

Transcript of Proceedings

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THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

MR PHILLIP CUMMINS, Deputy Commissioner

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IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2011

QUEENSLAND FLOODS COMMISSION OF INQUIRY

BRISBANE

..DATE 07/11/2011

..DAY 54

THE COMMISSION RESUMED AT 10.01 A.M.

COMMISSIONER: Yes, Ms Wilson?

MS WILSON: Ms Kefford will take the first witness this morning.

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COMMISSIONER: Ms Kefford?

MS KEFFORD: I call Gary Stuart White. I believe Mr White was stood down previously rather than excused.

GARY STUART WHITE, RECALLED AND FURTHER EXAMINED:

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COMMISSIONER: Was he? All right, thank you.

MS KEFFORD: Mr White, since you last gave evidence you have provided a further statement to the Queensland Floods Commission of Inquiry dated 7 October 2011. Could I ask you to have a look at this document, please? Is that a copy of the further statement which you have provided to the Inquiry?-- Yes, it is.

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I tender that document.

COMMISSIONER: Exhibit 913.

ADMITTED AND MARKED "EXHIBIT 913"

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MS KEFFORD: Mr White, if I could start by asking you a few questions about flood mapping. In terms of producing a flood map or mapping a defined flood event, it is fair to say, isn't it, that the position under the State Planning Policy has always been that councils need to determine a defined flood event?-- Yes, that's the case.

And the State Planning Policy also states that generally that defined flood event should be the one per cent annual exceedence probability?-- Yes, it does.

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Do you think it would be beneficial for flood maps to also include an indication of the probable maximum flood?-- It would be useful if that was indicated but it is not always going to be necessary. I think it would be useful if it was indicated just to give some scope and understanding that there is an event out there that could be even greater than the 1:100.

Have you had an opportunity to read a report prepared by Mr Steve Reynolds?-- Yes, I have.

And at page 23, paragraph 63 of that report - and we will provide you with a copy - I am not sure that the copy on the screen is the same as the paragraph 63 that I have. In the copy that you've got, Mr White, do you have one that starts, "Having regard to the circumstances for risk of flooding in Queensland"?-- No, that's not my paragraph 63.

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All right. Perhaps if I just ask you this: in Mr Reynolds' report he makes some suggestions about how a map including the probable maximum flood might be used in planning schemes?-- Yep.

And the first suggestion he makes is that depending on the circumstances, it would be acceptable to map the probable maximum flood to trigger a change to the level of assessment to regulate critical public infrastructure and services. Do you agree with that proposition?-- I think it is one of the options that you might have to consider but you could very well get a massive broad floodplain where the PMF could be 30 or 40 kilometres away. So if you were talking about facilities say at a small township - and one that comes to mind would be somewhere like Alpha in Central Queensland - the notion of using that solely as a means by which you'd look at emergency service facilities could be overly complicated, I would think.

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Is there some instances where that information might be useful, though?-- I think there would be circumstances where it would be but it really depends on the circumstances associated with that whole risk management approach you might have to look at as part of that process. I am not discounting it; I am just simply putting the qualification that it is not the only way of dealing with the issues.

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And in terms of if councils had that information available they would be better - in a better position to assess whether that information ought be used with the knowledge of where the probable maximum flood is, whether it ought be used to, for example, trigger a change to the level of assessment or to trigger other performance criteria, or the like?-- I think it follows from my earlier comment that it would be something that you would take into consideration, provided it didn't cause overcomplicated difficult processes associated with the scheme - the scheme's operation, because I think there can be other - other flood lines that might be equally as useful in terms of looking at your risk rather than just saying you go out to the outermost extremity of the probable maximum flood, which could be a massive plain as I was talking about before.

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What other lines do you think might be useful?-- It could be a whole series of lines not dissimilar to what the QRA have done in terms of looking at the multiple methods of data capture that they've used. You could in fact come up with an alternative line based on one of the other sources. It could

be purely on your contours, it could be based on your aerial photography. I am just saying there are other ways. I wouldn't just rely on the PMF because I think it might well put you in a difficult position in some circumstances.

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What about the use of flood characteristic mapping; by that I mean mapping that takes into account the depth and velocity of the water and factors such as that. Do you think that type of information has a role to play in flood maps-----?-- Yes, I do.

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-----for planning purposes?-- Yes, I do. I think it represents, perhaps, a refinement on some of the use of single lines like the 1:100 that we have if had you a series of additional information it would be useful as part of the process. Particularly when you're looking at urban areas as opposed to some of your rural, broad catchment.

How do you see those - that type of information being used in planning schemes?-- You can see - I'm currently aware of a scheme being done by the Cassowary Coast Council whereby rather than just having the simple blunt interpretation of the 1:100, which may very well close down all development options for them, they are looking at a series of lines to look at how they might best manage risks associated with different uses. So, for example, in a high velocity, high depth area, clearly open space, playing fields or something like that, up to the lower risk areas where you might put some of your emergency facilities and community services and those sorts of things. So I do see an opportunity - and I think it is - Mr Reynolds in his report references the Victorian system, the issue there where there is three or four lines of consideration that's been adopted down there.

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In terms of flood characteristic mapping, do you think that it would also be beneficial to have information such as the rate of rise of floods?-- Yes, I do because I think that that enables - enables you to consider that whole risk assessment. For example, when you're looking at somewhere like Ipswich, and even the situation that we found ourselves in Brisbane, a day and a half's notice enables you to consider a range of uses that you can condition accordingly in terms of the ability to manage the risk associated with them.

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And what about mapping the duration of - likely duration of floods? Do you see that as useful information for planning schemes?-- I do. It is whether or not that the costs associated with that information is such that a particular local authority can or can't do the level of assessment required to do the duration. But as a proposition, I think the more information you know about every flood characteristic for your planning system the better off you are.

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In terms of that proposition, do you think it would be beneficial for there to be a review of the State Planning Policy with this type of flood characteristic mapping set as the end goal that local governments should over time work towards?-- When you say local governments - I don't mean to

be pedantic here, I think if you're talking about local governments in an urban context, yes, I do. I think the notion of more sophistication, understanding a whole range of issues associated with flood events is very useful when we're looking at urbanisation and urban development. As we move out into a broader, non-urban character, which such a major portion of the State is, then I think it becomes more qualified in terms of its usefulness.

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Can useful distinction be drawn in reviewing the State Planning Policy between areas intended to be urban as revealed by the regional plans compared to areas that are intended to remain as non-urban?-- Yes, I think there is. I think the work that the QRA have done could very well create the appropriate triggers around which a planning system responds. For those broader non-urban councils, it could very well be the case that that is an adequate tool for the purpose required for a non-urban council. When you start to get into the urban characteristics, I think the more information, the more you're able to assess risk and ascribe different planning classifications, different overlays, I think it is a far more useful tool to do it that way, than simply choosing - as I think Mr Reynolds, and perhaps even Mr Vann and Mr Grech talked about - the notion of not just having a single line, but a series of lines whereby different risks and different understandings are gained from the process. I think that in an urban context that will help the planning system work a lot better.

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You've made reference a few times to the QRA maps. Can you tell us what you understand the QRA maps as showing?-- The QRA maps I think should be looked at in the correct context. They create a means by which a planning process can be activated, if you like, a planning process can be triggered. They don't purport to show everything with an exact science but one of the problems associated with SP 1/03 is the ability for less well resourced councils to be able to do a detailed flood analysis to the standards perhaps articulated in SP 1/03, say around a 1:100 mapping. So under clause 6.6 of SP 1/03, perhaps some councils steer away from the whole process, whereas what I think the QRA mapping does enable is for a trigger mechanism to be created whereby flooding can be considered by some of those other local authorities.

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COMMISSIONER: Mr White, you were actually asked what they showed; what you understood them to show?-- Sorry, Commissioner. They show a variety of information, contour information, historical flood data, flood plan characteristics, alluvial plains, and a variety of those characteristics, which simply show what could be comprising a PMF area across an entire floodplain.

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Thank you.

MS KEFFORD: My understanding was that they don't have any probability assigned to them?-- No, they don't.

So in terms of - you made reference in your last answer to

could be a PMF. There is no-----?-- Could aid a council in terms of creating that trigger mechanism. 1

Sorry, could you just speak up a little?-- Sorry, could be used as a trigger mechanism not dissimilar to the definition of a defined flood event, but it is simply the ability for a local authority to be able to trigger flood characteristic analysis as part of the process.

COMMISSIONER: I am not sure if I understand. What is it about the maps that does that? Why can't a council look about it and decide whether it needs some flood planning or flood studies?-- Commissioner, I suppose what it does is it does a detailed analysis, a cross-section of variables that enable a line to be drawn on a map which enables a council to at least start to trigger considerations under its planning scheme, which otherwise it might gravitate towards the expensive option which isn't necessarily available to them to try to define a 1:100 event which is a much more sophisticated process. I'm simply saying in reference to that 1:100 line, it enables a council to trigger an assessment process without having to necessarily go through the very complicated and expensive process of trying to define a 1:100 in order to comply with SP 1/03. 10 20

I am still not entirely clear how the QRA maps actually do that. Do they function as the trigger as opposed to the appreciation that you from time to time have a flood problem?-- They point to - they point to a series of lines on a map which a council can use of adopting that map as an interim code for consideration of flood issues. 30

So how would you do that using the QRA map? What would you adopt as the basis of your interim code?-- There is a line, as I understand, indicated on the QRA mapping around which a council could consider adopting planning processes and planning provisions.

And that line depicts-----?-- As I recall, it is a broken line that you could consider as part of that process. 40

What does it delineate?-- It delineates an area that there can be some flood risk associated with, whereby you can at least implement a code that might consider elevation of homes, or consideration of other factors associated with normal planning issues for a flood code or a flood provision.

My understanding - which is crude, I concede immediately - was that those maps showed where there had historically been flooding and that could go back hundreds and hundreds, perhaps thousands of years if you took into account various geological factors. If that was so, it wouldn't be a very precise indication of where you might in a contemporary setting expect flooding, but is there something I'm missing?-- Well, it doesn't purport to be a sophisticated document in the sense of getting an exact line in terms of how you might activate the planning scheme, but at least it enables you to adopt a line in accordance with the provisions of the temporary planning 50

instrument to enable you to consider flood issues without necessarily going through the complicated process that I talked about when you try to define a 1:100. It simply becomes a trigger tool around which a planning process can be activated for the consideration of development.

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MS KEFFORD: If we could bring up Exhibit 543, which is a copy of the map for Chinchilla? As I understand it, the yellow area - well, perhaps you could tell me what the yellow area depicts?-- The yellow area would be that area whereby consideration can be given to implementing the provisions of the code as developed by the Queensland Reconstruction Authority. So it starts to give you a line around which a temporary planning instrument can be activated as part of the process.

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So the idea would be that any property that falls within the yellow area would need, when making a development application, to address the flood code as provided in the-----?-- As provided by the QRA.

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And any area outside of the yellow would not need to address the flood code?-- Yes, that's as I understand it.

Isn't that part of the danger with the level of information provided in these maps because the blue area, as I understand it, shows the area which flooded in the 2011 - 2010/2011 flood events?-- Yes, that's right.

And so there are areas outside of the yellow which were subject to flooding?-- Yes, that is the case on that map.

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And under the scenario that you're describing to us, those areas would not be required to address the flood code?-- I would probably want to know what those blue areas outside of the yellow line in fact were. If they were part of the actual stream itself where you had high depth and high velocity, then perhaps it is already an indication that that's not a developable area but I would have to look at other planning issues in addition to that to fully answer your question.

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Doesn't this highlight, though, the danger of maps that are based on such low level of information and wouldn't it be better to - in areas where there is effectively no information about floods of a particular probability, to simply require that all development applications turn their mind to the flood code?-- Look, I suppose that is an option, but it would be a very onerous option for dwellings that are clearly not within any area of any threat so if you are going to subject every application to an onerous assessment process, it seems to me that that may also be an extreme, but at the opposite end of the consideration that we're looking at. It would - it would seem to me that every application lodged in Chinchilla, if it was subjected to flood analysis, it may be an imposition that's unnecessary. At least by having that line on the map, we start to get some idea of properties that should be giving consideration to flooding issues.

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Isn't subjecting those properties that are the subject of the yellow areas on the QRA maps potentially just as onerous when those maps don't contain a probability and might in fact map the 1:1000 or 1:1 million year event?-- Are you talking about the yellow line, in the context of that question?

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Yes, the yellow line?-- It could also be the case that that was a known flood event which occurred as part of the process of one of those range of issues that they have considered as part of the mapping product.

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But that can't be - that's not distinguishable from the yellow line alone, is it?-- No, but, as I said at the beginning of this line of questioning, it becomes a line around which consideration can be given to implementing a flood code, whereas at the moment there is possibly no lines or no considerations for flood codes or flood considerations.

I am just exploring the concept that you raise that it might be too onerous, and my proposition is that the QRA - adopting the QRA maps as the trigger might equally be too onerous in that what's depicted in the QRA maps potentially depicts something that has a probability of 1:1000 years or 1:1 million years?-- But is that the case within that line shown in yellow there, or is it a broader consideration?

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I'm raising it not for Chinchilla but generally, because, as I understand it, the QRA maps don't tell us anything about probability; isn't that correct?-- No, they don't tell us about probability. I agree with that.

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COMMISSIONER: Well, Mr White, looking at that is there any way of knowing whether the yellow area shows flooding in the past 100 years or past 1,000 years, or which of those it indicates?-- I understand the yellow line - and I'd have to - to be the extent of the PMF, is that not the case on that map?

That's what we're trying to get to the bottom of, really?-- I understand that that is the PMF, which is the maximum flood line in the case of Chinchilla but I-----

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MS KEFFORD: In the case of Chinchilla only, or in the case of all?-- -----would have to double check with the table or the code that shows the different codes that they have used in their mapping.

COMMISSIONER: Is there a legend to this map? Could we get that by scrolling down?-- There is a legend. There is a legend that-----

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MS KEFFORD: There is not a legend on this map itself but I think - my recollection is Brendan Nelson, in answering questions, acknowledged that there is no probability assigned to the maps?-- No, and I agree with that. I am just trying to clarify the area depicted in yellow there, as to whether or not it is the PMF.

If you assume for the moment that it doesn't depict the PMF,

do you accept that there is a potential difficulty in relying on the QRA maps as triggering a flood code?-- I do, but I also acknowledge that if that line has been drawn from a variety of sources, that it is a line that's come from contour information, it is a line that's come from historical information, that it may be a useful line to assist in relation to flood assessment. For example, there are many planning schemes that trigger consideration of additional requirements based on a known flood line or known maximum flood line, and that can be a useful tool to enable assessment of whether or not certain characteristics might be required for a particular development, ie raising above a certain height. By having the knowledge of an event is a useful consideration for how a development may go forward. Now, if that yellow line - and this is my point - is a combination of those sorts of considerations, it may well be a useful tool to enable a council to consider whether or not it applies certain requirements in relation to development.

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Do you know whether in providing the information to the council the information's being provided in a manner which would allow the council to turn off various layers of data that are used to create this map?-- I haven't asked that specific question but it would seem to me logically that if a council were to do more detailed analysis which the QRA mapping doesn't stop from happening, that there could be an opportunity to turn things on and off. And keeping in mind that it is only a 12-month tool just to allow certain councils to activate flood code or flood management techniques, it seems to me it is still a useful tool because of the sorts of elements it is allowed to consider.

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Useful as an interim measure?-- Useful as an interim measure. And I would say to you based on the line of questions, it clearly does represent work in progress but it nevertheless is still a useful tool, in my opinion.

Do you think - sorry, I withdraw that. In terms of the temporary State Planning Policy, it makes reference to use of these-----?-- Yes, it does.

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-----maps?-- Yes, it does.

And if we pull the temporary State Planning Policy up on the screen, and if we could go to firstly page 5 of that document, we can see there in paragraph 1 the policy outcome for the temporary State Planning Policy. In particular, if I ask you to just read paragraph 1.2. With that in your mind, if we can go over the page to paragraph 3.1, we can see that the policy outcome is said to be achieved if it results in an amendment to a Local Government planning instrument or a new Local Government planning instrument which designates natural hazard management area in accordance with annex 1. Do you see that?-- Yes, I do.

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And if you could go over the page to Annex 1, it provides three scenarios for mapping of natural hazard management areas for flood. The first is land inundated by a defined flood event identified in a planning instrument, that's effectively the same position that exists under the State Planning Policy?-- Well, the State Planning Policy does talk about a defined flood, but for the purposes of this exercise, and my confusion before, I think that line that we were talking about is, in fact, the natural hazard management area that you gave to me in relation to the Chinchilla example. I'm simply trying to make a comparison here in terms of your earlier questions that the Chinchilla shaded area seems to me to be the natural hazard management area.

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If local governments take up Option 2 in the annex, that is they choose to map their natural hazard management area by use of the interim floodplain assessment overlay mapping provided by the Queensland Reconstruction Authority?-- Yes, that's right.

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Yes. So that is one of the three ways in which the temporary State Planning Policy seeks to have the natural hazard management area mapped?-- Yes, that's right, yes.

The first way is by using the type of mapping contemplated by the State Planning Policy?-- Yes, that's right.

The second way is by using the QRA map?-- Yes, that's right.

And the third option is to use the QRA but as amended by the relevant local government?-- Yes, that's right.

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And we see there in Annex 1 that those three options can be taken up either by proposing amendments to an existing planning instrument, that's the first paragraph, or those options can also be used where a local government is proposing a new planning instrument?-- Yes, that's right.

In terms of the use of it, the use of the QRA maps when proposing a new planning instrument, the encouraged - in so far as the temporary State Planning Policy encourages that situation, isn't there a potential difficulty in that in given what you said earlier about the QRA maps being an interim tool, their use is as an interim tool?-- Yes, but, I mean, it gives Councils 12 months of protection pending the refinement of the tool, or, alternatively, pending any reviews that they may conduct as part of a more refined process and SP 1/03 or any other instruments that may come about. But I take your point that not only is it temporary as an instrument, it also will be temporary as how it's used by a planning scheme.

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But here it's encouraging something that local governments - encouraging local governments to adopt as part of a new planning instrument and planning instruments are only required to be reviewed every 10 years?-- Yes, that's correct.

And it's quite a momentous task to produce a new planning scheme, isn't it?-- Yes, it is.

And so isn't there a risk that if the temporary State Planning Policy is relied on by local Governments to discharge their obligations in terms of flood mapping, that we may have what are interim maps produced by the Queensland Reconstruction Authority used by local Governments as their final adopted position; that's a risk, isn't it?-- It is a risk and it's an issue I hadn't put my mind to as part of the process. It may well need to be something that we consider as part of the refining process of the temporary instrument.

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The temporary instrument hasn't yet taken effect?-- No.

It takes effect on Monday?-- On Monday, that's right.

Might it be more appropriate for the temporary instrument to suggest that the Queensland Reconstruction Authority maps be used only as part of a temporary local planning instrument?-- Yes, I would agree with that.

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The State Planning Policy contains quite extensive information in its guideline about flood mapping and risk assessments?-- Yes, it does.

And Appendix 2 of the guideline addresses the way in which a natural hazard assessment for flood should be conducted and how a defined flood event is determined; that's a-----?-- It's not on my screen, but, yes, I accept it.

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Yes. Do you think it's appropriate to incorporate those types of details into the policy, or do you think that they're best kept just in a guideline? I think you've been provided the temporary State Planning Policy Guideline instead of the actual State Planning Policy Guideline there. The proposition is that-----?-- Yes, could you ask me again.

Yes. That the detail about how a natural hazard assessment for flood should be conducted is a policy consideration and might be more appropriate incorporated into the policy itself rather than contained only within the guideline?-- Look, I generally agree with the proposition that, yes, it could. Having said that though, the only concern I would have is that as part of the Appendix 2 it does enable more refinement to take place in terms of how different components might be developed overtime. So as there is greater refinement of different methods, that it may well be something that could be incorporated more as part of the appendix, as opposed to a more stated rigid statement as part of the policy itself. So there could be some advantage in allowing the policy to be informed by improvements, if you like, refinement of various instruments overtime, that would be my only concerns there.

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In terms of the use of the State Planning Policy and its interaction with planning schemes, there's no requirement in the Sustainable Planning Act for a local authority to take steps to incorporate the contents of a State Planning Policy into a local planning instrument, is there?-- No, and there's

a reason for that and that's specifically because in not all instances will an issue raise as part of a State Planning Policy be relevant to all local authorities.

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But as they currently stand, there's also no mandatory provisions in the Queensland Planning Provisions to reflect the State Planning Policy?-- No.

So, we're in a situation where the State Planning Policy has been in place since 2003 and there has been very slow takeup of the concepts in the State Planning Policy in so far as they relate to flood, do you accept that?-- Yes, I do.

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And there's no mandatory requirement of any form on local governments to do something about changing this situation?-- No. In fact, I think it's clause 6.6, clearly enables Councils to basically opt out from SP 1/03 if they don't have a defined flood event or they don't have a mapping product.

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Given the importance of the issue of flood as compared to other topics which are covered by the State Planning Policy, such as bylaws, or matters that don't involve natural disaster management, do you think that there should be a mandatory requirement on local governments to address flood in their planning schemes?-- In the way it's currently written, no. If it were changed to reflect a broader consideration of the characteristics of different local authorities then, yes, it could, and that's part of the refinement process that's going on right at this moment around SP 1/03 to address some of the issues associated with takeup. To - in the context of my earlier question, to impose a requirement on a local authority that clearly doesn't have the resources or doesn't have the ability to respond to SP 1/03, in my opinion, is one of the reasons that you haven't had the takeup that we talk about, and, in fact, during the consultation process associated with SP 1/03, the issue of resources and capacities of local governments to, in fact, address all of the issues presented by SP 1/03 was an issue raised by a number of organisations.

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So how do you think the problem can be addressed?-- I think the problem can be addressed, and if we go back to some of our discussions around the usefulness of the QRA mapping, is to look at how we can better refine processes around basement and catchment mapping and data capture to assist some of those local authorities who potentially don't have the resources to fully comply with SP 1/03 as it's currently written.

Do you think it's-----?-- It's my view, and I've long held this view about SP 1/03, that it was a huge step in the right direction at the time and it has become - and it's a very competent framework. Unfortunately, it has an inherent weakness in so far as whilst articulating clearly what the expectations may be in terms of planning schemes, it probably refers responsibility down to the least most capable part of the planning system, if you like, or planning range to address some of those issues. So they could, in fact, be a proponent seeking to make a development application in order to comply

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with SP 1/03, or, alternatively, a Council that doesn't have the resources to do so. So my view is that SP 1/03, to

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address the range of issues in a State such as Queensland, needs to consider that broader range of means by which data can be captured, data can be interpreted, and then imposed into planning schemes, not just a simple one-off defined flood event which is clearly beyond the resources of many local authorities.

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Is the use of historical flood information a potential interim solution for some of those resources challenged local governments?-- I personally believe it is. I think I said in the first - during my first part of giving evidence to the Commission, that a single statement in a planning scheme that talks about a known flood event and then a requirement, say, to build a home 500 millimetres above the known highest flood event is a very reliable piece of information upon which I would build a dwelling in a set of circumstances. So, yes, I do, I consider it it could be one of those examples.

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Do you know whether the State has given consideration to providing assistance to local governments to refine their mapping?-- I understand there is a submission as recently as Friday coming to the Commission as a result of an earlier request about mapping which deals in part with assisting Councils in terms of that mapping process.

Are you able to tell us what the gist of that submission was?-- I don't - I would have to get hold of it for you, but clearly what the submission was doing was acknowledging that the competency of your planning documents, if you like, your planning system, is very much reliant upon the quality of your data and your data capture as part of your process, in that there is a role to be played by local government, there is a role to be played by the State, and there's also a role to be played by the Federal government in terms of the range of issues associated with that data capture. My earlier comments about my concerns about SP 1/03 could very well be the case, that a single local authority has no capacity to analyse massive catchment associated with a stream or a river system going through its local authority, but yet under, say SP 1/03, is required to respond to a flood event which could be way beyond its capacity. So this idea of a data share and a data capture along the lines that I just said, I think, would go a long way to assisting refining our planning process.

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Can I just ask you a few questions about the Queensland Planning Provisions and what role they may play in dealing with the issue of flood, and my questions relate to Version 3. I will show you a copy of Version 3. A copy is being provided to you now. In terms of Version 3 of the Queensland Planning Provisions, that's not the current version, is it?-- No, that's our full consultation at the moment.

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So Version 2 is the current version?-- Yes, Version 2 is the current version.

And Version 3 is currently on public display?-- Or broader public consultation.

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It's out for public consultation?-- I would also point out that that version, some of the comments that were asked of me in relation to certain provisions in relation to a variety of residential areas by Counsel assisting the Inquiry have already been responded to as part of that amendment.

So would it be fair to say that subject to the consultation, Version 3 reflects the current thinking for the Queensland Planning Provisions and-----?-- Yes, it does.

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-----where they might be headed? In Mr Reynolds' report, he suggested that where mapping data exists all flooding matters should be dealt with in the flood overlay code of a planning scheme. Do you agree that a flood code is a useful and definitive way to impose constraints on development within flood prone areas?-- I do agree, yes, with the idea of a code.

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The Queensland Planning Provisions though don't contain a mandatory inclusion of a flood code?-- It could be semantics in terms of Mr Reynolds' view. The Queensland Planning Code talks about a constraint which enables the same language to be developed once flooding is identified as that constraint. I think they're one in the same. I don't feel that there's necessarily any difference. I think the Victorians use the term "flood zone" or "flood code".

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In terms of a development constraint overlay and a development constraint code though, they are an optional aspect of the Queensland Planning Provisions?-- Yes, they are.

And they remain optional in the Version 3?-- Yes, they do.

So regardless of whether a local government has a flood - even where local governments do have a flood hazard map where they've undertaken that mapping exercise, they wouldn't be required under the Queensland Planning Provisions to include the map as a development constraint overlay?-- They would identify the constraints as part of their planning process. They would also identify a series of overlays as part of the planning scheme development process. That's - I feel that deals with the same issues that Mr Reynolds is raising.

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But it's optional, isn't it?-- It is optional. I don't see that there's any reason why you can't enable a Council to consider those issues based on the characteristics and circumstances in their own particular local authority around flooding, because it would seem to me that a Council would do a flooding study in order to comply with SP 1/03 in any case and the issues and constraints that may be required to address that in the codes or other requirements as spelt out by SP 1/03 do achieve the same outcomes as Mr Reynolds talks about.

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Isn't there a potential difficulty though where a local

government has that information, but under the legislation can elect not to use the information in its planning for the area? There's no requirement to reflect the State Planning Policy in

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the scheme?-- The development of a planning scheme right at this moment where a flood study has been done does address the issues that Mr Reynolds touches on. But, you're right, it doesn't become a mandatory requirement that every Council must do it, I acknowledge that point. My only concern about Mr Reynolds' statement is whether or not that code inhibits flexibility that might be required from one Council to another, I would have to give some more thought to that.

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Do you think the provision of a draft code as part of the Queensland Planning Provisions has the potential to alleviate the burden for local governments in terms of the drafting exercise?-- As long as it doesn't take away the reality associated with the fact that we're a vast State, we have a whole series of different characteristics that are going to apply to flooding in different areas in different parts of State. I would have to give that some thought as to whether or not it would unnecessarily constrain some Councils as part of the process.

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The Queensland Planning Provisions contains not only mandatory parts but model provisions that can be drawn on by local governments?-- I think the notion of looking at it as part of the model provisions, I think that could also provide a solution to the sorts of issues that Mr Reynolds has raised as part of a model framework. But the idea of it being a compulsory code is something a little bit different in my opinion.

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If I could take you to Part 8 of the Queensland Planning Provisions, Version 3, at page 70 of Module B, and there it's dealing with the use of overlays?-- Sorry, I haven't got that. I have got no numbering on my document. Yes?

There it's dealing with the use of overlays?-- Yes, I'm there sorry.

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And it says that it's recommended that changing the level of assessment by an overlay be used rarely; do you know why that's the case?-- No, I don't. I would have to check on that.

Do you agree with that approach, that overlays such as a development constraint overlay with respect to flooding not be used to change the level of assessment?-- It would seem logical to me that associated with an overlay that identifies a flood issue, that the level of assessment may need to be considered. So, yes, I do agree with your proposition.

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That in terms of flooding there may need to be a change from code to impact assessment, for example?-- Yes, I do.

If you could go to page 71, section 8.1 of Module B of the Queensland Planning Provisions, and, once again, this is

Version 3, the one that's out for public consultation, the table in this section relates to the standard suite of overlays. If I could take you to the top of page 72 and there the second paragraph of the first row deals with the flood

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hazard overlay and sets out it applies at a minimum to development that, and there's a number of bullet points. Are you able to tell us where those criteria came from?-- They're the criteria that seem to be discussed in most instances when we look at considerations around the provisions of overlay. So the first issue is the notion of increasing the number of people living and working in a particular area, how that might be need to be controlled or considered as part of the planning process. The second dot point revolves around the issue of what sort of institutional uses and evacuation strategies may need to be put into consideration as part of the developmental planning scheme. The third dot point involves the location of certain uses where there might be the storage of hazardous material that in the event of a flood event may float away or be impacted upon. So they're the three overlays, if you like, which attempted to embrace the considerations that a planning scheme might need to put into place.

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Now, the draft Queensland Planning Provisions, Version 3, doesn't at this point, or elsewhere, include any guidance as to the type of assessment criteria that development constraint code dealing with flood hazard should address, does it?-- No, it doesn't, but that enables consideration of the circumstances that may need to be applied again in different situations in different local government areas. It doesn't specify exactly what should happen, as it could well be the case that what's suitable in one area is not suitable in another area as long as certain provisions and commentary is contained in the document.

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But you acknowledged earlier the potential for incorporation of a model code, not a mandatory code but a model code?-- If that model code enabled the sort of flexibility that I just talked about, then, yes, that could be an option.

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In terms of the issues that a model code might address, would you agree that it should incorporate assessment criteria with respect to hazardous materials?-- Yes, I do.

Do you think it should address matters such as flood resistant building materials and design of dwellings?-- Yes, I do.

And why do you think that should be addressed in a planning scheme as opposed to leaving it to the Queensland Development Code, or the Building Code of Australia?-- I probably don't have any concerns either way, but I think that as long as the issues that the Queensland - that the Building Development Code, as long as it addresses the issues associated with the types of building materials, the way that buildings are built, and that as long as there is a trigger point or a referral point in the planning scheme documents, then it is dealt with by either one method or the other.

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Do you think the provisions should be mandatory provisions?--
In the Building Codes or in the planning scheme?

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Wherever they're dealt with?-- The way the Building Code has
been written at the moment they are certainly mandatory in

terms of considering certain issues, and I accept that the
cross-referencing between a planning scheme and the Building
Codes is not an inappropriate way of dealing with the issues.
It depends on what the content of the mandatory codes are in
terms of how deep they delve into the processes, but I
certainly accept the way the Building Codes are written at the
moment in terms of height of habitable floor areas and the use
of certain building materials in certain circumstances. So,
in a roundabout way I am accepting it, but I am concerned that
some flexibility again might need to be enabled as part of
that process.

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Can you tell us why you think flexibility is required,
particularly with respect to floor heights and building
materials?-- Again, it may relate to how buildings are
considered in different parts of the State, but by and large,
thinking back in terms of your question, I accept that a
mandatory framework can be made to work and I'm just trying to
think of the exceptions as you asked me that question. So,
no, I do accept that a more structured approach could work
very w

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In terms of issues such as streetscape, do you think a mandatory framework gives enough consideration to the heritage character, for example, of a street and how could they work within that type of framework?-- It would seem to me that in a planning scheme where heritage issues need to be addressed you could have a heritage overlay as well, so there could be consideration of how a heritage issue is taken into account because, as I recall, the freeboard that's required is a 300-millimetre freeboard and thinking back to the discussions and debate that I've read in terms of Mr Brumby's evidence and Mr Adams' evidence from Ipswich, we're talking about a distance of one foot under the old - under the old measurement and it seemed to me that perhaps that won't affect the issues associated with heritage, especially if as part of heritage overlay some sort of commentary about how it's dealt with were explained in the planning scheme as well. It just seems to me that I can't see why that sort of distance in a planning scheme can't be dealt with as part of some other consideration in the document whilst guaranteeing the issues of the freeboard that's required as part of it.

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For the record, you indicated an area?-- Sorry, I've indicated an area-----

COMMISSIONER: You said it was about a foot?-- It's about a foot simply because when you get involved in discussions about these sorts of things I think you need to put into context we're talking about a height difference of about one foot and when you stand in the street looking at a building which could otherwise be considered as part of a heritage character requirement that talks about building treatments, verandah treatments et cetera, it seems to me that that 300 mills would potentially get lost in the way you design, the way you consider all the other issues, so I don't consider it a problem.

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MS KEFFORD: The 300 mills, though, is set above - as a measurement above another measurement, isn't it?-- Yes, that's right.

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Above the defined flood event. So if the defined flood event, though, involves a significant level challenge, doesn't that suggest that adding another 300 mills on top of that already significant level change that there might be issues?-- That could cause more of an issue if we're talking about differences of four or five feet or a metre and a half, yes, it could cause problems.

I should while I remember tender the Queensland Planning Provisions version 3.

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COMMISSIONER: Exhibit 914.

ADMITTED AND MARKED "EXHIBIT 914"

MS KEFFORD: In terms of other topics that a model code might address, do you see emergency evacuation routes being an appropriate topic to be addressed through the Flood Code?-- Yes, I do. I think the rendering of a use suitable perhaps in a graduated risk management profile, the ability to evacuate would seem to me to be a consideration, especially where we're talking about a river and a flood which might be an event that gives you two days' notice of a situation, or even a shorter event, but particularly the ability to have an evacuation plan, not only for people, but a whole range of perhaps products, materials, vehicles, is a consideration that you could take as an advantage to your planning scheme.

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Now, evacuation routes is obviously something that can be determined without reference to the conduct of a particular individual. Is it important to draw in planning terms a distinction between that and evacuation plans which require involvement of individuals?-- Yes, I think there is a difference between the two.

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Do you consider evacuation plans to be appropriate as a planning measure?-- I don't think they need to be incorporated into your planning scheme as such. I think that the Evacuation Management Plan is a separate plan in its own right, but they should have cognisance and relationships between each. If you are designating a particular area for particular development and there's only one route out of that particular location, then it could very well influence the way your planning scheme itself works, but the actual evacuation plan itself, I see as a separate process.

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Would it be fair to say that it would be not advisable to draft a planning scheme to indicate that certain uses are appropriate in reliance on evacuation plans?-- I think reliance on the plans themselves as opposed to a means of evacuation is a different issue. If there's only one road out of a particular destination or place, then I think the issue of there only being one route out as opposed to the evacuation plan itself of which the road is only one component is a separate issue. I just road as an example.

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In the Queensland Planning Provisions, version 3, at page 112, in the Administrative Definition Section the term "Adverse Flooding" is defined, page 112. And the definition is that - of "Adverse Flooding" is "Flooding which may adversely affect the amenity, safety or use of a premises." The definition obviously is one that's quite broad?-- Yes, it is a broad definition.

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Do you know why the definition is included?-- It's simply to alert any - any council drafting planning scheme in relation to the need to consider flooding as part of its planning scheme and just drawing attention to the interpretation of what adverse flooding is supposed to mean, but I do agree with it, it is a fairly broad definition, but the main issue there is to alert the person drafting the planning scheme to the

issue of adverse flooding being considered.

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Can I ask you some questions about the concept of a flood referral agency? In the Integrated Development Assessment System under the Sustainable Planning Act there is provision to refer to a development application to a State department for specialist advice and this is the referral system generally. Do you accept that?-- That's the system generally yes, that's right.

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And the trigger for the involvement of a referral agency is found in a schedule to the State Planning Regulation?-- Yes.

And currently there's no referral agency trigger for the development that's proposed within flood-prone land?-- No.

Do you think that there should be?-- I don't think - I don't think there's any need to do that if you've crafted a planning document that takes account of all of the issues associated with correct overlays, correct procedures for building, correct procedures for selection of your overlays. It would seem to me it's an unnecessary burden to just simply create another referral process for the sake of a referral process when it should be built into the planning scheme which is the commentary around the whole planning process, in any case.

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Do you think there should be referral in the interim in situations where the planning scheme doesn't yet contain provisions with respect to flooding?-- It's something that I could give consideration to, but certainly something I haven't given thought to at this stage. I would think it would be a complicated process and I don't know what agency that you would consider would be the referral agency in that instance. I think most of the planning schemes that are operating do deal with the flooding issues, especially in the urban context. I'm trying to think of a situation in a rural context where you would be referring an application to some central agency. I would think - I would think in the refinement of the planning scheme to documents, say as a consequence of this Commission we will see a step forward and it wouldn't necessitate having that referral process. I do think that already in the last six months we've seen a number of opportunities that have created the building codes issue around flooding requirements, the issues associated with the QRA mapping, responses in the QPP provisions that do enable us to start considering those flooding issues without a complicated referral process.

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So do you think that the State interest check and the involvement of department agencies such as the Department of Community Safety, they are sufficient protection mechanisms in terms of the consideration of emergencies, evacuation procedures and the like, that the flooding is adequately addressed through that State interest check and the involvement of the agencies in that State interest check as part of the process?-- Is your question in relation to what we need to do in terms of interim measure or-----

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More generally?-- -----in a more general sense, yes, I do.

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There's no need for a flood referral agency because presumably the schemes are adequate having been referred to the Department of Community Safety during the drafting process?-- Yes, I would.

In terms of that process of referral to the Department of Community Safety for comment during the preparation or amendment of a planning scheme, can you give me some more detail about the relationship between the Department of Local Government and Planning and the Department of Community Safety?-- Well, on an issue associated with SP 1/03, that would be a matter that's referred to the Department of Community Safety in consideration of amendment to a planning scheme or a drafting of a new planning scheme.

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And why is that referred particularly to the Department of Community Safety?-- It's considered there's a whole range of State interests which are referred to different departments and that particular department is a department that you would refer issues to do with flood hazard and flood issues.

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They have specialist skills and knowledge with respect to flood hazard and flood management?-- Yes, they would.

How are comments that are provided by the Department of Community Safety being treated by the Department of Local Government and Planning? It's the case, isn't it, that not every amendment suggested by the Department of Community Safety is then suggested as a necessary amendment to a draft planning instrument?-- Yes, that is the case.

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And how is that call made as to what things should be - what things in the draft scheme should be amended and what comments of Department of Community Safety ought be ignored or disregarded?-- In the context of a planning scheme - a planning scheme being prepared, right at this moment from - from a complete scheme review, I'd say that there would be a considerable amount of consideration to how that planning scheme would respond to instances such as 103. In the context of a planning scheme reaching the final point of its preparation, for example, the Ipswich Planning Scheme when it was being considered at the time of its preparation as an entire planning scheme back in 2003/2004 a different set of circumstances, depending on the interpretation and the degree of compliance or reflexion of SP 1/03 to a planning scheme such as Brisbane which was a massive planning document having minor amendments prepared some three or four years into its life cycle, again a different range of considerations would be coming through, in my opinion.

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I'm interested, though, in exactly how a call is made as to what advice that the Department of Local Government and Planning receives from the Department of Community Services, how the Department of Local Government and Planning determines what recommendations made by the Department of Community Services ought be accepted and which ones ought be rejected.

Perhaps if I take you - you talked about Ipswich and this is one situation where - if we could go to attachment 47 of your second statement. I apologise, I think I've been saying the Department of Community Services instead of Safety?-- I knew which department you were talking about.

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This is an email chain between Ipswich City Council and the Department of Local Government and Planning. See that. And at the bottom of the first page is the start of an email from the department to the Council?-- Yes, that's right.

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The identities referred to in the email able you to confirm that?-- Yes.

If we go over to the second page we can see in about - a little way over halfway down there's a bullet point which says that in order to maintain faith with our State agency colleagues we are required to list all of their concerns/comments except the looney ones, even though we're not seeking any changes arising from any of them. And this is the point I'm trying to determine. How does the Department of Local Government and Planning when it recognises that the Department of Community Safety is the department with the specialist knowledge on flood hazard and flood management, how does the Department of Local Government and Planning determine which recommendations by the Department of Community Safety ought be required to be adopted and which should just be disregarded?-- It depends on the extent and the manner in which the comments have been made in relation to a particular issue. I'm trying to weave in in terms of the particular response there my answer to you, but clearly it would seem to me that in the context of the DLGP looking at a range of considerations, taking into account the circumstances and point at which that particular planning scheme had got to and whether or not it, in fact, in the opinion of DLGP did appropriately reflect SP 1/03, a recommendation or consideration might be made to the minister keeping in mind the views that have been expressed by the department. So there is a judgment that is made as part of the process, as is evident by that particular piece of correspondence.

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As part of that process if DLGP determines that it is not going to adopt the recommendation made by the Department of Community Safety, does it inform Department of Community Safety that that's the intention and give the other department a chance to be heard on-----?-- Certainly that would be the case at the moment, if I were involved in the review of a planning scheme, yes, it would be and I may well also advise the department as to why a suggested qualification is being made or a particular interpretation is being put forward as part of that process, but by and large we would attempt to resolve differences in the current set of circumstances between ourselves and other departments.

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COMMISSIONER: Would that be a convenient time to take a break?

MS KEFFORD: Yes, certainly.

COMMISSIONER: We'll come back at 11.35.

THE COURT ADJOURNED AT 11.20 A.M.

THE COMMISSION RESUMED AT 11.37 A.M.

GARY STUART WHITE, CONTINUING:

MS KEFFORD: If I could just ask you about a suggestion that was made by Mr Adams, the city planner for Ipswich City Council? He made a suggestion in terms of notification of conditions of a development approval that relate to flood-affected land that subsequent land owners could be made aware of such conditions on acquisition of a property by requiring anyone acquiring land to obtain a planning certificate or by recording notations on the certificate of title. Do you have a view about the means by which subsequent owners of land might be notified about conditions relating to flooding?-- It could be through a town planning certificate that they may seek. It may also be a notation perhaps put on the rates information to the fact that there are issues associated with a particular block of land, but I generally agree with Mr Adams' proposition that you should be advising subsequent purchasers as to what conditions may relate to that parcel of land.

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And in New South Wales, the Environmental Planning and Assessment Act makes provision for a planning certificate which specifies matters relating to land, such as whether restrictions affect development on land due to natural hazards such as flooding, and then the Conveyancing Act in New South Wales requires a copy of that planning certificate to be attached to a contract for sale. Do you think a similar approach might have utility in Queensland?-- Yes, I do.

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And in terms of the type of certificate that ought be attached, the Sustainable Planning Act makes provision for town planning certificates?-- Yes, it does.

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And it makes provision for three types of certificates. The limited certificate would not contain information about development conditions that attach to land, would it?-- No, but the limited certificate could highlight the fact that there are other documents that are available as part of a more detailed search.

And as the legislation's currently drafted, that type of flag is not required to be contained in a limited certificate?-- It is not, but I think it is probably something that most local authorities would in fact be doing as part of that process, they would flag that there is a development application that has been approved on the site, which would be the flag to seek details on the conditions and requirements associated with a particular application.

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Do you think it would be worthwhile amending the legislation to require all limited certificates to contain that type of

notification?-- I think it would be useful if it did alert somebody to the fact that there are other issues that you need to consider, yes, I do.

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Can I just ask you a few questions about the concept of development commitment, which is a defined term in the State Planning Policy. Do you have a recollection of the term?-- Yes, I do, yes.

And in outcome 1 of the State Planning Policy, that outcome seeks to ensure that development only proceeds where it is compatible with the nature of the natural hazard. Do you think that's a fair summary of the-----?-- Yes, I do.

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And there is an exception, and that exception is where there is a development commitment?-- Yes, there is.

And "development commitment" is defined in the State Planning Policy by reference to a number of things, including where the planning scheme makes development a material change of use code assessable or otherwise consistent with the requirements of the relevant planning scheme. In terms of that exception, that has very broad application?-- Yes, it does.

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It potentially captures development that is not only code assessable but also impact assessable but consistent with the general provisions throughout the scheme?-- Yes, that's right.

And so it would - such development that is code assessable or impact assessable and consistent with the planning scheme would not need to meet the outcome, and so there is potentially the bulk, would you say, of development under a planning scheme could fall within this exception to the outcome?-- I wouldn't say a bulk, but a high proportion would. I think the word "bulk" - a major proportion could, yes, that's right, especially in existing developed areas.

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Do you think such a broad definition is appropriate?-- Yes, I do, because applications have been previously lodged and considered in accordance with the planning documents that are already in place. People have lodged application, purchased property with a certain confidence and knowledge of what they could and couldn't do on that property.

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The development commitment definition, though, would capture situations where there is no development application on foot and no development approval given?-- There would be development rights on certain vacant properties, though.

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When you talk about development rights, are you talking about a crystallised right or an expectation that you may be able to get permission to develop in a particular way?-- A crystallised right would be, obviously, an approval; an application in your hand. The expectation would be to the best of your ability when perhaps purchasing that property was there a high expectation that you would be able to put forward a particular development proposal, otherwise perhaps you would

never have purchased it if you knew that there were other inherent barriers or constraints that were going to relate to that property. 1

And do you think that it is appropriate to have an exception where such an expectation exists, an expectation that you might be able to develop your property for a particular purpose?-- I would have thought the provisions of a town planning scheme is probably an appropriate place where those expectations are qualified, either through an overlay or something similar to that, but you should be able to understand where you are going to lie in terms of lodging an application, rather than being completely uncertain as to where you might end up as part of a development process. 10

So you think that a planning scheme should make a call, and in some instances it might be appropriate to further regulate development so that it is - so that it does only proceed where compatible with the nature of the natural hazard, even though previously under the planning scheme the development would have been code assessable or consistent and not have a requirement to be compatible with the nature of the natural hazard?-- I see no reason why a qualification can't be put in place as to how a particular development should in fact occur on a particular site, and that qualification could be triggered by an overlay provision, or something like that. The issues that we talked about previously in relation to building heights and use of certain materials, it seemed to me that that's a fair and reasonable qualification as part of that process, as opposed to a refusal or a complete preclusion when there have already been expectations in place. Especially insofar as so much of our urban fabric is actually within floodplains, and so much of our urban fabric can in fact be made to work when appropriately constructed or appropriately reflecting issues that might be associated with that particular site. 20 30

From your answers it seems to me that you perceive - and I could be wrong - outcome 1 as precluding development, outcome 1 in the State Planning Policy is directed at precluding development, and then outcome - if the exception applies, outcome 2 takes up the role of protecting property by imposing standards?-- Yes, that's right. 40

Is that how you see it as operating?-- Yes, that's right.

And is it for that reason that you see the definition of development commitment as satisfactory?-- Yes.

In terms of the-----?-- I'd say to you that if you are crafting a new planning instrument, I think outcome 1, clearly in instances where there are major problems associated with flooding, that clearly outcome 1 should be the precursor. Don't commit greenfield areas to development if there are major constraints associated with it. So, I suppose, that's just my point of difference between outcome 1 and outcome 2. 50

Would you accept that there is some instances of infill where

because of the circumstances it might also be inappropriate to allow development to proceed at all?-- I don't think that I would be able to say a categoric yes to your question. I think that the question is best answered by how you qualify the nature of development in some of those infill, brownfield sites. I think there is opportunity to do that in accordance with outcome 2.

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In terms of the incentive for a Local Government to even turn its mind to precluding development, would you accept that some local governments are reluctant to make changes to their planning scheme where those changes might trigger compensation?-- Yes, I do.

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And in terms of the trigger for compensation, the Sustainable Planning Act contains a trigger where a change to a planning scheme that reduces the value of interest in land may trigger compensation for that change?-- Yes, I do.

And there are exceptions to that trigger which include where the change to the scheme affects development that if it happened under the old scheme would have led to significant risk to persons or property from natural processes, including flooding?-- Yes.

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But there is a proviso on that exception that the exception will only apply if the risk could not have been significantly reduced by conditions attached to the development approval?-- Yes.

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When drafting a planning scheme, it would be very difficult to foresee the instances where risk might be addressed through attaching conditions?-- No, not necessarily. I think you - I think the whole process of drafting schemes, the whole notion of different levels of assessment anticipates the fact that certain applications can be rendered more suitable to a particular site by virtue of the conditions that you might impose on a particular application. So it could be the fact that with a major application like material change of use, you would anticipate a higher level of conditioning, a higher level of scrutiny back against the planning document. Whereas something which is self-compliant, something which is a straight-out building application, or even code assessable is a less condition framework. It seems to me that in crafting your planning scheme, you should be mindful of the sorts of issues that you might need to consider in those different circumstances. Otherwise you may just have one designation or one zone.

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In terms of the other exception that might apply in the situation of flooding, there is an exception to the requirement to pay compensation where a local government amends its scheme to have the same effect as another statutory instrument?-- Yes.

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And that would include the State Planning Policy?-- Yes, it would do both.

Do you think that the breadth of the definition of development commitment would make it difficult with State Planning Policy 1/03 to change the planning scheme in a way that would call up the exception to compensation?-- It would certainly challenge the ability. I would have to look at that in more detail. It would certainly seem to me that it would challenge the ability.

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Mr Adams, the City Planner for Ipswich council, in his second statement expressed an opinion that the Sustainable Planning Act should be amended to be clear that no compensation is payable should a local planning instrument be amended for the purposes of natural disaster mitigation. Do you agree?-- In principle I do agree but it is an issue that has far broader policy implications to government and policy makers, and I think that would also have to come into the process. But in principle I don't disagree with what Mr Adams is talking about.

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Could I just ask you a few questions about electrical substations? Schedule 4 of the Sustainable Planning Regulation identifies development that can't be regulated by a planning scheme and it includes all aspects of development for a supply network for electricity which is defined by the Electricity Act. The Commission has received evidence from the Executive General Manager of Energex that the location of Energex assets is the result of a negotiation between Energex and building owners. Are you aware of that?-- No, I wasn't aware of that.

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Mr Arnold highlighted - he is the Executive General Manager of Energex - he highlighted that Energex's position is that consideration should be given to amending the Electricity Act to give Energex greater powers to obtain suitable locations for electricity assets taking into account flood levels. Do you think it is appropriate for the Sustainable Planning Act to be amended to allow planning schemes to regulate the location of such assets?-- It really - I really don't have an opinion on that at this stage. I would need to give a little thought to it before just responding. The consequences of the electricity assets being community infrastructure and the importance of - the importance of ensuring a broader community interest to take into account would suggest to me that the less restrictions that were put on to the process would be an advantage on the basis of it being a community asset, community issues. So in that respect, I could be agreeing with the proposition that he put forward.

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Is it perhaps more appropriately dealt with by addressing the considerations through amendments to the Electricity Act?-- No, because I think - well, maybe it should be in both pieces of legislation. I think the planning legislation needs to indicate to a community why that particular position is being taken because of the significance of it being community infrastructure. The means by which it is enabled, I would have to take my own advice on legislation, it could very well be through a separate piece of legislation.

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In terms of - the next issue I wanted to explore with you is the exempt status of roadworks. Mr Adams, once again the City Planner for Ipswich City Council, raised in his second statement to the Commission concerns about the fact that development associated with state-controlled roads is not required to be assessed against the planning scheme. And in paragraph 12 of his statement he raises that the placement of fill for state-controlled roadworks projects without technical council assessment of the impacts can result in the fill being placed in flood prone areas, stormwater flow paths and environmentally sensitive areas. Are you aware whether the Department of Transport and Main Roads carries out any technical assessment of the impact of fill required for state-controlled roadworks projects?-- No, I would have to take advice from the department on that.

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Do you think that local governments should be the assessment manager for those types of projects?-- No, I don't.

Why not?-- Again, in the context of my previous answer to you, the issue of broader community significance and the importance of the infrastructure could very well be that, for example, the reconstruction of the Bruce Highway as a consequence of last year's events could be held up if there were a series of applications being required to every local authority along a particular strip. I think the answer lies more in the situation where the logic behind why its community infrastructure is maintained, that when Main Roads or any of its contractors decide to place fill in any area that they should be consulting with the councils and any other relevant authorities in relation to floodplain management. As far as I'm concerned the issues don't require a planning application to take account of the logic of floodplain management.

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Do you think that there is any utility in drawing a distinction between the construction works within the road corridor and the placement of fill in an entirely separate location outside of the road corridor?-- I don't - I don't see there is any need to distinguish the two. It could very well be the case that the ability for a piece of infrastructure to go in could in fact require massive earthworks at a particular location and a commensurate fill somewhere else. It would seem to me that the logic that says you - a competent floodplain management prevails in both instances, in my opinion.

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So it is more an instance of ensuring that the agencies and the government entities are maintaining dialogue?-- Absolutely, and respect for the fact that local government will have interest in a particular location associated with floodplain management.

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Can I next address the topic of what I refer to as satellite legislation, and what I'm talking about there is planning legislation that governs development other than through the Sustainable Planning Act, so legislation such as the Southbank Corporation Act and the Urban Land Development Authority Act. Those two acts in particular contain no requirement that

flooding be dealt with?-- No, that's correct. As I understand, that's correct. I don't recall that flooding is dealt with in either piece. 1

And because those pieces of legislation have a framework that is outside the Sustainable Planning Act, any improvements made to how flooding is dealt with through refinement of the State Planning Policy won't be reflected in how planning is dealt with under those other pieces of legislation, is that correct?-- That is correct. But it would seem to me that that doesn't preclude, under those other pieces of legislation, consideration of flooding as part of the normal planning process that you would expect a competent planning agency to go through. It would seem to me that if there is an agency which is displaying any degree of competency, the issues associated with flooding are naturally one of the considerations as part of the planning process. 10

Do you think for the sake of transparency that there should be a requirement in those other pieces of legislation that they give consideration to issues of flooding?-- It probably wouldn't be a concern because I think they are already doing that. I think all we'd be doing is recreating what is already occurring in relation to those developments. 20

In terms of - just finally on the issue of levees, throughout the course of the hearings the Commission's heard evidence from lay witnesses and councils about the challenges and importance of regulating levee banks. Are you aware how levees are currently regulated?-- No, I'm not. 30

Do you think that levees could be dealt with as assessable development in planning schemes?-- I think because the construction of levees can have a consequential effect as part of floodplain management not dissimilar to somebody illegally filling a block of land, or somebody putting up a retaining wall or a building in an incorrect position which has consequential effects downstream or even upstream, then there is some logic to suggest that a structure that's deemed to be deliberately holding back water or protects them should be considered. It seems to me the principles we're looking at as part of the normal planning process equally apply to levee banks. Whether or not it needs to necessarily be dealt with under the planning legislation, is a different question as long as it is potentially dealt with as part of some legislation I think is important. 40

Thank you. I have no further questions.

COMMISSIONER: Thank you. Mr Dunning? 50

MR DUNNING: Thank you, Commissioner. Commissioner, may we have, please, page 2,757 of the transcript on the screen? Mr White, my name is Dunning. You might recollect I asked you some questions on behalf of the Brisbane City Council last time?-- Yes, I do, yes.

Just while those passages are coming up on the screen, in paragraph 24 of your recent statement, you refer to the mid-2004 amendments to the Brisbane City Plan. Do you recollect the-----?-- Yes, I do.

You have exhibited the covering letter with extensive annexures to it?-- Yes, that's right.

1

Can I ask you to have a look at this document, please? Now, can I suggest to you that's the letter that you exhibited, together with all of the annexures that were part of it? Commissioner, all I'm really seeking to do is we think the whole of the document should go into evidence in case it's necessary. I appreciate it's somewhat difficult for the witness to identify every page of a lengthy document now, would it be in order for me just to tender it?

10

COMMISSIONER: Yes, that's not a problem. What's its proper title?

MR DUNNING: It's proper title is the - look, I think probably, Commissioner, the best way to identify it would be to describe it as, "The proposed mid 2004 City Plan Amendment to the Scheme referred to in Mr White's second affidavit, paragraph 24, including annexures."

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COMMISSIONER: That will be Exhibit 915.

ADMITTED AND MARKED "EXHIBIT 915"

MR DUNNING: Can I show you another document along a similar vein, Mr White? This is paragraph 31 of your recent statement. Do you recollect that you referred to the proceedings of the Brisbane City Council whereby certain amendments were adopted, and, again, you've exhibited a copy of the minutes without its supporting documentation, and that's it with the supporting documentation. Your Honour, I tender that.

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COMMISSIONER: 916.

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ADMITTED AND MARKED "EXHIBIT 916"

MR DUNNING: Mr White, we now have up on the screen an exchange you and I had on the 19th of September. Can you just read to yourself, please, that exchange? It starts at about line 25 on that page and finishes about line 50?-- Yes, I do recall.

50

Right. Now, it's right, isn't it, that nothing in your second statement, which was after this exchange, changes the views you expressly set out there?-- Yes, that's correct.

Okay. Thank you. That is, your views are unchanged?-- My views are unchanged, yes.

Thank you. And is it also right to say that nothing in the exchange between our learned friend, Ms Kefford, today or the Commissioner causes you to change the views expressly set out there?-- That's correct, yes.

Yes. Thanks for your attention to the questions, Mr White. That's the cross-examination.

COMMISSIONER: Thanks, Mr Dunning. Mr Flanagan?

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MR FLANAGAN: Thank you, your Honour.

MR FLANAGAN: Mr White, may I take you first to the topic probable maximum flood event?-- Yes.

Do you recall that you were asked certain questions by Counsel Assisting in relation to the probable maximum flood event with reference to Mr Reynolds' report?-- Yes, I do.

20

And specifically paragraph 63 of Mr Reynolds' report?-- Yes.

Do you agree that before a probable maximum flood event can be used in a planning scheme, it needs to be very carefully identified as to what its role is?-- Yes, I do.

For present purposes, it's the case that the Ipswich City Council Planning Scheme does not use, as part of its overlay at least, the probably maximum flood event, does it?-- No, it doesn't, no.

30

And if one was to use such a line, and we will talk about it as a line rather than an event, it could potentially, directly or indirectly, impact on the value of people's properties that fell within that line?-- Yes, it could.

Right. And if it's not properly identified, it could impact quite adversely on people's values of their property with that line?-- Yes, it could.

40

Would you also agree that it could operate in quite a detrimental way in unintentionally sterilising land that is otherwise available for development? Sorry, I will rephrase that, land that should be otherwise available for development?-- Yes, it could, and perhaps I could just elaborate, and that is it wouldn't take into account the fact that various overlays could trigger various considerations that would enable land to be rendered suitable for development under different circumstances. It would be a fairly blunt, potentially gagging instrument if it were inappropriately used.

50

Assume for present purposes that as a result of this Commission, and the recommendations made by this Commission, that further studies and further work will be done in relation to identifying a more accurate Q100 line for both the Brisbane

City Council and the Ipswich City Council, and further assume that we won't be calling it a Q100 line but it will, in fact, be a more accurate flood regulation line for both the Ipswich City Council and for the Brisbane City Council, can you assume that?-- Yes, I can. 1

Based on that assumption, what role do you see, at least in relation to the Ipswich City Council planning scheme, a probable maximum flood event line playing?-- Well, it simply alerts the community that there are potentially bigger floods than those which have been identified in the planning document and around which both triggers control and management frameworks have been put in place as part of the process. 10

Can I push you then on what sort of planning controls you're thinking of that such a probable maximum flood line would activate? You've talked about certain perhaps building restrictions, do you also envisage, for example, a new hospital being constructed above that line?-- I would. I think the opportunities that could be taken above that line would clearly give off the correct message as to the resilience of a particular site. Not just hospitals, there might be a range of other instances that might be possible. But I do add to my earlier comments, depending on the characteristic of your floodplain, if your floodplain is a very wide one, it could very well be qualified by other processes. But in Ipswich it could very well be the case that a site centrally located to the community is, in fact, above the PMF in any case, and it could very well be the case that the existing hospital site in Ipswich is already above the PMF. 20 30

Would you also see the line being used for the purposes of identifying evacuation centres?-- Yes, I could.

Thank you. You were also asked questions concerning the proposed Building Code?-- Yes, I was.

And you were referred to Mr Brumby's evidence, if you recall?-- I think I took us to Mr Brumby's evidence. 40

Yes. In terms of flexibility, two topics were identified for you, namely streetscape and heritage, do you recall?-- Yes, I do.

Apart from those two issues, can you identify to the Commission other areas where you think it's important that flexibility remain in relation to local governments making planning decisions in respect to a Building Code?-- I suppose answering your question the other way round, do I find the Building Code an impediment to flexibility for a planning scheme in the way it's currently written and, no, I don't. I think that if the opportunity is there for the planning scheme to reference the Building Code when it applies to particular overlays, or DFEs, then I don't see that it's necessarily a restriction that could come into the planning scheme. I also feel that other issues such as streetscaping, heritage issues, or otherwise, can in fact be dealt with adequately within the 50

framework of the planning scheme, which a building application would take notice of in any case in terms of the characteristics of a building or otherwise.

1

And just to put some flesh on that concept of a heritage overlay, if you like, could you envisage that a heritage overlay would protect, if you like, owners of a heritage building from aberrations in relation to the application of the Building Code, such as, for example, if it's habitable area it has to be above the relevant flood regulation line, instead of having to go up one could have some flexibility of adding that to the ordinary floor plan of the house?-- Yes, I do.

10

Right. Could I just then take you then to a final topic? You were asked by Counsel Assisting in relation to evacuation routes and evacuation plans and you appreciate the difference?-- Yes.

One is an identification of the physical evacuation route one can have in the context of a natural hazard event; is that correct?-- Yes, that's correct, and that's why I referenced a road.

20

All right. And an evacuation plan is, in fact, susceptible, is it not, to human error and - susceptible to human error?-- I would have to accept that, yes.

Right. Do you agree that if, for example, a child care centre, if it was simply conditioned on the fact that the developer had to have an evacuation plan for that child care centre, that such a condition could be open to criticism if it's only evacuation plan because it would call into question the very development approval itself, wouldn't it?-- Yes, it would.

30

Right. But what is your view where a child care centre, for example, has both an evacuation route above the relevant defined flood event as well as a condition for an evacuation plan?-- I would prefer that a child minding centre isn't located in a risk area.

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Thank you. That's the questions of Mr White, thank you, your Honour.

COMMISSIONER: Thanks.

MS McLEOD: I have no questions, thank you.

COMMISSIONER: Mr MacSporran?

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MR MacSPORRAN: Thank you, Commissioner.

MR MacSPORRAN: Mr White, just a couple of matters. You were asked some questions by Ms Kefford about how the State proposes to assist local governments with their producing flood mapping?-- Yes, that's right.

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And you mentioned in that context, I think, a submission that had been made by the State as recently as last Friday, I think?-- Yes, that's correct.

Do you have a copy of that with you?-- Yes, I do.

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Commissioner, I'm not sure whether that's been uploaded, but I have copies I would like to distribute perhaps conveniently now for reference?

COMMISSIONER: Thank you.

MR MacSPORRAN: Perhaps using that hard copy, Mr White, can you take us to the particular parts where that topic of assistance by the State to local governments for the production of their flood mapping is dealt with?

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COMMISSIONER: Mr MacSporran, should it be an exhibit, it will end up on the site?

MR MacSPORRAN: Yes, it should be tendered, yes.

COMMISSIONER: It should? All right then, that's 917.

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ADMITTED AND MARKED "EXHIBIT 917"

MR MacSPORRAN: I think it was page 7?-- Well, I could probably very quickly take you to a number of the pages-----

Yes?-- -----in that page 3 talks about the government "will continue to maintain availability IFAQ into the future", which is the work that's being done as part of the work from the Queensland Reconstruction Authority.

40

Now, that's the Interim Floodplain Assessment Overlay?-- Yes, that's right.

Yes, all right?-- And so there's clearly a statement coming there that-----

Can you speak up, please, Mr White?-- Sorry, "We will continue to maintain this work into the future and refine the mapping as improved data becomes available."

50

The idea being that that mapping is produced as a basic data set, which is designed to be supplemented by local knowledge in the particular area?-- Very much so, and also to take account of a further refinement as the process moves forward. Clearly, as a further reference in the next paragraph down,

"As well as providing technical support, the Queensland Government will also provide financial support to local governments to undertake more detailed mapping." That's on page 3. Page 5, the Queensland Government will continue to maintain the mapping as I previously spoke about before. "Custodianship of this material will be refined prior to the transition from the authority." There is commentary throughout the whole document in relation to that, I am just taking you to specific responses at the moment.

1

Yes?-- On page 6, in relation to the level of involvement, State there, dot point number 4, "Providing funding through MDRP to support local government delivery disaster preparedness, including flood mapping." Commissioner, I'm just jumping to different parts of the document to illustrate the point at the moment for you.

10

Yes?-- On page 7, the Queensland Government will continue to maintain, again, the mapping process. "Custodianship of this will be reviewed prior to the transition," again that comment. At page 8, question 5, "Commonwealth and State Governments also providing funding support to local government to undertake detailed studies."

20

And there are some figures given there, which I won't take you to, but they're all contained in the document; is that so?-- Very much so, yes.

All right. So it's not proposed to simply leave it to the local government to fund and manage the flood mapping on their own, they're getting significant support from the State?-- That's right, yes.

30

Now, I take it from what you've said in your evidence already, that you support a risk management approach to the assessment of the impact of flooding?-- I think a risk management approach represents a refinement on what SP 1/03 is set out to achieve, and I think a risk management approach is an approach that provides greater clarity as to the types of risks and how they can be managed as part of the planning process. I think a risk management approach, as I did mention previously, it's very interesting to see how one Council is already using the risk management approach to demonstrate the notion of land that is actually available for qualified development as opposed to a blunt Q100 stopping development. So by having the various risk management strategies in place, the Council planning scheme is starting to show how it can manage the different risks for the different types of uses with different strategies associated with both building products and land development products.

40

All right. Just, finally, you were directed to some areas where the local planning instrument provisions were in conflict with the State Planning Policy provisions?-- Yes.

Does the legislation deal with that situation?-- Yes, it does.

50

And what does it say?-- The State Planning Policy prevails over the other instruments.

1

And that's in the Sustainable Planning Act, is it?-- Yes, that's right.

Thank you. Thank you, Commissioner.

COMMISSIONER: Ms Kefford?

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MS KEFFORD: No further questions, might Mr White be excused?

COMMISSIONER: Yes, thanks, Mr White, you are excused.

WITNESS EXCUSED

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MS WILSON: Thank you, Madam Commissioner. The next witness is Gary Mahon. Madam Commissioner, Mr Mahon gave evidence on the 19th of September and at the conclusion of his evidence he was stood down rather than excused.

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GARY LEONARD MAHON, RECALLED AND FURTHER EXAMINED:

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MS WILSON: Your full name is Gary Leonard Mahon?-- It is.

And you gave evidence at the Commission's hearings previously on the 19th of September this year?-- That's correct.

And since you gave evidence on that day, you have been required to provide a further statement dealing, broadly speaking, with correspondence between the Department of Community Safety and other government departments in relation to the Ipswich City Council and Brisbane City Council Planning Schemes?-- That's correct.

10

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

Can you have a look at this statement, please, and that statement is in relation to that issue that I set out?-- Yes.

20

You provided a statement and as we can see by the box next to you it's got many exhibits?-- It's quite extensive, yes.

Can you just open that folder in front of you and you will see the statement on the front of that folder? We will just locate the box where your statement is in. Madam Commissioner, we've got all of the attachments but we haven't got the actual statement.

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COMMISSIONER: It can wait to be tendered?

MS WILSON: Yes. I will tender it at the end of his evidence.

COMMISSIONER: Certainly.

MS WILSON: You've got a copy of your statement though, haven't you?-- Yes, I do.

40

That's good. Could I just take you to that statement? Just as a preliminary matter, if I could just confirm just some of the information that you've provided us. In paragraph 6 of your statement, you refer to a search of the department's records?-- Yes, I do.

Relating to the years 2003 to 2011 and that search reveals that there are six volumes of correspondence that would meet the description of the documents or the requirement as stated in the requirement. So, is it reasonable to assume that all of the documents that you provide us are all of the documents that are in existence that could be found by your department in relation to the issues as set out in the requirement?-- To the best of our knowledge, yes.

50

Thank you. And on another matter, comments provided by the Department of Community Safety to the Department of Local Government and Planning as part of the State interest check

process are always provided in writing; is that the case?--
Yes. As I understand it, yes.

1

Okay. So, is it reasonable to assume that following that correspondence through, where the correspondence ends, that is the conclusion of the Department of Community Safety involvement in that State interest check for that local planning scheme?-- Yes.

Okay. If we could now turn to some of the information that you provided in relation to the Brisbane City Plan and if I could take you to attachment GLM2. Have you got that there in a hard copy?-- No, I do not.

10

It will come up on the screen and we can also provide you with GLM2?-- Oh, yes, the table?

That's the table, yes. And this is attached to your statement?-- Yes.

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And as I understand working through this table, this table summarises the advice provided by your department to the Department of Local Government and Planning with respect to the State Planning Policy 103; is that the case?-- Yes, the table itself wasn't provided. We developed the table to assist in terms of the provision of the evidence to summarise those documents and our comments within.

Okay. So the table itself wasn't provided to the Department of Local Government and Planning, it was a document created for the purpose of your statement?-- That's correct.

30

Now, this document sets out - there's various entries in this report - it sets out when the Department of Community Safety has been asked to provide input in relation to a planning scheme; is that the case?-- Well, in this - in the case of this table, it wasn't always planning schemes, in some cases it was neighbourhood plans and other-----

Yes?-- Yep.

40

But each entry is just a different request to the Department of Community Safety to have input in relation to the State Planning Policy 1/03?-- That's correct.

And this table also summarises the advice provided by your department?-- Yes.

Now, on my calculation there's 59 entries in this report that you've done for the Brisbane City Plan, so just putting all those points together, is it fair to say that your department has been consulted on 59 occasions in relation to the Brisbane City Plan from the 2nd of January 2003?-- On 59 occasions where the City Plan came into reference-----

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Yes?-- -----yes, I would agree.

Now, just in a number of these entries, your department

provided advice to the Department of Local Government and Planning that SPP 1/03 has not been incorporated into the Brisbane City Plan?-- That's correct.

1

And we can see that, just by easy reference, if we can go to the 22nd of October 2004, which is on the second page of that document?-- Ferny Grove, Upper Kedron?

Yes. And we can see there that, "DCS advises the DLGP that as the State Planning Policy 1/03 has not been incorporated into the Brisbane City IPA scheme, due regard should be given to SPP 1/03 for the purposes of development."?-- That's correct.

10

Do you get feedback from the Department of Local Government and Planning every time that you make such a comment?-- Not necessarily, no.

Well, "not necessarily", what does that mean?-- Well, in the first State interest check we provide that advice, on occasions they might come back to us for clarification, but under normal circumstances, at the second State interest check, we would then be provided with an understanding of what the local government has done with our advice from the first State interest check.

20

So are you provided with how your comments have been taken into account by the Department of Local Government and Planning?-- Not normally as I understand it, no.

And is that something that the Department of Community Safety should be receiving from the DLGP, and when I refer to the "DLGP", it's the Department of Local Government and Planning?-- I think on reflection, in hindsight, as we've looked and reviewed where we're at with these processes, I don't think it's unreasonable that we probably should be provided that advice.

30

When you say "in hindsight when looking at these processes", is that part of the review process that is going on in relation to SP 1/03 or is that part of the work that you've done to assist the Commission in providing this information?-- That captures both.

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Okay. Because, as you said before, this type of schedule, that doesn't exist in the normal day-to-day existence of the Department of Community Safety, does it?-- No, it does not.

Is that a useful document to have so the Department of Community Safety is aware of the advice that it is giving to the Department of Local Government and Planning in relation to a planning scheme?-- Yes, it has been.

50

Why is that - why is that useful?-- Well, because I think it gives you at a reasonably easy glance a summary of how our feedback has been going and I think it's fair to say that we should have better understood, I think, that we were not getting feedback about our views being put forward about SPP, for example.

1

And why do you think it is important that the Department of Community and Safety receives such feedback?-- Well, it allows you then to follow up.

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Would you be doing to follow up? What would you be looking at?-- Well, it's either we're not understanding that our feedback is being given due reference or that there's something we're missing in terms of that communication and need to look at within our own processes.

So how can this be done better? How can this process and the interaction about between DLGP and Department of Community Safety be done better?-- I think it's - as I said before, it's not unreasonable that as we provide that advice that we get a response to each piece of that advice.

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So that you can look at that about why your advice has been taken up or not taken up?-- That's correct. And there are a number of cases and evidence I've given before this Commission where that has worked, I think, reasonably well, but it has been more by happenstance, I think, than necessarily by a sophisticated administrative arrangement.

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So it would be more by good luck than by process?-- Well, in some cases it's worked quite well. In other cases it has not. The only pattern I've been able to see is different personalities change, different people hold different positions. On occasion it's worked better than on other occasions.

COMMISSIONER: If they choose to proceed in blithe disregard of everything you say, is there any monitoring process to pick that up or any review?-- Well, that's been the value of us preparing these documents. It's given us some room for reflexion and to incorporate, I think, what I would call the more sophisticated administrative arrangements. So we've fed this feedback, for example, into our SPP review as to what processes we ought change so that we get a better handle on that status.

40

But theoretically, and I'm only saying this theoretically, you could get responses from them that just said that they weren't taking your concern seriously?-- Well, it is within their prerogative of DLGP to override our advice or take other matters into regard and weigh that against the circumstances at the time. Ours is one piece of input, I suppose, is another way of describing it.

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MS WILSON: But is it the case that if they are disregarding your advice, then you want to know the reasons why?-- We would reasonably expect an explanation, yes.

And that may be because the Department of Community Safety may be looking at it from a different perspective or that-----?-- That's right. There may be other more compelling inputs that overrides particular advice that we have or balances the advice that we've given.

By looking at these tables, and you've also provided one for Ipswich as well?-- Yes.

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Just for the record, GLM14. But these tables could exist for all of the planning schemes around Queensland where you've been asked to provide input. I mean, it's unfair probably to just to pick out Brisbane and Ipswich. These tables could exist for all of the planning schemes?-- Yes, they can.

You've provided advice. And the planning schemes that - those tables would include numerous entries where you provided advice to the DLGP which has not been taken up or has been taken up?-- That's correct.

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So it appears from this that sometimes the right hand doesn't know what the left hand is doing. What I'm interested in is how this can be done better. Is it the case that there needs to be one agency or one agency that looks after all of the SPP 1/03 interest checks that the DLGP and the Department of Community Safety and DERM in relation to flooding, that should really become under one agency; have you got a view on that?-- That's one solution, but it doesn't necessarily always improve with bureaucracy. I think it's also a valid observation to make that those agencies that have a valid interest ought be engaged and involved and it's not unduly complex to arrange the administrative arrangements such that they are working complementary to each other.

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How can that be easily done?-- As I said, just some straightforward administrative measures we've undertaken in relatively recent times to reflect on where we're at. That's substantially improved our visibility in these processes.

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Well, can you just give me an example of some relatively simple administrative processes that you've undertaken?-- Well, tabulating our responses to a particular Council scheme does give us greater visibility as to how consistently our advice has been acknowledged.

But how is that going to help the process working better? It might help you understand where you sit in the process better, but how will that help the process given the players in the process? How will that help the process work better?-- Certainly one of the items for review under the SPP is our status as either advisory, referral or whatever other legislative mechanism is available to us to ensure there is a more compelling conversation, for want of a better description, from our agency about the advice that we give and how that advice is treated.

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So is it the case that the Department of Community Safety at

the moment is not sure of the role that it's performing in relation to SPP 1/03?-- We understand our role quite clearly, but it is advisory. So it is not within our purview to compel anybody to adhere or comply or be cognisant of our advice.

1

What would be the advantages of a single entity agency with responsibility for ensuring that local governments have reflected the SPP 1/03 in their planning scheme; they have a flood map and that map is adequate - what would be the advantages of all of that coming under the one umbrella?-- Well, you would have the opportunity to consider a divergence of views as against the risk you might have of a particular paradigm or a singular view developing over time within a particular culture. So I think it goes to normal good practice in public administration. I don't think it's necessarily unhealthy to have a divergence of views with then a decisionmaker needing to take those different views into account in coming to a final conclusion.

10

Has the Department of Community Safety expressed any concerns to the DLGP about whether their views are taken into account and how they're taken into account?-- There has been from time to time, yes.

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What about since this process has started, since you've undertaken what you call your administrative processes, what about it have you understood are better, the input that you're giving and whether it's taken up or not?-- I think it's fair to say we've improved our understanding in recent times.

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Improved your understanding between the Department of Community Safety and the DLGP?-- Yes.

Does there need to be a memorandum of understanding between the DLGP and the Department of Community Safety?-- I think it would be an unhealthy prospect to need a MOU to compel departments to cooperate with each other. I think it's quite reasonable to expect that State agencies would cooperate with each other as a matter of course.

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Do you think the process has worked efficiently in the last eight years?-- I think any process is always open for improvement. I think it's fair to say on our reflections in terms of looking at how this has been administered as well as undertaking, how far we've progressed in the SPP review. There's room for improvement. There's room for change. There's room for administrative processes to be improved and I think in most areas of administration that would always be the case.

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I'm interested in this. I'm interested in your view. You said that having all of these matters being dealt with under one agency or one entity is one option. What would you say is the best option?-- I still think the best option is for a divergence of views to be available in considering these sorts of issues. I think the legislative structure/planning instruments that operate around that, there's room for improvement as to how they are synchronised.

And that can just have to be done by better communication, are you saying?-- It could be or there might need to be some legislative change as a result of the review and of the Commission's findings.

And what would that legislative change seek to do?-- Well, one option, for example, could be that the DCS advice is the default advice, so that you need to make a case to take a different view which makes a DCS view, for example, more compelling, without necessarily being the compelling view. So they're the sorts of policy options that I think need to be considered as to better application of the different views that come into the planning equation.

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And would that be contained in the State Planning Policy itself?-- It could be or it could be in the Act. Local Government, no doubt, would have a view about how they might like to participate in that process as well.

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And how do you see as the best way for us to come up with the best process? Is it a case of all the parties sitting down and trying to work out a better framework?-- That's one option available, yes.

And other options?-- Undoubtedly the Commission will hold - will make some recommendations which would be compelling in terms of taking into account.

Can you help us make the recommendations?-- Well, I think my first answer to is that that's a matter for Government. That's a policy call for Government as to whether we are a referral, concurrent, advisory and how they might want to apply that. Local government would want a view in that space as well, as other interests might as well. There's various other specialists that would have a view. Department of Environment and Resource Management in terms of hydrography in other areas. So under normal circumstances for Government administration we would go through an interdepartmental committee process and make recommendations and take options forward to cabinet for Government consideration, but, as I said, a default mechanism is one option. To leave it as the status quo is another and improve the administrative processes around that space. To revert all of the accountabilities back to DLGP is another option. Giving more authority to local Government to be able to make those decisions against a set of criteria is another option. So it's more like the building code's type approach; you could bring more specificity to these sorts of considerations into a more instructive instrument and require local governments to take guidance from that instrument. So there's four options.

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If you could assist me in relation to this. You talked about some of the options could be whether the Department of Community Safety is a referral agency, a concurrent agency or an advisory agency. What are the advantages of the Department of Community Safety being a referral agency?-- Well, it makes the advice we provide more compelling for local government

and/or DLGP to take into account when considering planning schemes. We are not necessarily looking to do that. It's not unreasonable to think that by levels of cooperation and clarity of our guidance and why we arrive at the conclusions that we do, greater transparency in the decision-making that you can't reasonably reach a conclusion with the current arrangements.

1

What are the advantages of the Department of Community and Safety being a concurrent agency?-- Well, again, it's about raising, you know, advice to a more compelling status, would be the best description I would give. That has its pros and cons.

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Now, we've been, I think, focusing on the relationship between the Department of Community Safety and the Department of Local Government and Planning. There also is another relationship to take into account. That is a relationship between the Department of Community Safety and the Department of Environment and Resource Management, DERM?-- Yes.

20

Now, in what circumstances does the Department of Community Safety seek advice from DERM?-- We normally seek advice DERM on the specialist elements of flood studies where it goes to the hydraulic studies and so forth. So we'd be seeking advice as to the veracity of the professional approach to the conclusions that that hydraulic study might have arrived at. And the second part is the appropriateness of the setting of the DFE and, again, that's where we seek specialist advice as to whether it's reasonable to reach the conclusion of the particular DFE that's been assigned to that study based on the professional considerations that have been undertaken.

30

Does the Department of Community Safety to your knowledge seek advice on all occasions when they themselves have been asked for their advice?-- I couldn't sit here and conclusively say on every occasion their advice has been sought, but under normal circumstances I would have expected so.

And you would regard that as best practice for the Department of Community Safety to be seeking DERM'S advice?-- We certainly regard DERM as having the superior advice.

40

You talked about the actual content of the advice that you're looking for. Mr Cuere from DERM gave evidence to the Commission about the advice that DERM provides to the Department of Community Safety. And advised the Commission that when DERM reviews a planning scheme they don't look into the modelling conducted by the Council. Are you - as Department of Community Safety are you wanting DERM to go that further step and look at the modelling?-- Not necessarily, no. If they're satisfied based on their assessment, that would be satisfactory to us.

50

So you're not-----?-- We would have no reason to question DERM'S advice in terms of the veracity of the flood study.

And is that because you're relying on expert advice?-- That's

correct.

1

So you're not really looking at the content of the advice they give back, you're just wanting to know whether the flood study is adequate?-- There's been occasions where we've certainly sought assistance from them in terms of advice because at first glance the DFE appears quite low or low for the circumstances. So I mean, I've given evidence before the Commission about Bundaberg, for example, where we sought their assistance in drafting a response in that regard.

10

Previously in your evidence you mentioned that a memorandum of understanding between Government departments, that seemed taking it to another step; is that the case?-- From a personal perspective I don't necessarily see the value. It would be reasonable expectation that Government departments cooperate with each other in the conduct of their accountabilities. I'm not sure of the value that a MOU between State Government brings.

20

There was a memorandum of understanding at one stage being contemplated between DERM and the Department of Community Safety; were you aware of that?-- Yes, I am.

Why was that not seen necessary?-- That wasn't my decision at the time. That relates to another area of the organisation, but I believe that the imperative for that partly was driven by an agreement needing to be reached about service costs. That's a different question again. If there's an internal service cost being negotiated between defendants, that may warrant some standard agreement. I think that's reasonable.

30

Do you see any change necessary in relation to the relationship between DERM and DCS?-- Not particularly. I think we've both got pressing needs in terms of resourcing and from time to time they find it difficult to bring a timely response that we might expect, but on balance I think the relationship is reasonable and certainly we pursue a line as long as we understand what's going on and where the pressing time limit issues might be, we'll work with that as best we can.

40

Do you see whether it's necessary that there is any change in the role that DERM plays in this process?-- I think we need to come to a greater clarity about precisely the advice they can provide and the time limits of that advice. I think that at times has become a bit less clear.

What do you mean by that, Mr Mahon, about seeking clarity on the type of advice that they can provide?-- I think there's been some variability about the definition of the advice that they can provide. There has been occasions where I think we had an expectation of their being able to provide greater depth of analysis for us when that hasn't been the case, but all in all I think that relationship has worked, you know, reasonably well.

50

Well, as of today do you seek or require any further clarity

of the role that DERM plays in relation to SPP 1/03?-- Yes, we do.

1

What is that further clarity that you seek?-- That goes to the veracity of the actual flood study and it would appear they're not in a position to always give us that information at the moment and we're working through those issues as to how that might be best addressed.

You're wanting DERM to give you that information, are you?-- Yes.

10

And you're working - why does the Department of Community Safety need that further information?-- Well, it goes to place and context. Sometimes various questions arise that are quite particular to that particular scheme and it may be that we are seeking something further than we might normally do and we'd be seeking their advice.

Do you understand it's a resourcing and a funding issue or whether it's a capacity-----?-- I think generally it's a variability with resourcing from time to time for them.

20

You say that you're working through that. How are you doing that?-- In normal consultation with the department.

Are you close to being able to get that clarity that you're seeking?-- Yes, I believe so.

Just to be clear, what information what more information do you need from DERM?-- There's been occasions where sometimes we need, for want of a better description, greater granularity about the veracity of the actual hydraulic study because of particular - certain circumstances in a particular area and that has required further - you know, further analysis of the expertise that's been applied in the hydraulic study. So we've asked for further guidance in that regard.

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When you have asked for that further guidance has DERM been able to provide that further guidance to you?-- Not always as timely as we'd prefer, but they've been able to answer the question for us, yes.

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So if they've been able to provide that advice to you perhaps not as quickly as you'd like, then is further clarity required?-- Only in the sense that sometimes the demand has been more consistent than they expected and they've come back to us seeking clarification about whether we had changed position or had changed policy in terms of the types of questions we were asking and vice versa. So I think it's like any relationship, it requires visiting from time to time and ensure that there's - that understanding continues.

50

So whilst you say it doesn't require a memorandum of understanding between the two departments, the two departments' roles needs to be defined and clarified so each can understand-----?-- That's correct.

-----what each department has?-- And personalities change from time. I think you always need to refresh.

1

So when personalities do change, do we go back to the drawing board?-- No, we don't.

So how do we not go back to the drawing board?-- I think it's just one of those things where you need to check there's a continuing understanding and that we-----

10

How do you check whether there's a continuing understanding? Do you have these roles set out in a document?-- Certainly I would expect our people to know who their counterparts are and what their expectations might be and to undertake a professional understanding with those people. I think it's quite remiss if the relationship is just dependent on email and, you know, exchanging correspondence. They need to know who those people are and be able to talk with them and talk through the issues with them and ensure that we have a common understanding of what we both need.

20

Does there need to be any amendment of the SPP 1/03 that sets out what each department's roles are?-- Well, the SPP does set out who provides advice on what. I don't think it's unhelpful to be able to strengthen that description so that there is some greater clarity, but certainly the SPP currently does step out who provides advice on what.

And you would think that if that had - those roles were set out with greater clarity that would assist?-- I think that would serve a useful purpose, yes.

30

Madam Commissioner, the statement of Mr Mahon has now arrived. So I will tender that statement along with his exhibits. I'll show that statement to Mr Mahon to make sure it's his?-- Yes, that's my statement.

Thank you, Mr Mahon. I tender that statement.

COMMISSIONER: Exhibit 918.

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ADMITTED AND MARKED "EXHIBIT 918"

MS WILSON: I have no further questions.

COMMISSIONER: How long is everybody going to be?

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MR DUNNING: Commissioner, I expect to be about the same length of time as I was with Mr White, less probably.

MR FLANAGAN: No questions of Mr Mahon.

MS McLEOD: I have no questions.

MR MACSPORRAN: I have nothing at the moment, Commissioner.

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COMMISSIONER: You go ahead, Mr Dunning.

MR DUNNING: Commissioner, may we have, please, up on the screen transcript page 2788? It's again of the 19th of September. Mr Mahon, my name is Dunning. I appear for Brisbane City Council. I asked you some questions last time we were here?-- Yes.

10

I'm going to show you the exchange you and I had. Can you just read - you'll see on page 2788 at about line 30 I started asking some questions. It goes over to the next page at about - to about line 20. Can you just read that quietly to yourself?-- I recall that. That's where you set out to establish that I was not a qualified planner.

In the event that you recollect the exchange, I take it that nothing in the second statement you have delivered or the exchange this morning qualify those matters you and I canvassed on the 19th of September?-- Not that I understand, no.

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Thanks, Mr Mahon. Thanks, Commissioner.

COMMISSIONER: I wouldn't take it to heart. Thanks Mr Mahon for your time. You're excused and we will adjourn till 2.30.

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THE COURT ADJOURNED AT 12.57 P.M. TILL 2.30 P.M.

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THE COMMISSION RESUMED AT 2.28 P.M.

COMMISSIONER: Yes, Ms Wilson?

MS WILSON: Thank you, Madam Commissioner. I call Derek Millar.

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MS McLEOD: While we're waiting Commissioners, I might take the opportunity to tender the Commonwealth Flood Mapping submission, if that's an appropriate time.

COMMISSIONER: All right.

MS McLEOD: There are two attachments as well.

COMMISSIONER: Thank you. That will be Exhibit 919.

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ADMITTED AND MARKED "EXHIBIT 919"

DEREK GORDON MILLAR, SWORN AND EXAMINED:

MS WILSON: Can you tell us your full name, please?-- My name is Derek Gordon Millar.

30

You are an employee of the Department of Transport and Main Roads?-- That's correct.

Can you tell us your job title at the Department of Transport and Main Roads?-- I'm a project manager.

And is there any area that you are a project manager in?-- Principally in the delivery of typically major infrastructure projects.

40

And you have prepared a statement for the Queensland Floods Commission of Inquiry?-- Yes.

Can I show you this document, please? Is that your statement with attachments?-- That's correct.

Madam Commissioner, I tender that statement with attachments.

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COMMISSIONER: Exhibit 920.

ADMITTED AND MARKED "EXHIBIT 920"

MS WILSON: Now, keep that statement in front of you open and I will take you to some parts of your statement?-- Okay.

In paragraph 1, you describe that you have been the project manager for the Ipswich Motorway Upgrade Project from Dinmore to Goodna since February 2008, and you list the primary functions and duties of your role in paragraphs 2 and 3. But can you please tell the Commission what role you had in relation to the final design report which is attachment B to your statement?-- So the delivery of this particular project, Main Roads, we did do an alliance with other parties, and so in forming that alliance my role primarily would be to interface with the development of that design and with other departments within Main Roads, so the specialist areas in particular, and obviously making sure that that design was put through a review process, an independent review process with other major stakeholders.

10

Was there any one person who was responsible for the scope of works and technical criteria for the project?-- No.

20

So that it was a collaborative approach throughout your department, is that the case?-- Correct.

The Commission has heard some evidence that residents of Jabiru Place believed that the Monash Road overpass contributed to flooding at their residences. If we can go to the Monash Road upgrade, the Monash Road upgrade involves the construction of an overpass crossing a Queensland Rail track?-- That's correct.

30

And also involves the upgrade of Bridge and Francis Streets to provide a link to Monash Road?-- That's correct.

Now, we can see at paragraph 21 that an aspect of the project required a high embankment to be constructed in an existing overland flow path?-- That's right.

And to mitigate against the flood impacts caused by this, the upgrade design provided for the construction of a new culvert to be at the relevant location?-- Yes.

40

And if we can explore this a bit more, at paragraph 14 of your statement, you say, "The project brief states that any new infrastructure constructed must not generate additional outflux, that is, increase the existing flood levels, that may impact on property not owned by DTMR"?-- That's right.

The criteria of not increasing the existing flood levels, where does that come from? Is that a DTMR policy, or is it another State policy?-- I believe it is a DTMR policy not to increase - yeah, not to increase the outflux, that's correct.

50

Does that apply to all projects?-- Yes.

And how is that determined whether the project has the capacity to or not increase the existing flood levels?-- So,

okay, obviously every project's different, and what normally happens is the project establishes a base case scenario. So they analyse what the current immunity of that particular area is, and that's normally done in consultation with other affected stakeholders, land owners, that might be Ipswich City Council, depending on the boundaries where the project falls within. In this particular case, in the early stages of the project a number of discussions were undertaken with Ipswich City Council and Brisbane City Council to have an understanding of what the base case scenario is in that particular area. So once one has done that and you have established what the base case is, when you start to develop your design you then look at the impacts of that particular design on that base case, if any, and take it from there, yes.

COMMISSIONER: What do you mean by "base case"?-- In other words, the current situation, the existing situation. What is - in the advent of a flood or various type of flood conditions, what - how far does the flood levels go to, what are they?

Thank you.

MS WILSON: And so the local regional council may provide that information to you?-- Yes.

To the department?-- Correct.

Then what does the department do with that? Do they do flood studies, or how do they take into account the base case?-- Okay. Well, in this particular case we would have looked at - because of the proximity of the Brisbane River, for instance, we would have looked at the - what the flood impact would have been under various scenarios. Yes, at that stage Brisbane City Council provided us with flood levels for particular return periods; so what will it be at a Q100, for instance, and we would have agreed with them what the peak flows of the Brisbane River would have been at that particular case. So that then forms the base that we agree that typically a Q100, what the flood level is or what - what flood levels were reported previously for different flood events. So when we then do - you know, when we construct our infrastructure, it is really what impact, if any, does it have on those existing flood levels.

In paragraphs 14 and 15, which is in front of you, you discuss the flood modelling undertaken as part of the project, and that's a part of what we're discussing now, is that the case?-- Yes.

Did the scope of works and technical criteria for the project specify the kind of flood modelling required?-- No.

So who would specify the type of flood modelling required?-- You mean the-----

I mean the flood modelling required to be undertaken to assess the flood impacts - any flood impacts of the project?-- Yeah,

so within the scope - in the technical criteria, it was stipulated that we would have to assess the flood impacts at a Q100, at a Q2000 for the flood of the motorway and then at a Q20 for local roads.

1

At paragraph 14 we can see it refers to the project designer's modelling?-- Yes.

A local flood model - well, "The project designer's model, local flood modelling, the impact of the construction of the Monash Road overpass and provided a design." When we talk about local flood, is that referring to the definition that you provided earlier in your statement, I think at paragraph 10?-- Yes, that's correct.

10

And that's really just looking at overflow flooding, not riverine flooding?-- So that would be a flood event generated by a local storm event, yes.

Right. Do you know whether the local flood modelling that was relied upon ensured the design did not increase the flood risk of adjacent residential properties?-- Yes.

20

And do you know the result of that?-- Yes, it is in our design report. It showed that there was no - in that particular area we didn't generate any additional flooding.

In paragraph 15 you refer to regional flooding?-- Yes.

And when you are referring to regional flooding you are referring to a definition that you provided again in paragraph 10 of your statement?-- Correct.

30

To give it some relevance to the context that we're talking about, is regional flooding the kind of flooding experienced in the Ipswich and Redbank area in January 2011?-- Yes.

The motorway alignment was designed for regional flooding?-- Yes.

40

So that means where the Motorway was placed, is that the case?-- Correct.

Was the extra step done of - regional flood modelling done for the purpose of ascertaining whether or not the design increased the flood risk of adjacent residential properties?-- Yes.

Can you tell us the result of that?-- For the most part there was no additional impact on surrounding residences.

50

When you say "for the most part", what do you mean by that?-- Well, there are some places where you might generate a little bit - or very marginal efflux, so you would have to assess the impact of that efflux, so it could be five mm or 10 mm, and on a - on certain properties that might have a big effect, but on other properties it would not have have no effect whatsoever.

Perhaps you could help me understand this by going to exhibit K in your statement - attached to your statement. And have you got that exhibit there, Mr Millar?-- Okay.

1

And this is the Safety and Design Risk Schedule?-- Yes.

Can you tell me what this document - the role of this document; what is that?-- So this document primarily is - it is incumbent on designers today when they put a design together to consider the safety of that design, particularly from a maintenance perspective. There is no use designing something if it can't be maintained safely. So that's essentially what that process is. So one would typically draw in maintenance engineers, or maintenance inspectors, other people who have expertise in this particular area, and ask them for comment on the design in their experience.

10

Would that take into account any flood modelling that has been done?-- No. No.

20

Okay. So what is the information that the people who use this document rely upon?-- Sorry?

What is the information that provides the outcomes and the results of-----?-- They would typically look at the drawings, the design drawings that are produced, the type of structures, type of inlets, park inlets, that type of thing, whether they are safe, the inlet structures are safe, whether the apertures are appropriately sized for access.

30

Well, if we can go to page 5 of that document, we see there 2.1 at the top of that table?-- Yes.

The construction of Monash Road?-- Correct.

And we can see that - is that a consequence - or potential consequence is the dam effect between Monash Road and adjacent housing estate during significant rain event?-- Correct.

And it sets out the damage that could be caused - potential damage that can be caused?-- Yes.

40

Then we've got a number beside that 7A?-- Yes.

So then we have to refer back to the front of that document, do we?-- That's right.

Can you tell us what that number means in relation to the table at the front of that document?-- So the number would refer to the scale of risk presented by that effect.

50

And what - how is that assessed in relation to Monash Road? What is the scale of risk?-- Sorry, I can't read this here.

It is 7A?-- Yeah, I know. I just can't read the text. Sorry, I just can't read the text in this particular instance.

Which text are we looking at that we need-----?-- There is a

table there. This would be in colour and I just can't read the numbers in this particular case.

1

COMMISSIONER: What's the heading for the table?-- Sorry?

What's the table you're looking at?-- The table provides a risk profile of that particular rating. So it would - it could say, well, the event is likely and the impact of that event - possible impact.

10

I am just trying to identify it. Is it under "safety and design risk schedule"?-- Yes. So it is on that very first page, yes, correct, and on the right-hand side is a table there, and you pick up - I think 7A is the first column where we say "almost certain, experienced in most circumstances."

MS WILSON: Okay. Mr Millar, you might see on the screen, it has been blown up to-----?-- Yes, I can see that better, yes.

Can you tell us then what the reference to 7A-----?-- Yes.

20

-----means?-- 7A would be, again, assessing the likelihood of risk in the advent that it dammed up and the assessment is it is almost certain, expected in most circumstances.

What is almost certain?-- Well, if it dams - if it completely dammed up, there's a likelihood that that area could be flooded.

Okay. And if we can go back then to page 5, we see "to investigate drainage capacity/high flow culverts"?-- Correct.

30

Is that to overcome the rating of 7A?-- Correct. Yeah, so, we need to investigate it and close up that risk.

And that was done?-- Yes.

And that brings into account the flood studies that we were talking about before?-- Correct.

40

We also have another reference on this document to 3L in terms of an assessment. Perhaps if we can go back to page 1 and you can tell me what 3L means?-- So 3L is unlikely. So it is an event that is possible but it is unlikely.

So whilst it is - I don't understand how the two - how 7A interrelates with 3L?-- Well, 7A has a much higher risk profile, meaning that the event is likely - is highly likely to happen and will have an impact.

50

Yes?-- Whereas 3L means it is highly unlikely with a relatively low impact.

Okay. And how can those two be in the same table - on that table - that same entry?-- Well, the table's designed to accommodate all different types of risk profiles.

Right. Well, if we can just go back to page 5?-- Okay.

You see there we've got the potential dam effect, we've got a rating of 7A?-- Yes.

The 7A relates to the potential dam effect, is that the case?-- Yes.

So that's highly likely?-- Yes.

The "investigate drainage capacity/high flow culverts", there is a 3L next to that?-- Correct. It has been reduced from 7A to 3L. 10

If the drainage - if there is - if the drainage capacity is investigated, is that the case?-- That's right.

And then if we can go to page 19 of this document? We again see the potential dam effect between Monash Road and adjacent housing estate, and this is further along in the process, it appears, is that the case?-- Yes. 20

So the Monash Road culverts have been designed to an acceptable level of immunity?-- Yes.

When you're talking about PMF, that's probable maximum flood?-- Correct.

Do you know if that's for localised flooding or for regional flooding?-- For regional. 30

For regional?-- That's right.

So the road culverts have been designed for a probable maximum flood taking into account the rain event that we saw in January this year?-- Correct.

The residual risk is the damage to property and drowning?-- Yes.

And harm to people and/or equipment. What is the residual risk when you're putting that down? Is that a risk that remains today?-- That is risk that - yes, that's correct. Risk that we were unable to reduce, or risk that we would consider passing on to somebody else. 40

Okay. And who do you pass it on to?-- Well, it would depend on its locality. So you might - so some areas have a flood issue before you even start work, or if you don't have any works there at all. So we might identify that an area has a risk to flooding, and notwithstanding the fact that we might be doing some works, although we're not making it any worse, there is nevertheless a residual risk that some flooding could take place. 50

So despite the road culverts being designed to a PMF, the residual risk still remains of damage to property and drowning and harm to people and/or equipment?-- It would depend on the magnitude of the flood, yes.

COMMISSIONER: The PMF is for the road, isn't it, not for the unfortunate people who live next to it-----?-- The PMF is for the road, yes. Correct. The PMF is designed - well, the modelling was done - the PMF effect on the immunity of the motorway.

MS WILSON: But when we're looking at the possible impact to adjacent areas, is that taken into account?-- It is. So we would only look to see if the infrastructure we built exacerbated a base case. PMF of, say, Q2000 or something. If it didn't, then - yeah, it is not - we have no obligation there.

10

Sorry, you have no obligation?-- Well, it may already flood under a Q2000.

Right?-- And our infrastructure that we put in place has no material impact on it.

20

COMMISSIONER: But you're talking about a dam effect between the road and the housing estate, aren't you? So that presumably doesn't exist until the roadway creates the dam wall?-- That's right. So we build this embankment, which effectively is the dam. We remove that by putting in these culverts.

But if you're talking about a base case, in other words a scenario before you come and build things there-----?-- Yes.

30

-----then there was never a dam effect because there was nothing to make the dam?-- It would only be a dam effect if the culverts were blocked, if for some reason they became blocked. So the flow way - we were saying that the flow path remains where it is provided the culverts are not blocked.

All right.

MS WILSON: Just - if we can stay with this table for one - for a moment, "The residual risk has been transferred to group construction". What does that mean?-- So that means it is incumbent on the construction team when they construct the works to ensure that they mitigate the risks through their work processes and what have you.

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What risks are they mitigating?-- Well, during construction the culverts might not be in place. In other words, it is the way they construct the culverts. So if they go to construct the embankment and they haven't put the culverts in, then they would be creating a dam. So they need to put those culverts in first before they build the rest of the embankment.

50

Now, in relation to the design of the culverts, did DTMR have any discussions with the Ipswich City Council?-- Yes.

And you have included that in your statement?-- Yes.

And if I can just ask you to turn your mind to that for one

moment? Attachment A of your statement is minutes of a meeting between members of Origin Alliance and the Ipswich City Council on 21 September 2009?-- Yes.

1

And on the item 3 of that document, we can see the Bridge Street/Francis Street townhouses?-- Yes.

You can see that at the bottom of the table?-- I don't have A in here. A seems to be missing.

10

It is, as I understand it, on the second page?-- I have it, yes.

You have got it now?-- Yep.

The table refers to the "high embankment will be proposed that it is adjacent to McAuliffe Street, and the acknowledgement that this embankment will restrict an existing flow path that directs water from an upstream catchment"?-- Yes.

20

Now, we can all read that. Ipswich City Council required a conservative blockage factor of 50 per cent to be adopted?-- Yes.

Perhaps just assist us with some of the terms before we get into this. What's a blockage factor mean?-- So, it is recognised that when you design a culvert to be able to take a particular flow, that it might become blocked by debris of some sort or another. If it is - the upstream catchment area may be very forested, or in an area where lots of debris can accumulate in the drainage parts, they could block the culverts to some extent, and so obviously inhibit the flow. So there are guidelines that might - what sort of factors one could apply. It is not an exact science and it differs from council to council.

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COMMISSIONER: Ms Wilson, is what's on the screen what you were asking about or is that a different matter?

MS WILSON: No, that's not what I'm asking about. Item 3 is what I'm asking about.

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COMMISSIONER: Item 3.

MS WILSON: Which is at the bottom of page 2. That's it in front of you, Madam Commissioner. The Bridge Street/Francis Street townhouses. And in paragraph 23 of your statement you refer to screen blockage and culvert blockage. Can you help me with those terms?-- In the areas where these large culvert openings perhaps are located in an area where there is lots of people around and a park area where there is the possibility of children, or people being in the area when a flood occurs and then they might be washed through the pipe, screens are put on to those pipes to prevent people from being washed in or sucked in. So the screen itself can become a problem because as debris is swept through it, instead of being swept through might lodge in the screen and thereby causing further blockage.

50

Paragraph 23 refers to the Ipswich City Council requesting the conservative 50 per cent blockage factor?-- Yes.

Now, is that not a usual blockage factor?-- No, 20 per cent is generally what is applied. As I said, it varies from council to council and there is no - there is no particular science behind it but they did ask for that and we complied with that.

10

You go on in paragraph 23 to state that it was found that the provision of a new nonstructural flood relief point was not feasible because of the upgrade in embankment road levels?-- Yes.

Can you explain that to me?-- What often happens is when you build a road embankment, if the culverts are blocked, you rely on the fact that the water will overtop the road and flow over the road without causing an increase in the height of the water because it has now been able to flow away. Because this particular embankment had to go over the Queensland Rail, over a relatively short distance, it was quite steep, so the opportunity to allow water to flow over the road embankment was not possible.

20

So a structural solution using oversized culverts was required?-- That's correct, and we also installed two more culverts.

And where did you install these oversized additional culverts?-- Adjacent to the existing ones. So the designs showed that we needed three culverts of a certain size, and going through this process of applying the blockage factors, and accommodating Ipswich City Council's request meant we added two additional culverts and we oversized them as well.

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Just to be clear, was that to minimise flood impact on the road itself or adjacent land?-- No, that was to minimise flood impact to adjacent properties.

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Thank you. I have no further questions.

MR FLANAGAN: No questions, Madam Commissioner.

MS McLEOD: No questions, thank you.

COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: I have nothing thank you.

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MS WILSON: Thank you, Commissioner. May Mr Millar be excused.

COMMISSIONER: Thanks, Mr Millar. You are excused.

WITNESS EXCUSED

MS WILSON: Madam Commissioner, I call Keith Davies.

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KEITH ROGER DAVIES, SWORN AND EXAMINED:

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MS WILSON: Is your full name Keith Roger Davies?-- Yes, it is.

And you are the Coordinator-General of the State of Queensland?-- That's correct.

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And you were appointed to this office on the 31st of January this year?-- That's right.

You've made a statement for the Queensland Floods Commission of Inquiry-----?-- I have.

-----with attachments? Can I ask you to have a look at your statement? Is that your statement?-- It appears to be. There's a lot there, but I certainly recognise the bit where I've signed.

20

Okay. Now, before I tender that statement, can I just seek some clarification on whether some matters are typographical errors?-- Yes.

If you could turn to Annexure 1B at page 1 of Annexure 1B?-- I've got 1A here. Sorry, would you repeat that, 1B?

Have you got 1B?-- I have 1B(1).

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Your document refers to various exhibits?-- Yes. Yep.

If we can see at paragraph 3(a) where it refers, "Under the guidelines, flooding is considered within the management of Water Resources in section 5.12."?-- Yep.

And you're referring to Attachment 1B(1)?-- Yep.

Attachment 1B(1) is now in front of you?-- Yeah.

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If I could take you to page 8 of that document?-- Yep.

And it seems to me that you were referring to 5.1.2 and not section 5.12?-- That's correct.

Perhaps if you can make that amendment by hand to your statement. I can give you a pen?-- I have a pen.

Whilst we're at Annexure 1B, can I take you to page 4 of that document?-- Yes.

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And you can see at paragraph 9 you are referring to Attachment 1B(6), that should read Attachment 1B(5)?-- That's correct.

Perhaps if you can make that amendment to your statement? And at paragraph 11 of Annexure 1B, you refer there to Attachment 1B(5) and that should be Attachment 1B(6)?-- Yeah, that's right.

Could you make that amendment?-- Thank you.

Madam Commissioner - is there any other amendments you wish to make to your statement?-- I believe there could be some discrepancy between the lot numbers that are described in the requirements, but possibly we can come on to those if you want to question me later.

Well, perhaps then your lawyers could give us a schedule of any amendments that need to be made, would that be acceptable?-- Yep.

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Okay?-- It's a timing question.

Madam Commissioner, I tender that statement, with exhibits, with this proviso: an attachment to Mr Davies' statement, 1B(12), has only just been recently circulated via e-mail, it is a large attachment, so I propose at the end of Mr Davies' statement - evidence to ask that Mr Davies be stood down and not excused if any party wishes to further cross-examine upon receipt of that attachment.

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COMMISSIONER: All right. It will be Exhibit 921, the statement and exhibits.

ADMITTED AND MARKED "EXHIBIT 921"

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MS WILSON: Mr Davies, if I could ask you some questions in relation to the State development areas?-- Sure.

The functions and powers of the Coordinator-General for State Development Areas is pursuant to the State Development and Public Works Operation Act; is that correct?-- Organisation, yes.

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Yes, organisation?-- Mmm-hmm.

And that Act, it's a separate regime that operates outside the Sustainable Planning Act?-- Correct.

Now, your statement sets out briefly the process of declaring a State development area and also a significant project?-- Yeah.

Now, in your time as Coordinator-General you note that no declarations have been made?-- That's correct.

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But you are familiar and well placed to answer any such questions though, aren't you, with the Act and how that operates?-- I'll certainly try.

Okay. Now, in relation to State development areas, just to give us some context, can you briefly describe to us the types

and range of projects that State development areas are designed for?-- Okay. I can give you maybe a few examples of the current State development areas. There's one mentioned in my evidence, which is the Abbott Point State development area. This was an area that was identified by government as a very important area for port development going forward. The Coordinator-General, a predecessor to mine, went through the process of identifying the footprint for that SDA, as we call it, and lengthy investigations into what types of industry would typically site themselves there, what products would turn up at the port in terms of coal or minerals, went on to look at areas that could be prone to flooding, something topical to this audience, and declared the area as subsequent. What happens then is the Coordinator-General becomes the assessment authority for the SDA and is then responsible for rolling out the actual delivery of the infrastructure within the SDA. So there's Abbott Point. They're not all complicated. The Queensland Childrens Hospital, for example, in Brisbane was declared an SDA. The reason for that is the complexity involved in terms of the landholders that were there previously. So it can often be complex, not necessarily large, there's a good example with the Queensland Childrens Hospital.

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The large ones though can be quite large?-- They can.

And they can be so large that they could cross a number of Council areas; is that the case?-- They can.

And these projects, as you've described, they come in different shapes and sizes?-- Mmm.

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And they all come with different environmental constraints or otherwise?-- Yes.

In your statement, you note at Annexure 1A, in paragraph 2B in particular, that there is a planning assessment undertaken before an area is declared to be a State development area, but there is no legislative requirement to consider State Planning Policy 1/03 with respect to flood when declaring a State development area, is there?-- I think that's true.

40

And is it the case, or can you tell me, is any consideration of flood risk mandated in any way, shape or form in this process?-- The process really starts with an assessment of the area itself, as I just mentioned. Take Abbott Point again as a good example. Abbott Point has a variety of terrain there, there's the wetlands, the Kaley Valley Wetlands which have-----

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COMMISSIONER: How is it spelt?-- Sorry?

How is it spelt?-- I think it's K-A-L-E-Y, from memory. Kaley Valley Wetlands. There's an area that would be very prone to water levels. So, an assessment would be done by my office initially to look at the topography and get a very early cat on the propensity for flooding in those areas, for example, and then added to that would then be the types of

industry that I just mentioned that we would expect to go there. Some industries can actually sustain higher levels of risk than others. So heavy industry - sensitive industries you would typically put at the higher levels, the lower probability of flooding. Other areas can actually sustain a higher risk of being cutoff than other parts of it. So you do that assessment, my office would do that assessment, and out of that would come, I suppose, a blueprint of what the SDA could sustain. But that's really just the start of the process. That will change over time once it becomes clear precisely what industry ends up going there. At that stage, it really is just a blueprint. Those industries may not come, the development may not occur as we expect, it really is up to the market then to decide if that State development area is actually going to cut it. So, at that point it's just an opportunity for those developments. But it will change over time as industries show their interest in actually arriving there.

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So the initial assessment that is done by your office, that is just really a desktop assessment, is it?-- It is.

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With the resources that it can access on a computer?-- That's right, yeah.

Once an area is declared, a development scheme is then prepared?-- Yes.

And that development scheme identifies land use precincts and specifies the purpose of the precinct; is that the case?-- That's right.

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At this stage of the process, there's no legislative requirement to consider State Planning Policy 1/03, is there?-- Not at this stage.

And at this stage of the process - I know you might say that your office does take into account or will take into account under when that occurs-----?-- Yep.

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-----with you there now - with you there?-- Yeah.

But is consideration of flood risk mandated in any way throughout this whole process?-- I don't believe it's mandated. It's - we're basically setting up the store for an SDA to portray to the market, to industry, to basically come along and consider putting yourself in that area to set up your business, that's really what it is at that stage, because the government has decided through its policy setting that that is an area that the government feels is appropriate to develop. And the Port of Abbott Point is a good case where it's been decided there's an existing port there, rather than have new ports spring up along the coastline, best to make maximum use of that particular one, and the State development area is a good way of marketing that area to the industries, coal, gas, multi cargoes, to come and use it. So that's the work at that stage.

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And how can we be assured that flood risk is taken into account during the process?-- Because when projects turn up for real - let's say a proponent wants to build a rail line from - in this case it might be the Galilee Basin to build a rail line to Abbott Point, we will be working with them to identify corridors within the precincts to get that product through the State development area to the port, and it's at that stage where the detailed design would be done. There's not really much point in going through a very thorough exercise until you really know that those projects are going to arrive.

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And does that only occur once an area has been declared?-- Yes.

And that's when you have some idea about the use, the land use precincts and the purpose of the precinct?-- Before that it's desktop as you described it.

Yes. But once you've got to that you've got a degree of certainty, haven't you?-- We have some certainty.

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You've got an idea, that's the project, this is how we're going to use that land, you know the scope of the works, or some idea, but importantly you know how the land is going to be intended to be used?-- That is right.

Whether it's going to be a hospital or a port, you know the use?-- Yeah, we identify which types of industry typically would site within certain precincts within the SDA.

30

Is there any downside for flood risk being mandated at this time?-- Only wasted effort.

Why would it be wasted effort?-- Well, in the sense that not all of those great master plans will come to fruition. We really are, as I said earlier, setting up a store where industry might settle. It's not my job to actually specify that certain industries have to go there, that will be their own commercial decision. So, I think that there is a cutoff point where we do sufficient work to give those companies an indication, shall we say, of where they can site within the SDA.

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So when you are stepping into the realm of reality that this will occur-----?-- Yeah.

-----that's when a development scheme is prepared, isn't it?-- The development scheme is there, but what I'm saying is it can be refined depending on who turns up.

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Okay. So at that point in time is there any downside of flood risk being mandated in the process?-- No downside. Once a company shows its colours and says, "I would like to put my stockpile," let's say, "in that SDA," there would be nothing wrong mandating at that stage if they're serious about spending money and locating in that patch.

And how can this be best done, can that be best done by changes in regulation, legislation or statutory procedure?-- I think we already do a thorough job of flood modelling. It appears in just about everything we do, if not everything we do. Significant projects, for example, you would have seen in my evidence, the IAS process we go through in the declaration of a significant project is thorough. The flooding issues are addressed from the start.

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But significant project, it's a different process to some degree, so let's just talk about the State development areas, we will just focus on that and we will move to significant projects. You've said that there's really no - that there's no problem once the project reaches a certain stage to mandate a flood risk, what's the best way for that to occur?-- I really don't have any great ideas on that. As I say, I've never declared one. I've never really been at the sharp end of industries turning up at that area. I've only been involved in assessing those blueprints, as I'm calling them, at that stage.

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You've referred to significant projects, so perhaps if now we can address significant projects. The process for declaring and assessing a significant project also comes under the State Development and Public Works Organisation Act-----?-- That's right.

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-----that's the case?-- That's right.

Can you just, in general terms, just to give us some context, describe what a significant project is?-- Sure. Maybe I can start by pointing out what I think are the benefits of why anyone would approach me and ask me to consider declaring it in the first place because it's not obvious. The benefit, as I see it, is that my area, my office, acts as a one stop shop for approvals. So if it was, say, a coalmine wanted to be assessed, then asking me to declare it significant would - I would do the coordination role, which is the key word in my title, to work between other agencies, the general public, landholders, to actually smooth the process, to streamline the process of getting an approval or not, as the case may be, for that project. So I think that's the merit of actually having one. The process that's gone through, as I said earlier, is, I believe, rigorous. The IAS, as we call it, which is the Initial Advice Statement, starts like a pro forma but gets negotiated through its short period. The Terms of Reference, which comes next, is a very consultative process, but not only is decided with the proponent but also goes out to interested stakeholders, the public, Councils, the Commonwealth at that stage get involved as well and they may or may not declare it something of their interest. The Terms of Reference then get folded into an environmental impact statement, which is where the real rubber hits the road which can often take years, two or three is not uncommon to do all of that work, and then more - potentially more iterations through a supplementary IAS and culminating in either an approval with conditions or a disapproval, as the case may be, if my office decides that the project cannot get up environmentally soundly.

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In terms of the Initial Advice Statement, you say in paragraph 3A of Annexure 1B to your statement that there's a guideline prepared by your office; is that the case?-- Yes, it's a pro forma.

And that's in relation to the generic content to be included by anyone seeking to do a significant project-----?-- That's right.

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-----in an Initial Advice Statement?-- Yep.

And you've mentioned the term "Initial Advice Statement" and this is the - you're going through the process, aren't you, of the steps that must be taken?-- That's right.

Now, if I can take you to that guideline, which is Attachment 1B(1) to your statement?-- Yep.

Now, can I take you to 5.1.2, which is that section that I referred to you before?-- Yep.

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Now, 5.1.2 is referred to in your statement as a matter that can address flooding; is that the case?-- Yep.

It doesn't give you any focus that flooding should be addressed by 5.1.2, does it?-- Not explicitly. It doesn't say "flooding", it just talks about water features, whether they be surface, ground or marine. So it's a high level statement at that stage.

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Okay. And 6.1 is another matter that you refer to in your statement?-- Yep.

That you include in the guideline?-- Yep. Yep.

And that also - it's not clear that that 6.1 refers to flooding?-- No.

So, I appreciate that you might be talking in the abstract because you actually haven't gone through this process from start to finish, but in terms of getting Initial Advice Statements, is it the case that you may get Initial Advice Statements that don't refer to flooding at all?-- It's possible. It's possible.

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Could that part of the process be tightened up, that if there are flooding issues that your office is made aware of them very early on in the process?-- I think in terms of the process if a proponent chose not to flag a flooding concern at the IAS stage, but clearly my office were aware of it, then it would be featured in there. We will change that pro forma IAS in line with information that we are aware of. If, however, we're not aware of it and the proponent chooses not to say anything, then it will come out in the Terms of Reference, because that's the stage where the people who really understand the area concerned will have a chance to speak up.

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Now, the Terms of Reference, there's a template Terms of Reference; is that the case?-- There's a generic Terms of Reference to start with, yes.

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And then your office edits that Term of Reference to make it applicable to the project; is that the case?-- As best we can.

And that's the point then, if your office is not aware of any flooding issues, then does that cause any concern that flooding may not be addressed, properly addressed through the Terms of Reference?-- Only to the extent that, as I just said, that that Terms of Reference in its draft form gets given to the public, the Councils, the experts, the people who live in and around that area, it goes for public comment, and that's the stage where it would become known if it hadn't been flagged already through the IAS stage.

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Okay. And it's the Terms of Reference that you see as the important part of the process to address flooding?-- It's critical. Absolutely critical. If I could take the point that if it could be identified earlier it wouldn't be a bad thing. If we were to tighten up the wording within the IAS document you've pointed to for it to refer directly to any knowledge of flooding in the area, I would take that on board as a sensible suggestion.

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So, is it the case that your office is really relying on other parties to tell you if there's any flooding issues?-- At this stage we are wholly relying on mainly external advice. There is some internal expertise clearly. My staff, many of them have been doing this for quite some time and understand the areas very well, but that's no substitute for stakeholders who actually understand the area directly.

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In terms of the Terms of Reference, they're obviously sent to proponent, the organisation that's wanting to complete the project?-- That's right.

And it's called the Draft Terms of Reference at that point in time, is it?-- Draft TR, yep.

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And in that Term of Reference, that Term of Reference can refer to completing a flood study?-- It can.

But when it gets sent to other parties, other relevant parties, do they look and see whether the Terms of Reference adequately deal with the site; is that your-----?-- Well, I trust them to do that. So it might be an agency such as DERM that has direct experience of flooding in that particular area.

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Who do you send these Terms of Reference to?-- A variety of agencies and affected landholders, councils whose area is affected. It could be - I really have complete freedom on who I send them to. There is a list of typical agencies, but I can really decide - if I want input from anyone, I can decide to send them that Draft Term of Reference and seek some input.

Is there any need in the process for flood risk to be mandated in this part of the process for proponents to specifically address, "You tell me about the flood risk and address it upfront."?-- It's a similar question to the IAS stage, I would argue, and given that I have already conceded that it wouldn't be a bad thing to have it in the IAS, it would carry into - that notion would carry into the Terms of Reference stage as well. So, again, I'm open to suggestions that the Terms of Reference document itself, the generic form, right upfront has an requirement to address flood risk, I have no problem with that. It doesn't at the moment.

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Considering that the SPP 1/03 does not apply to either of these projects that we've been talking about-----?-- Yeah.

-----is there any other way, through legislation, regulation or policy, that flood risk can be assured that it is being looked at through this process?-- Well, to the extent that most people don't understand the level of approval that I actually give. I very rarely approve anything. Most of my recommendations go to other agencies for final approval. So - approval. So in the case of a mine, let's say, I would give it approval with conditions typically that the mine can go ahead, but the final approvals for that will end up with entities like DERM and DTMR and other areas of government to give their approval on top of that. So I think that legislation already exists. At this point, my work as coordinator is to make sure that by the time they get it, not only have the proponents addressed all the issues of concern to the environment, the social and economic side, but also that other stakeholders have had full access to that and had an input to it and I've been able to consider it and condition it.

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In terms of the process that we've been discussing in relation to significant projects and State development areas, in assessing flood risk can the process be improved?-- Always. I'd be lying if I sat here and said you can never improve any process, clearly you can.

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Well, how can it be approved from your perspective?-- I think already I've conceded that the generic Terms of Reference document can directly require a proponent to address flooding at that stage and I think the IAS form, the generic form again, should contain that.

What about flood risk being mandated from any legislation or regulation or policy?-- Well, that would be under SDPWO Act.

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Yes?-- The Act that I work under.

Yes?-- So that's where I think the suggestions that I think we've talked about today would end up being prescribed in there. So, again, I have no issue with that.

I have no further questions, thank you?-- Thank you.

MR FLANAGAN: No questions, Commissioner.

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COMMISSIONER: Ms McLeod?

MS McLEOD: Just a couple of questions, if I may, Commissioner.

MS McLEOD: My name is McLeod and I appear for the Commonwealth. I would just like to clarify, if I may, with you some of the topics you've touched on in terms of Commonwealth approvals as you've set out in section 1B of your statement. In this case, and I understand this case is just used as an example of the processes that you ordinarily go through; is that correct?-- Sorry, which case are you talking about? 1B?

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1B of your statement, which is the one-----?-- Oh, yeah. Yep.

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And in particular paragraphs 23 through to 28, probably on page 7?-- Is this - which document, 1B(3), (4)? Is it the Terms of Reference or the Advice Statement or-----

The case study, 1B?-- Oh, sorry, I'm in the other folder.

Sorry, Annexure 1B?-- Paragraph?

23 through to about 29?-- Got it. Sorry.

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Yes. So just to clarify the process, in this particular case the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities approved this project in March of this year under the Commonwealth - relevant Commonwealth legislation; that's correct, isn't it?-- I wasn't aware it was this year.

Perhaps we can come back to that. These proposals were assessed by you or by your office under a bilateral agreement with the Queensland Government?-- They were.

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And subject of a report from your office in November of 2010 to the Commonwealth?-- Yep.

That's correct?-- That's right.

And that was subject - the report recommended that the project proceed subject to various conditions?-- Yep.

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The Commonwealth involvement in this particular project was triggered by the designation of various actions of the proposal impacting on listed species, controlled communities, and things of that nature, weren't they?-- Yep.

So typically what would happen is if there's a decision at the Commonwealth level that there is a controlled matter under the Environment Protection and Biodiversity Conservation Act,

that's designated a controlled matter and under the mutual arrangements between the Commonwealth and the State that may be referred back to you to report upon?-- Right.

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So you accept that?-- Correct.

And in this case this is what's happened?-- Yep.

And then there's a separate Queensland process, which is the Environment Assessment Process, where a matter is designated as significant under the State legislation?-- Yep.

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In terms of the impact upon the commonwealth protective species or communities you prepared recommendations which included certain conditions that the proponent had to meet in this case?-- Yeah.

And so that might mean mitigation or offset strategies to protect those species?-- It could be.

In this particular case the proponent accepted the conditions that you specified and the Commonwealth minister accepted and the Commonwealth minister signed off on the proposal. Can I just ask you if a natural disaster such as flood impacted upon those controlled species, is there a revisiting of the conditions under the environmental management arrangements of the set -up?-- I don't know the answer to that.

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So obviously you wouldn't know if that happened in this case?-- I don't know.

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MS WILSON: Thank you.

MR MACSPORRAN: I have nothing.

MISS WILSON: May Mr Davies be stood down? The next witness is Associate Professor Lawrence and he is by telephone.

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DAVID CLEMENT LAURENCE, ON AFFIRMATION, EXAMINED VIA TELEPHONE LINK:

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MS WILSON: Associate Professor, my name is Elizabeth Wilson and I am a counsel assisting at the Queensland Floods Commission of Inquiry?-- Yes.

I'm going to ask you some questions?-- Okay.

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Can you tell me your full name?-- David Clement Lawrence.

And you're an associate professor at the University of New South Wales?-- That's correct.

And you've produced an expert report for the Queensland Floods Commission of Inquiry titled "Flooding and Abandoned Mines"?-- I did.

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And this report is dated the 4th of November 2011?-- Correct.

Madam Commissioner, I tender that report.

COMMISSIONER: Exhibit 922.

ADMITTED AND MARKED "EXHIBIT 922"

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MS WILSON: Have you got a copy of that report in front of you?-- I have.

If I can take you to some parts of that report?-- Sure.

First of all, can we go to paragraph 22. Have you got that?-- Getting there, yes.

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In this paragraph you refer to a number of types of data that must be collected?-- Mmm.

To determine how to rehabilitate a mine site?-- Yes.

You refer to hydrological studies. Do you see that?-- Yes.

Hydrological studies are vital in gaining a better understanding?-- Yes.

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What type of hydrological studies are needed?-- Well, that's - I guess we refer to two main ones. That's surface and ground water. We need to understand what's happening as far as the - or what's happening on top, but also down below because minerals, as you now, extend a depth and their impact can influence ground water as much as surface water as well.

And can you give us an estimate of time and costs of such

studies, say, for an average-sized mine?-- Off the top of my head, no, but I could. 1

You could provide that information?-- At a later date.

Based on perhaps an average-sized mine?-- Yes. Well, these studies can vary in costs. Consultants aren't cheap and it's generally done by consultant. Their costs would be 3 to 5,000 a day. These studies can take a week, take a month. It can be a costly exercise. 10

That gives us the type of scope that we are looking for, in any event?-- Yeah.

And I suppose the bigger the mine the greater the time that would be required for such a study; is that the case?-- And the sensitivity of the site as well. So if you are in, I guess, in an arid environment where there are few downstream users or - compared with something that's sensitive, there are people living downstream, there are farms downstream, there's a national park downstream, there's a reserve, there's a Barrier Reef, so I guess it's horses for courses. 20

COMMISSIONER: Professor Lawrence, it's the commissioner here. I know we are on the telephone and that gives an air of casualness, but could you call counsel assisting Ms Wilson?-- Certainly.

MS WILSON: In terms of understanding and characterising the waste material, what investigations are needed in relation to that?-- The waste is a - tends to be one of these sleepers. It will come to bite you off in years after the event. So the more we understand about the waste the better. So we call that waste characterisation where we can, as indeed you get an understanding of what ore - O-R-E - is in the mine or the mineral deposit, the same attention should apply to the waste. So we need to understand what are the minerals in that waste deposit. Generally it's the sulphide minerals are the ones that cause the problems later on because they generate or they assist in the generation of acid mine drainage. 30 40

And is that a time-consuming process to determine those materials?-- It's a systematic process. It does take time. You need to sample the waste. Sampling can be often by drilling. So you need to get - if it's an abandoned site you will need to get equipment on site. You will need to take samples. They can be core samples or chip or rock chip samples. It can also be though pitting - test pitting. They have to be transported off site. They have to be analysed and the results interpreted. 50

And in terms of the time and cost, is that like the hydrological studies that there are so many characteristics that it would be difficult to estimate at this point in time?-- Yes. It's not an easy exercise, but it certainly can be done.

But you would need to know - is it the case - what a natural

mine that you're looking at to be able to give any such assessment?-- Certainly. If it's close to a capital City or is it remote, there are factors that come into play.

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In terms of geotechnical data, you refer to that in paragraph 24?-- Yeah.

And geotechnical data is needed particularly on the suitability and competency of the open pit?-- Yes.

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Again, if I'm looking at work required in terms of time and cost, is that a difficult assessment to make in the abstract?-- Again, it would be in the tens up to hundreds of thousands, I guess, depending on the size of the mine and how many pits. So you would need to employ geotechnical engineers and they are greatly in demand at the moment as the industry is booming. So they would need to be on site. They would charge, I guess, the same \$3,000 or so a day per person. They would need to assess the pit. Again some drilling might be needed to see how competent the area is around the pit, to see if it's fractured, as I mention in the report, and what can be stored in that pit. Open pits are a great resource in abandoned mines if you have the resources and money to be able to pick up the tailings and the waste and put them back into the pit, which would be a better outcome for that particular piece of land.

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Is the most appropriate way to obtain all of the data that you have referred to in paragraphs 22 to 24 is it to physically visit the site and do the work at the site?-- You would do it systematically, do a desktop study to see what information is available because all operating mines would have some geotechnical data, should have hydrological data, even if that involved going back to the tree development and the mining feasibility study, but the best way is to certainly get on site preferably with a team of skilled people.

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If resources do not allow for all the data to be collected at once, can you provide a list of priority, what should be done first?-- I would look at the type of mines. Is it a coalmine or is it a gold mine or a copper mine and do a risk assessment. So if it's - and typically I think I mention in there an open pit as opposed to an underground. An open pit tends to have more of an environmental impact or legacy impact and often, particularly in Queensland, they're associated with acid mine drainage or acid mine drainage, one of the manifestations after abandonment, typically due to the mineralisation which is sulphide. Acid mine drainage is a long-term problem, so that would be one of my priority areas to look at.

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You refer to doing a risk assessment?-- Mmm.

Is there a bare minimum of data information that should be collected before doing a risk assessment?-- I would say not really. The idea would be to have an open mine, to get the right people, so you need a facilitator; you would need those areas I mentioned, hydrological experts, for want of a better

team, geotechnical expertise, people with rehabilitation and mine closure expertise and bring them in and have an open mine and really see what are going to be the short-term, medium-term and long-term risks and how can we control those risks.

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In terms of rehabilitation decisions, if I can take you to paragraph 14 of your statement where you set out-----?-- Paragraph 14?

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Yes?-- Yes.

You set out that rehabilitation techniques in abandoned mines are determined by many factors and you set out them there?-- Yes, I see that, yeah.

Just to be clear, does this mean you need to have information on each of these topics to make an informed decision about rehabilitation of a site?-- These are factors that would determine the techniques. So as many of those factors as possible. Certainly we need to know who owns the land and what that land would be used for. That's pretty essential information, but relatively easily collected.

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You refer to climatic conditions?-- Yes.

Would you consider Queensland to be of one climate or would this differ depending on where in Queensland the mine may be?-- The latter. So if it's in the tropics, in an old tin mine - an abandoned tin mine in the Cairns area is different to a mine near Mount Isa, which is different a mine in the Bowen Basin, a coalmine, so, yeah-----

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I apologise?-- No, no, that's really - so it depends on clearly if it's semi-arid or tropical or temperate.

What sort of impact do you mean in dot point 5 where you refer to the potential severity of impact?-- I guess it's the impact of the environmental issues resulting out of mining such as acid mine drainage. Is this going to be a long-term problem or is it more of you've got a piling storage facility that given the first heavy downpour could fail and threaten a township downstream.

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You go on then in paragraph 15 where you set out that rehabilitation should be chosen after a risk assessment process has been carried out?-- Mmm.

What sort of risks must be assessed? Are we looking at to people, property, social, economic, or is it the whole box and dice; is it all of those?-- Holistic. Our work on mine closures takes a holistic approach. Public safety is important. Environment is important. Economics and resource utilisation is important. I think I mentioned somewhere in the report that we - many so-called abandoned mines actually are just resting for a while and these mines are covered by title that one day might result in another mine and that resource might be utilised again. That possibly should come

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into it.

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Can you give us any assistance how those risks could be balanced, how those risks are balanced in the assessment?-- In my opinion the safety - human safety is really the most important, so - and most immediate. So if you have - let's say it's an underground mine with a series of open shafts, they should really be attended to before a longer-term issue such as acid mine drainage. So both important, but one - I guess it depends on your philosophy on life. And my philosophy and I think it's the philosophy of our centre, Centre For Sustainable Mining, is that safety is preeminent.

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Is your view that a team of stakeholders should be assembled to undertake the risk assessment? What sort of expertise is required within this team of stakeholders?-- It's important to have a mix of expertise and a mix of experiences. It depends on some of those other factors I mentioned. If it's a metalliferous mine such as a copper mine as opposed to an underground coalmine. We would want people with local experience because locals do understand the climate, do understand the land and they will have ownership of this long after the mining experts and even Government officials have moved on. So people from Government, people from industry, if possible, but we often see those people aren't there because the mine by definition is abandoned, so finding those people can be problematic.

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Could the risk assessment be adequately performed without gathering the data that we discussed previously?-- I think it would be before gathering the data and, of course, during the risk assessment it might be that there is insufficient data to quantify the risk. So part of the risk assessment process might be, well, I think we really have a safety issue here. We need someone to come in and get some more data on it or we suspect if there's a big wet season next season we could have an acid line drainage problem. We need some more data. We need someone to come in and have a look.

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Do you need to undertake a physical inspection of the site to carry out a risk assessment?-- I think that's essential. I think the stakeholders need to have a look - probably a two-part process, examine the site, examine whatever data is available, maps, reports, go on site and then even off-site to do a risk assessment.

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How long are we talking about in terms of how long would such a risk assessment take?-- It would vary, Miss Wilson, depending on the complexity, size of the issue of the problem. I've been involved in short half-day ones to a couple-of-day risk assessments.

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And is there a quick way for assessing risks for sites that not expected to pose high risks, for example, small abandoned mine shafts away from population?-- I think the process would be shortened. Possibly templates could be developed for that purpose and they may well exist. I'm not sure about the Queensland situation.

If I can now take you to paragraph 25 of your report-----?--
Yes.

-----where you refer to the legislation governing operating
mines and exploration projects?-- Mmm.

You acknowledge that the legislation in Australia is generally
by world standards comprehensive and includes environmental
and safety provisions?-- Yes.

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In terms of abandoned mines, is it your view that legislation
should be directed at abandoned mines specifically?-- No, not
necessarily. I'm just stating that most of the abandoned
mines in my experience are not covered by any title or
tenement or any legal ownership. I'm not saying they should,
but by not having any title it means forcing an entity to do
some work, rehabilitation and remediation and makes it
difficult. Do you want me to clarify?

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Yes, if you could?-- Yes. So the situation in my experience
is that companies operate and they apply when they finish -
I'll go back one step. We've done research on mines that
close early and I mention in the report that - I think I do
anyway - that 75 percent of all mines that close, close
earlier than expected or premature mine closure. And that's
because things happen that they don't control, particularly
commodity price drops. Prices go up and the price they
receive for their product goes down. The company has no money,
they go into liquidation. So in that case there may well be a
title or a tenement, but the company has no money to do any
rehabilitation. The other situation is where the companies
were operating. They finish mining. They apply to get relief
or relinquishment of the lease and the Government of the day
said you may go. That seems to be a common problem also. The
standards of rehabilitation then aren't the same as they are
today.

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Have you got any view how rehabilitation can be best achieved
in this environment?-- I like the Tasmanian model where the
industry puts in part of their royalty that is specifically
directed to fund legacy mine sites and that allows for those
companies that - maybe they have good intentions, but the
economic conditions of the day beat them. So they close
early, didn't have money, but there is still money available
to rehabilitate. The other area which governments can have
control over is to make sure there is sufficient bond or
security deposit in the - while the mine is operating, while
the lease is current or mining licence to cover the cost of
rehabilitation.

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And finally if we can go to paragraph 31 of your
report-----?-- Yes.

-----where you refer to a management committee?-- Yes.

And that's rehabilitation should be overseen by a management
committee?-- Mmm.

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If you can just give me some assistance about when this management committee should come into play. Is that that they should oversee the data and information collection that needs to be done?-- I guess this would be called an abandoned mines management committee. So it would be there in the expectation that there will be even in the future cases coming up, obviously not as frequent as they did from the past, but they would, I guess, manage the whole system, representatives with expertise in Government and industry, and I'm sure it would be good for the Mineral Resource Council or the Chamber of Mines in various states, including Queensland, to be involved in this and the local community as well. My experience is these - and that would allow a more systematic approach based on safety, based on the severity of the environmental impact as opposed to someone ringing up a minister complaining to the local member that there's a problem and being a squeaky wheel, which seems to be the situation in my experience.

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In terms of the systematic approach, does that mean that information and data should be collected on all abandoned mines and risk assessments done on all of them before any decisions can be made about the priorities and rehabilitation options?-- Given that there are likely to be thousands of mines in that category in Queensland, that would be a wonderful approach, but I don't think practical in the first instance.

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What is a practical approach, taking into account the whole of the system rather than your reference to a squeaky wheel analogy?-- Yes. Look, I would - in each - I know you have various officers of the department, Department of Mines and Energy in various parts of Queensland. That might replace the start, what are their priority areas. I think eventually to get a data base of all abandoned mines would be fantastic. I believe in Western Australia they do have a data base of over 11,000 abandoned mines and they're attempting a systematic risk-assessment approach to the problem.

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So is it the case that a management committee can work parallel with obtaining all of the data to ensure a systematic approach is done?-- Yeah. Look, I like the idea of you starting somewhere. We know there's a problem and this is one way of starting to collect the data. Clearly there will be cases, and we live in a real world where we know there is an urgent problem, an urgent safety issue, a piling storage facility might be threatened with collapse and clearly the government of the day and the industry - it would be in their best interests to make sure that has priority.

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I have no further questions.

MR FLANAGAN: No questions, Commissioner.

MS McLEOD: No questions.

MR MACSPORRAN: No questions.

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COMMISSIONER: Thank you for your time. You are excused.
We'll end the connection.

MS WILSON: That is all the witnesses for today. May we
adjourn till 10 o'clock tomorrow?

THE COURT ADJOURNED AT 3.55 P.M. TILL 10 A.M. THE FOLLOWING
DAY