brisbane City Council, while there would have been many meetings canvassing options the full extent of Mirvac's rights to build on that site is governed by Mirvac's Development Approval.
- 49 Mirvac engaged experts to advise in relation to flooding and storm water issues to ensure that Mirvac satisfied the authorities and obtained approval to construct a development in accordance with the requirements of the authorities. All such matters were addressed in the material put before Council in Chapter 6 of the Development Application.

SECTION 2 – THE PROCESS OF SELLING UNITS AT THE DEVELOPMENT

- 50 Mirvac began marketing apartments to be sold off the plan in the Softstone and Lushington buildings (being Stage 1 of the residential development) in the months leading up to June 2007.

CORRS
CHAMBERS
WESTGARTH

- 51 Mirvac conducted this sale process by releasing marketing information to its database of prospective purchasers and adding to that database persons who expressed an interest in the development.
- 52 Mirvac offered persons in its database an opportunity to make a pre-release appointment at which they would have an opportunity to inspect and purchase apartments prior to those apartments being put on the open market. Pre-release appointments commenced on 21 June 2007.
- 53 Mirvac provided potential purchasers who attended pre-release appointments with a copy of a sales brochure, a draft contract and a disclosure statement with respect to the apartments.
- 54 Mirvac sales staff were trained on the basis of an internal sales manual in order to answer queries from potential purchasers in relation to the development.
- 55 Mirvac began to market off the plan sales of apartments in the Farringford building (being Stage 2 of its development) in November and December 2007.

SECTION 3 – THE RELATIONSHIP BETWEEN MIRVAC AND TENNIS QUEENSLAND

- 56 Mirvac and Tennis Queensland did not have a relationship during the development of the site. Mirvac's client was the State of Queensland, through its representatives from the Department of Sport and Recreation. Such representatives were members of the Project Control Group. Tennis Queensland was not Mirvac's client.

SECTION 4 – DETAILS OF THE JANUARY 2011 FLOOD

Reporting structure for Mirvac Development

- 57 Mirvac Development employs a Chief Executive Officer for each of New South Wales, Victoria, Western Australia and Queensland. State CEOs are responsible for managing all Mirvac development projects located in the relevant state.
- 58 Matthew Wallace is Mirvac Development's CEO for Queensland. As is the case with all State CEOs, Mr Wallace reports directly to me.
- 59 Given the significance of the potential impact on Mirvac Development projects during the Brisbane floods, Mr Wallace and I communicated by telephone and email on a very regular basis (usually several times a day) during the period 11 January 2011 to 18 January 2011. As I discuss later in this statement, I also visited several sites in Brisbane with Mr Wallace after the flood waters subsided on 18 January 2011.
- 60 Accordingly, much of what is recorded in this statement is my personal knowledge gained as a consequence of my regular communications with Mr Wallace in the period 11 January 2011 to 18 January 2011 and my observations during my visit to Brisbane on 16 January 2011. In preparing this statement, I have also made inquiries of senior Mirvac employees that were present at the Tennyson Development site during and immediately after the January floods as well as other members of the Mirvac Queensland Executive Committee.

**Mirvac Developments projects in Brisbane affected by floods**

- 61 At the time of the floods, Mirvac Development had completed works at Tennyson and had handed over the developed portion of the residential site to the Tennyson Body Corporate. By January 2011, a substantial proportion of the apartments had sold, particularly in Stage 1, and many of the residents were already in occupation. While Mirvac had a continued presence at the site in the form of a sales office dedicated to the project, it no longer controlled or managed the site.

Events of 11 January 2011

- 62 My recollection is that the first occasion on which I personally became aware that the Brisbane floods may potentially impact the Tennyson development was the morning of 11 January 2011.
- 63 That morning, Mr Wallace, had called an impromptu meeting of the Queensland Executive Committee (**Ex Com**) to discuss the potential impact of the floods on various Mirvac Development sites including Tennyson. Among other things, that meeting involved a discussion of mitigation measures that could be taken at the sites that were still in the construction phase or which Mirvac otherwise controlled or managed. As I have already observed, Stages 1 and 2 of the Tennyson Development were completed so therefore this was not a site that Mirvac controlled or managed.
- 64 I am aware that while there was continuous information available through the media regarding the floods, it was difficult at that stage to predict with any certainty which areas of Brisbane were likely to be vulnerable and the levels the floods might reach.
- 65 Importantly, this meant that we could not be sure at this stage which Mirvac Development sites would be affected by the floods. Because of this lack of certainty, the Ex Com agreed that the most sensible course was for a cautious and consistent approach to be taken across all sites. The decision was made to close all Mirvac sales offices at sites in Brisbane and to send staff home before access and transport became a real problem. It was also decided that valuable equipment, documents (such as sales contracts) and furniture would be removed from all Mirvac sites (or at least relocated to a more secure position on site) in case the site was effected by floods. Various actions required by our Business Continuity Plan were also discussed during this meeting.
- 66 So far as the Tennyson development was concerned, the Ex Com agreed that the sales team would visit the sales office located at Tennyson and ensure that valuable equipment and paperwork (such as sales contracts) were removed from the Tennyson development site or moved to a higher area.
- 67 Mr Wallace spoke with me shortly after the Ex Com meeting to brief me on the potential vulnerability of Mirvac head office and various projects (including Tennyson) to floods and on the actions agreed by the Ex Com to address those risks. Mr Wallace put in place tentative arrangements for alternative accommodation in the event a temporary relocation of the Mirvac head office became necessary.
- 68 Later that morning, Mr Wallace contacted me and advised that he had personally inspected the level and state of the Brisbane River and believed that there was a high possibility that the basement and lower level of the Mirvac

head office would be flooded. Mr Wallace was also becoming increasingly concerned that the severity of the weather conditions were such that it was desirable to have staff return home before access and travel became problematic. He advised that in his opinion, a decision should be made to evacuate the Brisbane head office. I agreed that was the appropriate course.

- 69 For my part, I took steps to brief other members of Mirvac's national senior executive team on these recent developments and to update Mirvac staff at other offices to advise them of the situation in Brisbane.
- 70 I understand from Mr Wallace that all Mirvac personnel were evacuated from our head office in Brisbane by 12:52pm on 11 January 2011.

Attendances by Mirvac at Tennyson on 11 January

- 71 Following the Ex Com meeting of 11 January 2011, Georgina Madsen, Senior Development Manager and Claire O'Rourke, Development Manager attended the Tennyson site. During that site visit and subsequent calls:
- (a) Ms Madsen discussed with Ron Leslie, Building Manager at Tennyson and an employee of Cambridge Building Management Services (CMS) the flood mitigation steps that were being taken by CMS and the Body Corporate.
 - (b) Ms Madsen discussed with the operators of the Tennyson cafe, which Mirvac continued to own, that it was advisable for the cafe to cease operating to allow employees to return to their homes.
- 72 Mirvac also took the following steps in relation to the Tennyson site during the afternoon and evening of 11 January 2011:
- (a) Cameron Kirkwood, Senior Project Engineer with Mirvac Constructions discussed with Mr Leslie of CMS and Darren Lynch of CMS and Steve Bridges (Chairman of the Tennyson Body Corporate), and Graham Upton (Treasurer of the Tennyson Body Corporate) mitigation works that could be taken to prepare the Tennyson site for the flood. Mr Kirkwood recommended that CMS and the Body Corporate hire generators to keep the pumps in the basement going in the event that the power was lost and that they recommend to residents that they start moving cars out of the basement and empty the storage units in the basement in case the basement was inundated with flood waters.
 - (b) Ms Madsen had several further discussions with Mr Leslie and Mr Lynch of CMS in relation to flood mitigation works. During those discussions, Mr Leslie and Mr Lynch advised Ms Madsen that CMS had:
 - hired 2 generators to keep the pumps in the basement going in the event of an electricity failure;
 - also hired a security guard to monitor the pumps and ensure they were working continuously;
 - recommended to all residents that they remove cars from the basement and empty storage lockers and that all residents had in fact taken cars out of B2 (the lower level of the basement) except for a small number of residents who had decided that they didn't want to move their cars; and



- put up signs around the common areas of the development in relation to lift operation (one of the lifts had shut down) and advising of the steps to be taken in the event that power was lost.
- (c) Ms Madsen also made calls to Mr Lynch and Mr Leslie that afternoon and evening to relay information reported in the media to assist them in their mitigation measures on site.
- (d) Ms Madsen had discussions with Mr Bridges of the Body Corporate during which Ms Madsen asked Mr Bridges what assistance Mirvac Development could offer the Body Corporate to assist with flood mitigation. Mirvac agreed that unsold apartments on higher levels would be made available for use by residents from apartments on the lower and ground floors as accommodation and storage.
- (e) Both Mr Kirkwood and Ms Madsen had conversations in the late afternoon of 11 January 2011 with Mr Leslie and Mr Lynch regarding water on the floor of the basement at the Tennyson site. At that stage, it was not apparent whether the water was flood water or from another source, most likely a backing up of the stormwater system.
- (f) Mr Kirkwood, with a representative from Tacoma (a plumbing contractor), attended the Tennyson site on the evening of 11 January 2011 to assist CMS representatives and the Body Corporate identify the source of the water in the basement.
- (g) It was thought that the storm water system might be backing up because the storm water tanks were full. Mr Kirkwood inspected the storm water tanks and noted that they were close to full, but not in excess of full capacity.
- (h) Due to concerns that rising water near the essential services area in upper basement level 1 might become electrified, Mr Kirkwood, the representative from Tacoma and representatives of CMS and the Body Corporate agreed to cut pipes around the drains which were backing up near those essential services.
- (i) They then shut off access to the lower basement level 2 and turned off power to that basement level and lights in the parkland, so that electricity would not create a safety hazard if those areas became inundated.

Events of 12 January 2011

- 73 The Ex Com team met at Mr Wallace's home on 12 January 2011 for a briefing on developments occurring on the afternoon and evening of 11 January 2011 and to plan a response to those developments.
- 74 Mr Wallace briefed me shortly after the Ex Com meeting and communicated to me that the following matters had been discussed:
- (a) the safety of staff;
 - (b) safety issues that might arise when re-entering the head office, Waterfront and the other sites that had been evacuated, including the risk of electrocution from damaged power systems;
 - (c) potential damage incurred as a result of the flood;

COERS
CHAMBERS
WESTGARTH
LONDON

- (d) clean up arrangements, focusing on the need to secure contractors, labour, equipment and supplies as soon as possible due to a potential shortage;
 - (e) temporary office capability;
 - (f) the likelihood of the flood water entering the ground floor apartments at Tennyson.
- 75 After the initial briefing and discussions, the Ex Com team had separated into teams and prepared clean up and re-entry plans for each of the projects, including Waterfront and Tennyson.
- 76 Ms Madsen attended the Tennyson site at about 7:30am. At the time of her visit, the flood water was around 60cm below the ground floor (including the ground floor apartments) of Softstone and Lushington (Stage 1 of Tennyson), and there was some flood water throughout the visitors car park. Ms Madsen spoke with John Shepherd of CMS, and repeated that Mirvac was willing to offer the use of Mirvac owned apartments at higher levels of the building for use by any lower or ground floor residents who needed or wanted to move their possessions to higher ground.
- 77 Mirvac arranged for Cameron Kirkwood to engage in contacting contractors to assist in the clean-up process at Tennyson and other sites and communicate with CMS about the steps being taken to secure resources and labour for the clean-up process at Tennyson.
- 78 Later that day, Mr Wallace briefed me on the rising flood levels at Tennyson and that at some point during that day Mirvac was advised by CMS representatives that it was becoming increasingly likely that flood waters would enter the ground floor of Tennyson, including apartments.

Events of 13 January 2011

- 79 On the morning of Thursday, 13 January, water had entered the ground floor apartments at Tennyson, power and services had been lost and many residents had evacuated the building.
- 80 Mirvac was conscious that resources that would be necessary for the clean up and rectification processes at sites including the head office, Sebel Suites, Waterfront and Tennyson. Mr Wallace was liaising with key subcontractors and suppliers and sourcing equipment and materials from unaffected Mirvac sites in Queensland and from Mirvac offices nationally. We knew that these resources would be in high demand during the impact of the floods throughout Brisbane and so were working hard to secure what resources we could.

Attendances by Mirvac at Tennyson after flood waters subside

- 81 On 14 January 2011 at 9am after the flood waters had subsided, Ms Madsen and Mr Kirkwood attended the Tennyson site to assess the damage. They were later joined by Ms O'Rourke
- 82 I am informed by Ms Madsen and Mr Kirkwood that:
- (a) at the time of their visit, the site was covered in mud and silt and it was necessary to move around the site very cautiously;
 - (b) Ms Madsen and Mr Kirkwood offered to CMS and the Body Corporate that Mirvac would commence the clean up work as soon as possible and that Mr Kirkwood would take on the responsibility for coordinating



the works as he had the best contacts with sub-contractors and equipment suppliers. Mirvac received a letter from CMS instructing Mirvac to commence the clean up works.

- (c) Ms Madsen and Mr Kirkwood also had a discussion with CMS and the Body Corporate about safety concerns in connection with ongoing occupation of the site. In particular, the mud and silt had made the area extremely slippery and a number of people had fallen. It was agreed that it was necessary for the site to be shut down for 48 hours and the residents evacuated so that Mirvac would have a chance to clean up the site and remove hazards.

Events of 15 January 2011 to 18 January 2011

- 83 Basic clean up works commenced on 15 January 2011. Cameron Kirkwood was overseeing the clean up operations at Tennyson.
- 84 While it was possible to remove much of the mud and silt in the first few days, the clean up phase, including the removal of water in the basement, the drying, cleaning and disinfecting of the basement and external walls, the removal of damaged fixtures, fittings and other property and the erecting of hoardings, locks and chains over doors to prevent unsafe access and looting, continued until around 25 January 2011.
- 85 On 16 January 2011, I visited the Mirvac sites that had been affected by the floods, including Tennyson. and I spent several hours at Tennyson and inspected the foyers and other common property as well as some of the ground floor apartments.
- 86 During the inspection we met some of the residents who had elected to stay on site.
- 87 While Mirvac was under no legal obligation to undertake the clean up works we were of the view that our assistance was appropriate and part of our contribution to the flood relief.
- 88 There was a strong common interest with the Tennyson Body Corporate in having the clean up and rectification works performed as quickly and cost effectively as possible.
- 89 On 16 January 2011, we commenced costing the clean up and rectification works. Preliminary estimates of costings were agreed with the Body Corporate shortly thereafter and the clean up and rectification works continued from late January through to 28 March.
- 90 The work Mirvac performed for the Body Corporate included mobilising skilled labour and sub-contractors, restoring the essential services and drying, cleaning and disinfecting the basement and visitor carparks. Mirvac charged the body corporate its costs of performing this work but did not charge a margin or overheads.
- 91 These works allowed residents to resume living in their apartments from 28 March.
- 92 In addition to the works Mirvac performed for the Body Corporate, Mirvac assisted residents by making unsold apartments on floors in the Farringford building available for residents to store belongings. Mirvac employees assisted residents to move furniture and remove damaged property from storage

lockers in the basement carpark. Mirvac also offered to remove and dispose of damaged goods if required by residents to assist in their moving process.

- 93 Mirvac also offered temporary accommodation in the Faringford building (once residents were able to return to that building) to the owners of eight ground floor apartments in the Softstone and Lushington buildings which were subject to inundation.
- 94 Whilst Mirvac had no liability to do so, Mirvac restored those eight apartments, at no cost to residents, to the same condition those apartments were in at completion in 2009. This involved thoroughly cleaning, disinfecting and drying the apartments and removing and replacing damaged fixtures and fittings. Those works were completed and residents were able to return in early June.
- 95 Furthermore, Mirvac cleaned and restored the public road accessing the site and the public paths and parkland surrounding the project and did not charge the Brisbane City Council or residents for doing so.

Requirements for basement car park and the location of essential services

- 96 As noted above, the January flood inundated and caused damage to essential services which were located in the basement carpark of the Softstone and Lushington buildings.
- 97 It is a common design feature of large apartment buildings that the essential services are located in the basement. Doing so allows easy distribution of pipes and wiring from that central location up through the building to apartments.
- 98 Furthermore, the location allows easy access by persons needing to repair or inspect any aspect of those services and does not disturb residents if access is required at inconvenient times.
- 99 The decision to locate the essential services in the basement carpark was made collaboratively between Mirvac's internal architects, HPA, and the following consultants:
- (a) Hydraulic Consulting Engineers, Thomson Kane;
 - (b) Electrical and Mechanical Consulting Engineers, Lincolne Scott Associates (LSA);
 - (c) Structural Consulting Engineers, Qantec McWilliam; and
 - (d) Civil Consulting Engineers, Lambert & Rehbein.
- 100 The decision to locate the essential services in the basement was made early in the design process for the development. It was necessary that each consultant advise Mirvac's architect how much space it required for the various services that fell in their expertise. This was factored into the location for the essential services area.
- 101 I understand that Brisbane City Council Guidelines with respect to flooding, which were in place at the time Mirvac obtained its building approval, did not set any requirements for the location of the essential services.
- 102 The location of the essential services on level one of the basement carpark was approved as part of the building approval issued by CERTIS.

CORRS
CHAMBERS
WESTGARTH

SECTION 5 – THE DECISION BY MIRVAC AFTER THE JANUARY 2011 FLOOD NOT TO PROCEED WITH FURTHER RESIDENTIAL BUILDINGS ON THE TENNYSON DEVELOPMENT SITE

- 103 Prior to January 2011 Mirvac had not received the level of interest in apartments in its Farringford apartment building, particularly in the six months up until December 2010, that it had expected and had approximately 50 unsold luxury apartments in its possession at January 2011.
- 104 The prospect of building a further 200 luxury apartments at that site was challenging in these circumstances.
- 105 The flood event compounded these difficulties. Mirvac realised that further development of the site would not be economically viable for a number of years. Furthermore, Mirvac would incur extensive holding costs if it chose to wait for the market to improve, and it faced uncertainty as to the development controls that would be imposed on the land in the wake of the flood.
- 106 In these circumstances, Mirvac faced a decision to sell the site to a third party or sell the land to Council for parkland. The latter option was preferred because it would increase the value of Mirvac's unsold apartments in the existing buildings and was also in the interests of existing apartment owners.
- 107 Mirvac did not receive advice from the Brisbane City Council in forming its decision.
- 108 Mirvac did not consult the State of Queensland regarding this decision.

SECTION 6 – THE AGREEMENT BETWEEN THE BRISBANE CITY COUNCIL AND MIRVAC FOR THE SALE OF PART OF THE DEVELOPMENT TO CONVERT INTO PARKLAND

- 109 Mirvac first approached the Council in April this year with its proposal to sell the land so the Council for use as parkland.
- 110 Mirvac decided that due to the Tennyson residential being characterised by limited transactions, consequential pricing impacts and uncertainty in relation to the outcomes of the Queensland Floods Commission of Inquiry, the Group had taken a conservative approach to the reassessment of the carrying value of Tennyson Reach. These circumstances led to a provision of \$80.8 million, resulting in zero residual value as at 31 May 2011. All of this was disclosed to the market in ASX announcements on 6 May 2011 and 24 June 2011.
- 111 The announcement also noted that Mirvac would seek to dispose of the undeveloped site.
- 112 Following announcement of this impairment Mirvac finalised negotiations with the BCC for sale of this land. Settlement took place on 30 June 2011.

SWORN by the Deponent)
at London)
this 6th day of September 2011)

