
TRANSCRIPT OF PROCEEDINGS

The attached transcript, while an accurate recording of evidence given in the course of the hearing day, is not proofread prior to circulation and thus may contain minor errors.

2014 HAZELWOOD MINE FIRE INQUIRY

MORWELL

TUESDAY, 10 JUNE 2014

(11th day of hearing)

BEFORE:

THE HONOURABLE BERNARD TEAGUE AO - Chairman

PROFESSOR EMERITUS JOHN CATFORD - Board Member

MS SONIA PETERING - Board Member

MERRILL CORPORATION AUSTRALIA PTY LTD
4/190 Queen Street, Melbourne

Telephone: 8628 5555
Facsimile: 9642 5185

1 MEMBER PETERING: Good morning and welcome to the third week
2 of the public hearings of the Hazelwood Mine Fire
3 Inquiry.

4 We've heard from a number of people throughout the
5 first two weeks on the origin of and the circumstances 10.02AM
6 of the fires in week 1 and on matters concerning the
7 environment and health of the community in week 2.
8 We've heard evidence that the fires in the mine were
9 complex. The fires took many thousands of people to
10 put out and affected many thousands of others. 10.03AM

11 We've heard from Incident Controllers;
12 firefighters; a Fire Behaviour Analyst; mine workers;
13 mine management; air quality, health and communication
14 experts; community members; volunteers; Department of
15 Education, Health and Human Services representatives. 10.03AM
16 We've heard from the local council; the Fire Service
17 Commissioner; the Chief Health Officer and many others.

18 We've heard about spotting; predictions;
19 compressed air foam, PM 2.5; 8-hour average readings;
20 carbon monoxide protocols; emergency command 10.03AM
21 structures; travel blankets; Emergency Response Plans;
22 information versus communication; and fire, smoke and
23 ash.

24 The key areas of focus of this Inquiry were driven
25 by the terms of reference and the issues raised by the 10.04AM
26 community in the ten community consultations attended
27 by over 260 people and the 160 submissions received.
28 The information has been presented in this open forum,
29 and the number of folders around the room demonstrate
30 the mass of material that has been provided. 10.04AM

31 We extend our thanks to the many people who have

1 been involved in the Inquiry to date, providing
2 information and evidence, and we also recognise the
3 many members of the community taking time to
4 participate, in listening to the materials presented
5 either here or in the hearing room or via bulletins in 10.05AM
6 the media. The hearings have been conducted
7 respectfully and the parties have co-operated with the
8 Inquiry, and we thank you for your continuing
9 cooperation.

10 The social, environmental and economic impacts of 10.05AM
11 mining, and particularly mining failures, can be
12 significant. We've heard that the fire got into the
13 mine coal seam, elderly and vulnerable residents were
14 encouraged to temporarily relocate from Morwell, and
15 the remaining community breathed acrid smoke and lived 10.05AM
16 in houses covered with ash.

17 Commencing today, the focus of the Inquiry, led by
18 Counsel Assisting, Ms Richards and Mr Rozen, will be on
19 mitigation and prevention and regulatory compliance.
20 The evidence will explore whether the risk of fire in 10.06AM
21 the worked out batters of the mine close to the
22 township of Morwell was adequately recognised by people
23 and by those responsible. We will also look at whether
24 the measures taken to control the risk were sufficient
25 and how they might be improved in the future. If no 10.06AM
26 changes are made, then we will not have learned the
27 lessons of experience and we can expect similar
28 disasters to occur in the future.

29 So, for us, another week of listening with open
30 minds. Chairman. 10.06AM

31 MS RICHARDS: The first witness today will be Kylie White

1 from the Department of State Development and Business
2 Innovation, but before I call Ms White there are some
3 preliminary matters. There are some changes in
4 appearance, so those counsel may wish to announce their
5 appearance.

10.07AM

6 MS DOYLE: May it please the Board, I now appear in the
7 place of Mr Riordan for GDF Suez.

8 MS NICHOLS: If it the Board pleases, I appear with
9 Ms Trewhella for Environment Victoria.

10 MS RICHARDS: There's also the matter of Firefighter L that
11 I raised with the Board on Friday afternoon. Over the
12 weekend those representing the State, which includes
13 the Metropolitan Fire Brigade, provided the assurance
14 that I requested on Friday afternoon in writing in a
15 letter from the Victorian Government solicitor. That
16 letter has been provided or a copy of it has been
17 provided to the United Firefighters Union, with a
18 request that it arrange for Firefighter L to get in
19 touch with the Inquiry, and if and when that happens we
20 will take that matter further.

10.07AM

10.07AM

10.08AM

21 CHAIRMAN: Yes, thank you.

22 MS RICHARDS: I call Kylie White.

23 <KYLIE WHITE, sworn and examined:

24 MS RICHARDS: Good morning, Ms White, welcome?---Thank you.
25 Can you please tell us your full name again and your
26 professional address?---Kylie Anne White, level 9, 121
27 Exhibition Street, Melbourne.

10.09AM

28 You are currently employed as the Executive Director of
29 Earth Resources Regulation Branch in the Department of
30 State Development, Business and Innovation?---That's
31 correct.

10.09AM

1 Which I will refer to as the Mine Regulator from time to
2 time; it's less of a mouthful. You've made two
3 statements for the Inquiry; the first is a statement
4 that's in two volumes with 46 attachments and 192
5 paragraphs. Are you familiar with that statement?---I 10.09AM
6 am.

7 Are there corrections that you would like to make to
8 it?---Just one matter and that is that document 46 that
9 was supplied with that was a previous draft and the
10 final document has been supplied. 10.09AM

11 That was supplied over the weekend, I believe?---That's
12 right.

13 That substitute document has been circulated to the parties.
14 With that correction, is your statement true and
15 correct?---It is, yes. 10.10AM

16 Then you made a supplementary statement that was provided to
17 the Inquiry in the course of last week, and the main
18 purpose of that statement was to provide the Inquiry
19 with some additional information about the basis on
20 which the rehabilitation bond for the Hazelwood Mine 10.10AM
21 was assessed in 1995?---That's right. We were able to
22 find more information.

23 You also took the opportunity to provide some clearer copies
24 of a number of documents that were annexed to your
25 first statement. Are there any corrections that you 10.10AM
26 would like to make to that supplementary
27 statement?---No.

28 Is that true and correct?---Yes.

29 I tender both of those statements, if I might.

30 10.10AM

31 #EXHIBIT 59 - Two statements of Kylie White.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

MS RICHARDS: Ms White, a good place to begin our discussion is probably to ask you about your role and responsibilities as executive director of the Earth Resources Regulation Branch. What does your role involve?---As the Executive Director of that Branch I'm responsible for implementing a number of legislations that relate to mining, quarrying, petroleum and other related matters, but particularly for this Inquiry I'm responsible for the regulation of the Mineral Resources (Sustainable Development) Act or MRSD.

10.11AM

10.11AM

A little bit about your own background. You've been in your current position since July 2013. Where did you come from? What was your previous employment in the Victorian public service?---Prior to that I had been in the Department of Primary Industries and then, prior to that, the Department of Sustainability and Environment.

10.11AM

1 July 2013 was the date on which mine regulation transferred from the Department of Primary Industries to DSDBI; is that correct?---That's correct.

10.12AM

What had been your role with the Department of Primary Industries prior to moving into your current role?---Prior to that I was a Director in the Earth Resources Development Branch with a range of responsibilities relating to petroleum and mining.

10.12AM

Going back further in time, your experience has been in the forestry regulation area?---I've spent a considerable time working in forest related matters and forest regulation was part of those duties, yes.

You have a number of formal qualifications, most recently graduate of the Advanced Management Program from the

10.12AM

1 Harvard Business School?---That's correct.
2 Your undergraduate and masters degrees are in science, with
3 a focus on environmental management?---That's correct.
4 You've provided us at attachment 1 with an organisational
5 chart of DSDBI. If we could have that on the screen, 10.13AM
6 just to locate you in the scheme of things. On the
7 left-hand side of the chart there is an Energy and
8 Earth Resources Division; that's not where you're
9 located, is that correct?---That is correct.
10 You are in the Corporate Planning and Compliance Services 10.13AM
11 Division under Deputy Secretary Rob Barr. If we could
12 move the chart up a little bit we will see right at the
13 very bottom of that column there's the Earth Resources
14 Regulation Branch. What's the relationship between
15 your branch and Energy and Earth Resources?---We have 10.14AM
16 responsibilities under the Mineral Resources
17 (Sustainable Development) Act. However, as the
18 regulator, I am separate from what is seen as the
19 development or facilitative arm of Earth Resources
20 Development. There is a structural model that enables 10.14AM
21 greater independence of the regulator, being myself and
22 my team.
23 There's a range of powers and functions and decisions that
24 fall to be made under the Mineral Resources
25 (Sustainable Development) Act, are they all collected 10.14AM
26 within your branch or are they divided between the two
27 parts?---The administration of the regulatory
28 framework, it's contained within Earth Resources
29 Regulation Branch.
30 So that includes advice about granting a licence, approval 10.15AM
31 of work plans and work plan variations, rehabilitation

1 bonds, the whole range of decisions that fall to be
2 made?---That's correct, yes.

3 Thank you for that clarification. Just to be clear about
4 the location of the Mine Regulator and the
5 responsibility for administering the Mineral Resources 10.15AM
6 (Sustainable Development) Act, it currently sits with
7 your branch within DSDBI. Between December 2002 and
8 the end of June 2013 it sat with the Department of
9 Primary Industries?---That's correct.

10 And from privatisation until December 2002 it sat with the 10.15AM
11 Department of Natural Resources and
12 Environment?---That's correct.

13 The practicality has been that there has been a branch or
14 section responsible for mining regulation under the
15 Mineral Resources (Sustainable Development) Act, and 10.16AM
16 that's moved from department to department over
17 time?---That's correct.

18 The Act also confers a number of powers on the Minister, and
19 the Minister at the moment is the Minister For Energy
20 and Resources. I see from paragraph 13 of your 10.16AM
21 statement that that's been the title of the relevant
22 Minister since December 2006. There are a number of
23 powers that reside in the Minister and a number of
24 powers that reside in the Department Head under the
25 Mineral Resources (Sustainable Development) Act but, to 10.16AM
26 be clear, the Minister's powers include granting a
27 mining licence; is that correct?---That's right, yes.

28 Setting a rehabilitation bond?---Yes.

29 And requiring the reassessment of that rehabilitation
30 bond?---Yes. 10.17AM

31 The Department Head is the one who approves a work

1 plan?---Yes.

2 Have I understood that division of responsibilities

3 correctly?---Yes.

4 Of course, the Chief Inspector of Mines is a separate

5 statutory office who has a number of functions under 10.17AM

6 the Act as well?---That's right.

7 There is one enforcement power that the Minister has under

8 the Act that I wanted to ask you a little more about

9 which was the power in s.110 to issue a stop work

10 notice. I know this is not one of the matters we asked 10.17AM

11 you specifically to address in your statement, but I'm

12 interested to know how that power is exercised in

13 practice?---The s.110 penalties or the processes that

14 do that have a number of elements and they generally

15 relate to - there is an issue that has been identified, 10.18AM

16 a risk that's to be managed or a problem of a serious

17 nature, and a s.110 notice can then describe the

18 problem and then seek the problem to be mitigated or

19 addressed. The stop work power would be used only, if

20 you like, in extreme situations or when previous 10.18AM

21 notices had not been dealt with.

22 Those previous notices would be issued by inspectors under

23 the Act, just to get a sense of the process that would

24 lead up to a stop work notice being issued?---That's

25 right, they would be issued by the Chief Inspector of 10.19AM

26 Mines or one of his delegates, yes.

27 One would not expect that drastic step of a stop work notice

28 to be taken without clear advice from the

29 Department?---That's correct, yes.

30 Before I move into the detail of the Hazelwood Open Cut Mine 10.19AM

31 I just want to ask you a bit broadly about the mining

1 industry in Victoria. You tell us in paragraph 15 that
2 it represents about 1 per cent of Victoria's gross
3 state product, so it's not exactly Western Australia
4 here. Of that 1 per cent, is it the case that the vast
5 majority is represented by the three open cut coal 10.19AM
6 mines here in the Latrobe Valley?---I don't think I
7 would describe it as being the vast majority; there are
8 a range of other mines and other mining activities
9 across Victoria, gold being one, however there is a
10 concentration and the only - there is a concentration 10.20AM
11 of large coal mines here in the Latrobe Valley.
12 Yes, not the only coal mines in Victoria, we're aware that
13 there's one at Anglesea?---Yes.
14 But these three mines here in and around Morwell are the
15 largest mines in Victoria, are they not?---They are the 10.20AM
16 largest mines, yes.
17 By quite a long stretch?---In size, yes.
18 In size and in terms of the number of people employed?---I'm
19 not familiar exactly with their employment details, but
20 because of their complexity and the scale they would 10.20AM
21 employ many people; I'm aware of that, yes.
22 In part B of your statement you've set out a very helpful
23 summary of the regulatory scheme that exists under the
24 various legislation but most particularly under the
25 Mineral Resources (Sustainable Development) Act and the 10.21AM
26 regulations made under that Act. There's only a couple
27 of things that I would really like to explore with you.
28 In paragraph 29 you tell us the requirements that the
29 Minister must be satisfied of before an applicant can
30 be issued with a mining licence. Then at paragraph 30 10.21AM
31 you list the various conditions that may be imposed on

1 a licence.

2 At paragraph (k) one of those is payment of
3 royalties other than in respect of lignite. Now,
4 lignite is brown coal. Do I understand that correctly
5 to mean that royalties are not paid on brown coal under 10.21AM
6 a mining licence?---There are royalties, but it's set
7 specifically for lignite, so they are separated out
8 from the other matters relating to mining. So for
9 example, payment of royalties for something like
10 antimony is determined in this methodology, but the 10.22AM
11 royalties for lignite has been determined separately.
12 By what method?---I'm not familiar with the method but it
13 has been determined separately and I can provide more
14 details if you would like.

15 The Board's interested to have some idea of the magnitude of 10.22AM
16 the royalties, an order of magnitude figure of the
17 royalties that are paid by Hazelwood each year. Are
18 you able to assist with that?---The three mines
19 collectively, it's somewhere in the vicinity of
20 \$50-60 million. I can clarify that to give you a most 10.22AM
21 recent figure.

22 Yes, that would be helpful, thank you. Starting on page 9
23 of your statement - - -

24 MEMBER PETERING: Just to elaborate, please. Ms White,
25 thank you for that clarification. Were there any other 10.23AM
26 fees paid to the Victorian Government or is it only the
27 royalties?---I believe there are only royalties. I'd
28 need to determine if there were some fees as well
29 related to other matters relating to this mining
30 licence. 10.23AM
31 So if your response could cover the royalties and any other

1 fees, that would be great. Thank you.

2 MS RICHARDS: Moving to the details of this mining licence,
3 you set out starting at paragraph 32 the various
4 constituent parts of the mining licence that's
5 currently in place. The mining licence was first 10.23AM
6 approved in May 1996 and that was a licence to the
7 publicly owned Hazelwood Power Corporation; is that
8 correct?---That's my understanding, yes.

9 Then that was revoked and essentially re-issued to Hazelwood
10 Power Corporation Limited, which is privately owned 10.24AM
11 in September 1996?---Yes, that's my understanding.

12 There was a gazettal which you've annexed at Attachment 3 of
13 the mining licence and the approved work plan that went
14 with that licence. I just want to be clear about
15 exactly what this authorised, so if we can go to the 10.24AM
16 first page of Annexure 3. It's a recommendation, and
17 over the page there's an order granting the mining
18 licence which includes an approval at paragraph 3(b) of
19 the work plan. If we can just be clear about what the
20 work plan was that was approved. At page 12 of that 10.25AM
21 document there's an authority to commence work as per
22 work plan dated 1 June 1995. At page 52 of the
23 document is the front cover of a Hazelwood Power
24 Corporation Mining Licence Application Work Plan
25 submission, and then in the following pages there's a 10.25AM
26 detailed work plan set out. Is this the work plan that
27 was approved in September 1996?---It is my
28 understanding that that's the case.

29 If we go straight to the areas that are of most interest to
30 the Inquiry. At page 63 the work plan deals with the 10.26AM
31 Bushfire Mitigation Program and there is a recognition

1 that the mine is situated in a high bushfire risk area
2 and of the potential consequences on the mine
3 infrastructure of a bushfire. There's a Bushfire
4 Mitigation Program that's funded and also it conforms
5 with the Fire Service Policy and Code of Practice that 10.26AM
6 we're familiar with now.

7 At 7.7 there's a Fire Protection Policy, which
8 again refers to the Fire Service Policy and Code of
9 Practice and then identifies an extensive network of
10 water reticulation and sprays for fire protection and 10.26AM
11 refers to figure 13A which is the Fire Service network
12 schematic. That's what I've found in the work plan
13 that deals with fire protection. Is there anything
14 else that we should refer to?---I'm not aware of
15 anything else for that work plan. 10.27AM

16 The last step in this to look at figure 13A which is on
17 page 89 of the document. It's a little difficult to
18 read. It is, with the aid of a magnifying glass, the
19 Fire Service pipe network that's referred to which
20 shows a pipe network extending all around the perimeter 10.27AM
21 of the mine and more extensively into the working area
22 of the mine.

23 The question now is this: Am I right in expecting
24 that any change to the Fire Services network or the
25 Fire Protection Policy would have to be by way of a 10.28AM
26 variation to the approved work plan?---At that time, if
27 it was included in the work plan and you've made note
28 that it is, then that would be the case.

29 At paragraph 43 and following in your statement you step
30 through the various variations to the work plan that 10.28AM
31 have been made since 1996 and there have been seven in

1 total since that September 1996 gazettal. You've given
2 a broad description of the subject matter of each
3 variation and I've looked through them. I can't find
4 any variations that approve the variation to the Fire
5 Service's pipe network. I don't expect you to be able 10.29AM
6 to point me to one immediately today, but can you take
7 that as a question on notice, if you like, to identify
8 whether there's ever been any approval of changes to
9 the Fire Service pipe network in the mine's work
10 plan?---I can determine that up to the point of which 10.29AM
11 my responsibilities lie and I think, just to clarify,
12 matters relating to what would be occupational health
13 and safety changed in regards to who oversighted those
14 aspects from 2002 but more subsequently from 2008.

15 Is your evidence that, when those changes were made to the 10.30AM
16 regulation of occupational health and safety, that
17 responsibility for approving the fire protection
18 measures in the work plan moved away from the Mine
19 Regulator?---I don't know whether I would like to see
20 it in such a defined way, but how I would describe it 10.30AM
21 is, DSDBI or Earth Resources Regulation is one of the
22 mining regulators; we're not the mining regulator.
23 DSDBI in this case is responsible for matters relating
24 to the work plan, but since 2008 the work plan has not
25 included occupational health and safety which has been 10.30AM
26 under the responsibility of the Victorian WorkCover
27 Authority and the Occupational Health and Safety Act.
28 That's just what I was trying to clarify. I can go
29 back through our records and determine whether there
30 has been anything up until that time that relates to 10.31AM
31 the fire infrastructure.

1 I'd be grateful if you could do that, if you could identify
2 whether there was any variation to the Fire Service's
3 pipe network that was approved with a work plan
4 variation. I don't expect you'll find one given what
5 I've looked through, but you may know where to look 10.31AM
6 better than we do?---I believe that we've provided a
7 full account of all the variations.

8 The latest work plan variation, and this was a very
9 substantial one, took place in 2009 and you've provided
10 it at Annexure 12 to your statement. This was the 10.31AM
11 culmination of a very long approval process, was it
12 not, that had commenced in 2004 or 2005?---Post the
13 EES, that was done for the extension of the coal mine,
14 yes.

15 The extent of the approval is probably best captured by 10.32AM
16 looking at figure 2.1 which is on page - the pages are
17 unhelpfully not numbered sequentially. It's at
18 page 2-3 on the bottom. It should be on page 14 of the
19 document. This is a depiction of the mine licence
20 boundaries as they now are; is that correct?---Yes, 10.33AM
21 that's correct.

22 And they were extended as a part of this process that ended
23 with the approval in 2009 of the work plan
24 variation?---That's right, it was the subject of an EES
25 and then was then clarified with the extension, an 10.33AM
26 amalgamation of mining licences and then subsequent
27 work plan.

28 There were four new mining licences granted in the
29 several years leading up to 2009 that were amalgamated
30 into mining licence 5004?---5004. 10.33AM

31 And that amalgamation occurred in about 2006?---Prior to

1 this work plan being issued, yes.

2 That's the current boundaries, and the area outlined in
3 white is the area of new work that's approved in this
4 work plan variation?---That's right.

5 We'll come back to this document a couple of times this 10.34AM
6 morning, but if we can return to your statement now, to
7 paragraph 52 in particular. You refer there, as I
8 understand it, to the interaction between the Mineral
9 Resources (Sustainable Development) Act and the
10 Planning and Environment Act. Have I understood that 10.34AM
11 correctly?---That's right, yes.

12 It's a difficult interaction to understand. Are you able to
13 explain how it works in practice? There are some
14 things that are the mining regulator's responsibility
15 and other things that are the responsibility of the 10.34AM
16 planning authorities. What's the dividing line?---I
17 think it would be best to ask somebody who's competent
18 in the Planning and Environment Act and so can provide
19 you with the details, but in regards to this particular
20 mine and this situation, the Environmental Effects 10.35AM
21 Statement and the Panel Report set the determination
22 or, if you like, the guidelines for how this mine was
23 to proceed or to be developed, and so the MRSDA in this
24 case has, if you like, then abuts the Environmental
25 Effects Statement process and creates the details, the 10.35AM
26 working operation of the mine once the Panel Report has
27 been provided.

28 If I can put it to you this way: Approval of mining and
29 mining operation is very much the province of the Mine
30 Regulator; approval of other changes that had to be 10.36AM
31 made, for example the diversion of the Morwell River,

1 was not the mining regulator's province, it was the
2 province of the planning process more broadly?---And
3 also matters relating to Southern Rural Water or those
4 departments with water responsibilities.

5 The particular provision that identifies the boundary line 10.36AM
6 is s.42A of the Mineral Resources (Sustainable
7 Development) Act. Have I understood correctly that, in
8 terms of what goes on inside the mine, the mining
9 activity/planning authorities do not have any
10 jurisdiction over that under the Planning and 10.36AM
11 Environment Act?---Once the area is - well, in this
12 case the mining licence or the activities, can I put it
13 that way; the activities as designed under the MRSDA
14 are determined or oversighted by Earth Resources
15 Regulations, and then there are other regulators who 10.37AM
16 may have other responsibilities such as OH&S or there
17 could be matters relating to discharge which the EPA
18 would have some involvement with, and so, there are a
19 number of aspects of what would happen within that area
20 that would have some oversight from a range of 10.37AM
21 agencies.

22 But the Latrobe City Council as the responsible authority
23 within the Latrobe municipality does not have any
24 approval power over mining activities within the mining
25 licence boundaries?---Not so much the mining 10.37AM
26 activities, but the area had already been previously
27 identified as being an area set aside for coal mining
28 or coal winning activities, yes.

29 You tell us in paragraphs 53 and 54 that Hazelwood has an
30 application pending to vary the work plan. 10.38AM

31 Mr Faithfull in his statement has provided a copy of

1 the application. One of the aspects of it is to refine
2 mining sequencing and better rehabilitation. We'll
3 come in a little while to what the current
4 rehabilitation plan requires in terms of the stages of
5 rehabilitation. Is there any proposal to change that 10.38AM
6 sequencing or to delay the completion of rehabilitation
7 under the current application?---I don't believe that
8 delaying the rehabilitation is what's being sought in
9 that variation. Rehabilitation, according to the
10 MRSDA, relates it to how the mine is to be left in a 10.39AM
11 stable and safe situation at the end of mine life. So,
12 for the rehabilitation plan that GDF Suez is required
13 to provide to us, it would still have to meet all those
14 requirements.

15 But there is already in place a detailed rehabilitation plan 10.39AM
16 with some dates by which certain works must be
17 completed, and my question now is really to identify
18 whether this application seeks to move those dates or
19 to change the work that must be completed by those
20 milestones?---My understanding is, GDF Suez have sought 10.39AM
21 a revision or a variation to their work plan to
22 accommodate a slightly different model of how they
23 would like to mine the coal going forward, and in
24 addition to that they are required to provide some
25 additional hydrogeological or geotechnical requirements 10.40AM
26 relating to mine stability and they wish to include
27 those as required by legislation.

28 But that doesn't answer my question about the sequencing.
29 I'll pursue this also with Mr Faithfull when he gives
30 evidence, but there is currently an application that 10.40AM
31 you tell us seeks to refine mining sequencing and

1 matter rehabilitation, and we know that at present the
2 rehabilitation plan has a four-stage approach to
3 rehabilitation and there are dates by which the
4 progressive rehabilitation must be completed. Is the
5 current application seeking to defer completion of that 10.40AM
6 staged rehabilitation work?---We haven't yet assessed
7 the variation, but I don't believe it's to defer the
8 rehabilitation, but I will clarify that. What I would
9 say, though, is that it is not uncommon for mine
10 sequencing to be varied over time as the mine operator 10.41AM
11 determines what's the best way to win the coal.

12 Mr Faithfull's statement also identified again
13 what was reiterated in the previous statement around
14 the suitability of materials for certain forms of
15 rehabilitation and I think he clarifies that once more 10.41AM
16 in that statement.

17 And that relates to the overburden and where it can be
18 placed within the mine?---Yes, based on the
19 characteristics of the overburden, yes.

20 Moving to the next section of your statement, paragraphs 55 10.42AM
21 and 56, we asked you to identify the role or
22 responsibility that the Mine Regulator plays in
23 mitigating the risk of fire in the mine and how you
24 work with other agencies. We asked you specifically
25 whether the Mine Regulator participates in integrated 10.42AM
26 fire management planning either at State, regional or
27 local level. You've given a very definitive answer;
28 the answer is, we do not participate in the integrated
29 fire management planning, and that since 1 January 2008
30 the responsibility for mitigating the risk of fire at 10.42AM
31 the Hazelwood Mine has been the Victorian WorkCover

1 Authority's. Have I understood that correctly?---Yes,
2 that's correct.

3 As you sit here, you do not regard any part of the Mine
4 Regulator's responsibility to be mitigating the risk of
5 fire at the mine?---I believe that is the case and so, 10.43AM
6 yes, that is correct. I just would like to clarify
7 that there is one part of the MRSDA that seeks for a
8 mine operator to notify DSDBI or Chief Inspector of
9 Mines of a fire in the mine, but that's the only other
10 requirement. 10.43AM

11 Yes, I'll come to that in a little while. Specifically in
12 relation to integrated fire management planning,
13 there's a document that I'd like to take you to now
14 that is an annexure to Mr Lapsley's first statement.
15 It's the Gippsland Strategic Fire Management Plan for 10.43AM
16 2013-2023 dated 30 June 2013. It's Annexure 38 to
17 Mr Lapsley's first statement referred to at
18 paragraph 210 of that statement. Is this a document
19 that you're at all familiar with?---I have become aware
20 of this document after the fire, yes. 10.44AM

21 In the course of this Inquiry or earlier than that?---I
22 can't be definitive, but I'd say earlier than the
23 course of this Inquiry.

24 It wasn't a document, I take it, that the Mine Regulator had
25 any part in developing?---That's my understanding, yes. 10.44AM

26 If I can take you to Attachment A to that statement which
27 appears on page 27. This is a Regional Register of
28 Assets At Risk. If we could expand the top two lines
29 on the table?---Which top two lines? Is it "Power
30 generation facilities" that you're referring to? 10.45AM

31 Yes, there's "Power generation facilities" and then below

1 that there's "Power generation facilities - coal
2 mines". So these two facilities are at the top of the
3 Gippsland Region's Register of Assets At Risk. We see
4 there that there's an identification that there is a
5 risk that bushfire will threaten the coal mines, 10.45AM
6 potential for fire in the mines as a result of either
7 an internal or external fire event, disruption medium
8 to long-term loss of power to the National Grid. The
9 likelihood is identified as likely; the consequences
10 are identified as catastrophic and hence the risk 10.45AM
11 rating is extreme.

12 What I want to ask you about is the existing
13 treatments that are identified in that next column, and
14 the last one relates to DPI regulatory planning. As at
15 30 June 2013, it was still DPI, was it not, that was 10.46AM
16 the Mine Regulator?---(No audible answer).

17 Can you give any content to the treatment that's identified
18 in this Risk Register?---No, I can't verify that the
19 content in that particular register is something that
20 we would have contributed. I'm not aware of that. 10.46AM

21 Your evidence is that DPI from 1 January 2009 did not play
22 any role in mitigating fire risk at the
23 mine?---1 January 2008?

24 Yes?---That's correct. Those matters, for example fire in a
25 mine, is a mining hazard as prescribed under the OH&S 10.46AM
26 Act.

27 Your evidence would be that, of the existing treatments that
28 are listed, DPI regulatory planning is not one that has
29 any real content?---Not specifically for fire
30 mitigation or for matters relating to fire suppression 10.47AM
31 activities, no.

1 Thank you, we can put that document aside now. Moving to
2 part C of your statement, you've provided us with a
3 very clear history of the transfer of health and safety
4 responsibilities from the Mine Regulator to the
5 Victorian WorkCover Authority. Just to extract the 10.47AM
6 gist of it, from 2002-2007 the Mineral Resources
7 Development Regulations required work plans to include
8 an occupational health and safety plan; is that
9 correct?---Just let me check whether it's 2007 or
10 whether they were - the Mineral Resources (Health and 10.48AM
11 Safety in Large Open-cut Mines) Regulations were
12 repealed in 2002 and then replaced, so that's my only
13 clarification.

14 They were repealed and replaced by those two regulations
15 that you list in paragraph 58?---Yes. 10.48AM

16 So both the Occupational Health and Safety (Mines)
17 Regulations and the Mineral Resources Development
18 Regulations. The latter set of regulations continued
19 to require health and safety to be the subject of a
20 work plan or to be covered by a work plan, but there 10.48AM
21 were also broader health and safety responsibilities
22 that resided in the Victorian WorkCover
23 Authority?---That's correct, yes.

24 From 2002 until the change at the beginning of 2008 those
25 responsibilities were delegated by the Victorian 10.49AM
26 WorkCover Authority to DPI?---That's correct, yes.

27 There was then, as you've identified at paragraph 61, a
28 review of that arrangement and you've provided us with
29 a copy of Mr Pope's review. To cut a fairly long story
30 short, he recommended that the Victorian WorkCover 10.49AM
31 Authority should resume responsibility for health and

1 safety in mines and should be delegated responsibility
2 for the assessment of health and safety requirements of
3 work plans?---That's right, yes.

4 Does it still remain the case that work plans must contain a
5 health and safety component?---They're no longer 10.50AM
6 required. They were amended in 2010.

7 That was amended in 2010, and it has been amended again -
8 well, year after next there will be a new set of
9 requirements for work plans?---That's correct, yes, but
10 they won't include matters relating to occupational 10.50AM
11 health and safety.

12 Not specifically, although there will be some broader
13 requirements to identify risk and identify measures to
14 control risk?---Amendments are around - well, these are
15 the proposed amendments to come into place by or before 10.50AM
16 2016. The work plan, as it currently is described, is
17 a more prescriptive work plan to one that's more
18 outcomes-focused or fits more with a risk based
19 regulatory regime.

20 Since 2010 there's not been a requirement for a work plan to 10.51AM
21 address health and safety, but prior to it there
22 was?---That's right, but I just would clarify that in
23 2008 when the regulations changed and the delegations
24 were taken back by VWA there was a delay in amending
25 the regulations, just through administrative processes. 10.51AM
26 In amending the regulations that relate to that element
27 that was still there until 2010; it had been superseded
28 before that in 2008.

29 The intent was that work plans would not have to include a
30 health and safety plan, but the regulations didn't 10.51AM
31 actually follow that intent until 2010? Have I

1 understood that correctly?---That's correct, but the
2 2009 work plan variation you see did include that
3 aspect of the requirements because the regulations
4 required it up until 2010, until they were replaced.
5 Was it the case that during that period when the regulations 10.52AM
6 hadn't yet followed the intent, that the Victoria
7 WorkCover Authority had the responsibility for
8 assessing health and safety requirements of work
9 plans?---They did.
10 Because that's no longer a requirement of the work plan, 10.52AM
11 that's no longer one of the Victorian WorkCover
12 Authority's responsibilities?---No, they administer it
13 through their own regulations.
14 Through their own regulations?---Yes.
15 There's just one aspect of the transition that I'd like to 10.52AM
16 explore with you. Mr Pope, as well as making the
17 recommendations that you set out at paragraph 61, made
18 a number of recommendations about how the transition of
19 responsibility should be effected. At
20 Recommendation 7, and this document is at Attachment 15 10.53AM
21 to your statement and the recommendations are set out
22 starting at page 122. Recommendation 7, which is on
23 the top of the second of those pages, there's a
24 recommendation that the staffing of this unit, which is
25 a new unit to be established within the Victoria 10.53AM
26 WorkCover Authority, "Should include the transfer from
27 the DPI of at least two qualified mining engineers and
28 all regulation officers currently within the Minerals
29 and Extractive Operations Branch."
30 You tell us in paragraph 79 of your statement that 10.54AM
31 only one staff member transferred from DPI to the

1 Victorian WorkCover Authority. Are you able to tell us
2 why the transfer of staff, and presumably expertise,
3 didn't occur as Mr Pope had recommended?---I'm not
4 familiar with all the details relating to that time. I
5 can assume, however, that VWA and the then DPI 10.54AM
6 determined that that was all that was required; that
7 they reached an agreement about that.

8 Are you able to provide any more insight into the reasons
9 behind that agreement?---I'm afraid I'm not, other than
10 what I've - - - 10.54AM

11 Could you be able to find out? Is there anyone who could
12 tell you now?---Other than, I was going to say, I can
13 investigate further. We have provided some
14 documentation that relates to the transfer arrangements
15 and the considerations that were taken at that time, 10.55AM
16 but as to the determination of one staff member versus
17 others, I'll have to see if there's further
18 information.

19 Because there's a clear recognition that DPI has accumulated
20 a good deal of experience and knowledge and presumably 10.55AM
21 wisdom about this regulation of health and safety in
22 the mining industry and it would be useful to transfer
23 that to the authority that's going to be responsible
24 for regulation in the future, and it appears that that
25 didn't occur and we'd be interested in finding out the 10.55AM
26 reasons for that. We'll add that to the list and we'll
27 correspond with the Victorian Government Solicitor
28 about matters for follow-up.

29 You've set out in your statement a series of
30 Memorandums of Understanding between the Mine Regulator 10.56AM
31 and the Victorian WorkCover Authority, and I'd just

1 like to ask you about the operation of the current one.
2 You refer to it at paragraph 80 and then you extract
3 helpfully the relevant parts of it at paragraphs 81 and
4 82. There's an explicit recognition, is there not,
5 that there is some overlapping of responsibilities in 10.56AM
6 this memorandum of understanding?---There was that
7 recognition that there could be those areas of overlap
8 and they were best identified and then determined an
9 approach to deal with them, yes.

10 There are various safety related elements that are listed in 10.56AM
11 the left-hand column of that table under
12 paragraph 1.2.2. I just ask you about the first two,
13 public safety and amenity; the Mine Regulator is the
14 lead agency; WorkSafe as it was then known, is the
15 support agency, and then public safety (work related), 10.57AM

16 the position's reversed, the Mine Regulator is the
17 support agency and WorkSafe Victoria is the lead
18 agency. Can you explain how that division of
19 responsibility works in relation to public safety
20 issues connected with the worked out batters of the 10.57AM
21 mine? Who's the lead agency, who's the support

22 agency?---In regards to the - and I'll put my comments
23 in the context of the MRSDA - public safety as applied
24 to the mine area itself, and then I'll come back to the
25 northern batters, relates to or has been described as 10.58AM

26 matters relating to safe access, gates, fencing,
27 ensuring that the site is secure and that, if you like,
28 the public are not put unnecessarily at risk from being
29 able to enter the site or be impacted by what's
30 happening. There is another aspect which relates to 10.58AM
31 mine stability or the need to be able to ensure that,

1 for example, the northern batters, which are terminal
2 batters, that means they're not going to be worked any
3 further, that those batters are seen to be stable and
4 don't pose a risk to the public.

5 Those are issues on which you would identify your branch as 10.58AM
6 the lead agency. What's the difference between those,
7 public safety and amenity and public safety (work
8 related), with a specific focus on the worked out
9 batters?---The batters may not be batters that are
10 currently winning coal, but they still perform a range 10.59AM

11 of functions, or they are adjacent to existing
12 infrastructure that is still utilised as part of the
13 mine. So, even though the batters are not currently
14 being worked and they won't be further worked, the
15 infrastructure that is on the batters or adjacent to 10.59AM
16 the batters is still part of the working mine.

17 I understand that, while they're worked out they're still
18 part of an operating mine?---Yes.

19 There are roads, there is a conveyor belt, there are pumping
20 stations, there's pipes. But my question was, what's 10.59AM
21 the distinction between public safety and amenity and
22 public safety (work related)?---My understanding of
23 that distinction is that, where matters related to
24 works, that public safety that could be impacted by the
25 works within the mine would be the responsibility of 11.00AM
26 VWA.

27 And by which you mean?---It's a work site, it has workers
28 and it would have all the requirements of what would be
29 covered by the Occupational Health and Safety Act
30 instead of the MRSDA. That is my interpretation of 11.00AM
31 what that table is attempting to resolve. I think also

1 the table has in a way - wanted to be able to
2 distinguish between the responsibility of each agency
3 in regards to, for example, the matters pertaining to
4 the mine and its impact to people that may perhaps be
5 at risk if they wanted to enter the mine or, in the 11.00AM
6 case of public safety, or us as Earth Resources
7 Regulation Branch, as to relating to ensuring that the
8 terminal batters are stable and safe in the longer
9 term.

10 None of that's spelled out in this table, is it?---No, it's 11.01AM
11 not. It is a summary.

12 There's a separate aspect to public safety, particularly
13 with the Hazelwood Mine, which is that people live,
14 work and go to kindergarten a few hundred metres from
15 the northern batters. Who's responsible under this 11.01AM
16 memorandum of understanding for managing that risk?---I
17 don't believe I can comment and say that I am
18 responsible to the risks to the - did you say a
19 childcare centre that's in the proximity?

20 The public are just a few hundred metres from the northern 11.01AM
21 batters?---But I do know that in the work plan that we
22 currently regulate, matters relating to noise and dust
23 are regulated within that MRSDA, so I'd confine my
24 understanding of what I'm required to do within the
25 context of the MRSDA. However, I would also add that 11.02AM
26 the stability of the northern batter which has been I
27 think of great concern since - or for many years - - -

28 Since the freeway collapsed?---Didn't quite. But since 2011
29 in particular but prior to that because the batter has
30 been monitored for many years, has been around 11.02AM
31 overlooking works that GDF Suez has done in order to

1 keep that batter as stable as possible.

2 The lead agency for batter stability issues is the Mine
3 Regulator?---That's right, yes, particularly in regards
4 to terminal batters where they are internal and they
5 may affect Occupational Health and Safety aspects, so 11.02AM
6 workers working adjacent to them, then the VWA would
7 also have an interest and I think some of their
8 documentation shows that they have an interest in mine
9 stability as well.

10 So the lead agency for managing fire risk in the worked out 11.03AM
11 batters is who?---My understanding would be VWA.

12 Is that regardless of whether the fire affects people
13 working in the mine or the public who live and work and
14 go to kindergarten on the other side of the
15 boundary?---My understanding after reading the 11.03AM
16 Occupational Health and Safety Act is that there is
17 primarily a matter relating to impacts or adverse
18 impacts to workers and others within the mining area,
19 but there is also recognition of impacts outside of the
20 workplace. 11.03AM

21 And that's s.23 of the Occupational Health and Safety Act
22 you're referring to, risks arising from the
23 undertaking?---I would have to defer to your knowledge
24 of the section of the Occupational Health and Safety
25 Act. 11.04AM

26 I appreciate it's not your Act. The point of this
27 discussion really is that this table provides a highly
28 generalised division of responsibilities between
29 agencies that have overlapping areas of responsibility;
30 do you agree?---I think it's a way of being able to 11.04AM
31 categorise a number of elements and then being able to

1 determine over time how each regulator is best able to
2 address the full range of things in this table.

3 It does run the risk, does it not, that difficult areas to
4 regulate may fall between the gaps?---I don't know
5 whether I would describe it as difficult areas of 11.04AM
6 regulation that would fall between the gaps. This is
7 my observations and my working with VWA and with my
8 inspectorate, is that they understand the complexity
9 and the major risks that such a mine as Hazelwood
10 poses, and so I don't think it's seen as a way of being 11.05AM
11 able to or could enable major risks to fall through the
12 cracks. I think its approach was to ensure that - or
13 this table was identified as being areas of possible
14 overlap and we needed to come to an arrangement to
15 effectively review these areas, or oversight these 11.05AM
16 areas.

17 When I say "difficult areas of regulation", I'm referring
18 specifically to the risk of worked out batters catching
19 fire. Would you not identify that as a difficult area
20 of regulation?---I would identify it - and of course 11.05AM
21 what we now know since the fires of February is that
22 the risk of those worked out batters catching fire was
23 real, yes.

24 It was already real, there had been fires in worked out
25 batters in 2005 and in 2008?---There had been fires, 11.06AM
26 but they had been - without wanting to say a fire is
27 not a fire is not a fire, there was some differences to
28 those fires and I think the fires of February, with my
29 understanding, those suggested a fire of much greater
30 scale and outside of the knowledge of those that have 11.06AM
31 been regulating to date.

1 Because it burned for longer and involved more of the
2 mine?---And that its origins and, if you like, the
3 extent, yes.

4 There's nothing new about an open cut coal mine being
5 threatened by external fire, is there?---I believe that 11.06AM
6 they are at risk, yes.

7 That has been identified since at least 1944 with the fire
8 in the Yallourn Mine that was the subject of the
9 Stretton Royal Commission. It's identified in the
10 Regional Strategic Fire Management Plan that I just 11.07AM
11 took you to and it's identified in the mine's own Fire
12 Service Policy and Code of Practice. It's not a new
13 idea that an open cut coal mine might be threatened by
14 an external bushfire?---No.

15 And nor is it a new idea that the worked out batters might 11.07AM
16 catch fire?---No, I believe you'd be able to see some
17 of the documentation that's in that Fire Policy and
18 Code that would refer to ways and means of being able
19 to suppress or prevent fires in the worked out areas.

20 I'll come in some detail to that with other witnesses later 11.07AM
21 in the week. It's not a risk that no-one had
22 recognised before February 2014, is it?---I can only
23 comment about really my expertise and also within the
24 parameters of the MRSDA and that, given that it's not a
25 consideration for me as the regulator, that it doesn't 11.08AM
26 factor into our kind of oversight. However, I can't be
27 unaware of the other considerations that relate to fire
28 that the mine operator and other regulators consider as
29 well.

30 Your interpretation of this table is that, in relation to 11.08AM
31 the risk of the worked out batters catching fire,

1 whether from an internal source of ignition or an
2 external fire, that the Victorian WorkCover Authority
3 is the lead agency?---I would still see all the area
4 within the mining licence as being a workplace, as
5 people still use it, they still work in it and 11.08AM
6 therefore I would include those batters as part of the
7 work site, yes.

8 So the answer to that question was, yes?---Yes.

9 MEMBER PETERING: Ms Richards, before you move on, are you
10 still continuing? 11.09AM

11 MS RICHARDS: Please.

12 MEMBER PETERING: Ms White, the two bottom safety related
13 elements there, site rehabilitation planning and site
14 rehabilitation activity, the table indicates that the
15 DPI are the lead agency. Would site rehabilitation 11.09AM
16 cover fire mitigation?---In the case of the MRSDA, no,
17 it doesn't include fire mitigation other than in the
18 post mine end of life considerations along the lines of
19 what the site looks like and how to manage the risks
20 post the mine life. 11.09AM

21 What does site rehabilitation mean?---Site rehabilitation
22 under the legislation and the regulations refers to end
23 of mine life; that at the end of mine life a mine be
24 safe and stable and reflect a sustainable landscape.
25 In some cases the legislation refers to, if the area 11.10AM
26 can be returned to agricultural purposes that it be
27 done that way, but in this case that wouldn't be a
28 requirement given the level of disturbance, so it's
29 focused around being able to have a safe site that
30 could be put to another use at the end of the mine 11.10AM
31 life.

1 And your understanding of what year that is?---The current
2 timeline is about 2032.

3 So, would you agree there's an area of vulnerability between
4 the year, whenever this mine licence - the plan was
5 granted in 2009 and the year 2032?---For 11.11AM
6 rehabilitation, according to the MRSDA Regulation, it's
7 about progressive rehabilitation to ensure a safe and
8 stable environment; if you're referring to fire
9 mitigation, can I clarify, or fire risk identification?

10 Yes. Correct?---It's not currently included in the 11.11AM
11 rehabilitation plan and it's not in the MRSDA. That's
12 not to say that, following this Inquiry or with further
13 discussions with fire experts, it couldn't be included
14 in the future.

15 So, have you had discussions along those lines since this 11.11AM
16 particular outbreak of fire then?---Of course we've had
17 a lot of discussions about the fire and the fire in the
18 mine and the possible ways of being able to minimise
19 the risk in the future. I think from my perspective
20 the current framework, it means that being able to, if 11.12AM
21 you like, further those discussions it would mean I
22 think a more formal approach with the VWA and perhaps
23 the Fire Services to best deal with this matter and
24 bring all the expertise to the table. We don't
25 regulate fire, we don't have fire expertise, and then 11.12AM
26 we would also discuss the other, if you like,
27 conditions or constraints that we're aware of to be
28 able to get the best approach going forward.

29 We've had, if you like - I haven't had formal
30 discussions with VWA or the Fire Services Commissioner, 11.12AM
31 but informally of course we've looked at this situation

1 and looked at how it could happen, whether fire - we've
2 had just, if you like, the questions of whether it
3 would be possible to have fire mitigation included in
4 the rehabilitation plan.

5 It seems pretty amazing that something that's as large as 11.13AM
6 the current mine and its combustible nature doesn't
7 have any regulation about fire mitigation?---Not in the
8 legislation relating to the MRSDA, but there is in the
9 Occupational Health and Safety Act.

10 MS RICHARDS: Just before I leave this memorandum of 11.13AM
11 understanding between the Mine Regulator and Victorian
12 WorkCover Authority. At paragraph 82 you've extracted
13 clause 1.3 which governs the provision of advice. The
14 Mine Regulator's responsible for advising other
15 agencies, I take it, and the mine operator as 11.13AM
16 well?---That's right.

17 About sustainable development, including design, safe
18 operating standards, approval of work and operations
19 plan and protection of people and site rehabilitation:
20 VWA has responsibility for occupational health and 11.14AM
21 safety, dangerous goods including explosives and
22 licensing. Where does fire risk mitigation and
23 prevention fit? It could fit comfortably within both
24 of those descriptions?---It could other than, the
25 legislation under the OH&S makes a particular reference 11.14AM
26 to fire.

27 So, you would again say, with VWA?---That's my
28 understanding, yes.

29 Can we turn now to the 2009 work plan variation which you've
30 annexed as Attachment 12 to your statement. Part 9 11.14AM
31 which is at page 0074, so page 71, sets out the health

1 and safety management plan. I think you've explained
2 why that appears in the work plan notwithstanding the
3 transfer of responsibility for health and safety from
4 the Mine Regulator to the Victorian WorkCover
5 Authority, and that's because it took a while for the 11.15AM
6 regulations to catch up with the administrative
7 arrangements. Is that correct?---That's correct, yes.

8 Given that by the time this work plan was approved the
9 Victorian WorkCover had functional, if not legal
10 authority, was the health and safety aspect of the work 11.15AM
11 plan referred to the Victorian WorkCover Authority for
12 its assessment and advice?---I actually don't know if
13 that was the case or whether the mine operator provided
14 that directly to the Victorian WorkCover Authority.
15 I'd have to determine the process under which that 11.16AM
16 happened.

17 Because by this time the Mine Regulator's not doing health
18 and safety any more; is that correct?---That is
19 correct.

20 So presumably the staff you had who had been involved in 11.16AM
21 health and safety were no longer working in that area.
22 So who assessed the health and safety management aspect
23 of the revised work plan?---I will have to get some
24 information for you about how it was assessed and who.
25 My assumption though is, given that the changes had 11.16AM
26 already been made, the VWA would have been involved in
27 that assessment and there would have been requirements
28 under their own legislation and regulations that would
29 have covered the elements in this, but I will clarify
30 that. 11.17AM

31 Yes, because the 2009 work plan variation was the

1 culmination of a very long process that had gone on for
2 nearly 5 years that had the net effect of significantly
3 extending the mine licence area and the area that would
4 be mined into the future. Is that correct?---That's
5 right, yes.

11.17AM

6 It follows from that approval of the extension of the mine
7 that the worked out batters of the mine would over time
8 become a more significant proportion of the mine
9 area?---That's right, and that's why the rehabilitation
10 plan in 2009 provides, if you like, a program for
11 rehabilitation of worked out batters which, prior to
12 that time, the rehabilitation plan had really been
13 based on, the void would fill with water over a lengthy
14 period of time, so this is really the first time that
15 batters and their rehabilitation for long-term
16 stability has been incorporated.

11.17AM

11.18AM

17 It's the first time we really see any meat on the bones of
18 the rehabilitation plan?---That's right. Prior to that
19 it had been, fill the cavity or the hole with water and
20 then landscape those areas just above or beyond that,
21 yes.

11.18AM

22 We'll come to the rehabilitation plan in a moment, but this
23 is a very, very significant step in the life of the
24 mine, the 2009 work plan variation. You're extending
25 the mine by a large amount, the worked out batters are
26 necessarily going to become more because more of the
27 mine will be worked out over time, and the
28 rehabilitation requirements are going to be
29 significantly increased because there's going to be
30 more mine to rehabilitate.

11.18AM

11.18AM

31 It occurs to me that this would have been a good

1 point at which to review the suitability of the Mine
2 Fire Service Policy and Code of Practice; it was a
3 1980s document. Are you able to identify whether
4 either the Mine Regulator or the Victorian WorkCover
5 Authority registered that as a necessary part of this 11.19AM
6 overall extension process?---No, I can't answer your
7 question; I don't have the information relating to
8 that. I do know that the last time that our inspectors
9 had looked at that policy code/document was in 2007.

10 And that was in the aftermath of the fire in October 11.19AM
11 2006?---That's right, yes.

12 There was a review of the Mine Fire Service Policy and Code
13 of Practice in light of the recommendations of that
14 review?---That's correct, yes.

15 But here we're talking about a very significant step in the 11.20AM
16 life of the mine. I take it that the Mine Regulator
17 didn't say, "Well, we'd better review the suitability
18 of this policy that's been in place since 1984"?---No,
19 we - my understanding, and I'm just reflecting on the
20 research and information that I've been able to gather, 11.20AM
21 is we weren't involved in a review of such a kind and
22 we didn't ask for one.

23 It might be that the Victorian WorkCover Authority took that
24 opportunity, given that it's squarely within the health
25 and safety management plan?---I really can't comment on 11.20AM
26 that, I'm not familiar with what VWA might have done.

27 There is an area that is squarely within your remit which is
28 the rehabilitation bond. Clearly there's going to be
29 much more extensive rehabilitation of a much larger
30 mine required. Was there any discussion in 2009 or in 11.21AM
31 the lead-up to it of the need to reassess the

1 rehabilitation bond for the mine?---My understanding
2 was that the Department looked to review rehabilitation
3 bonds in 2010, so there was an intent to look at that.
4 That was then delayed or subsequently consumed with
5 other matters, and there were a few mine stability 11.21AM
6 issues that the Branch dealt with. More recently we
7 have re-established a review of rehabilitation bonds
8 and the methodology under which they are calculated.

9 Was that 2010 review prompted by the expansion of the
10 Hazelwood Mine in 2009 or the approval of the expansion 11.21AM
11 of the Hazelwood Mine, or by separate processes?---I
12 understand that there was some consideration at that
13 time, yes.

14 So, could you - - -?---I'm sorry, I don't have any more
15 information other than, my understanding at that time 11.22AM
16 was that it was considered that with the extension of
17 the mine and, if you like, the identified risks, that a
18 review of the rehabilitation bond should be considered
19 and part of the review was prompted by that.

20 Is it the case that there is no methodology for assessing 11.22AM
21 rehabilitation bonds?---No, we do have a methodology, a
22 current one for assessing rehabilitation bonds, but we
23 are currently in the process of reviewing that
24 methodology to see if we can determine a better
25 methodology for better identifying risk and the 11.22AM
26 appropriate way of being able to determine - know the
27 associated dollar amount.

28 Why could not the existing methodology be used to conduct at
29 least an interim reassessment of the rehabilitation
30 bond?---I'm not saying that it couldn't, of course it 11.23AM
31 could, yes.

1 This extension of the mine was approved nearly five years
2 ago, and yet there's been no reassessment of the extent
3 of the rehabilitation bond for a vastly expanded
4 mine?---No, it probably was started and then didn't end
5 up being completed. I would say, though, that the 11.23AM
6 rehabilitation bond that's held is different to the
7 rehabilitation that GDF Suez are required to do as part
8 of their mining licence and part of the work plan, and
9 so regardless, if you like, and I use that term not
10 definitively, but regardless of the bond they are still 11.24AM
11 required to rehabilitate according to the work plan and
12 the rehabilitation plan, which may amount to more or
13 less millions to do that work.

14 You're referring there, I take it, to their requirement to
15 progressively rehabilitate the mine?---That's right, 11.24AM
16 which is still a requirement of the licence.

17 Why don't we go to what those requirements are. You
18 referred a little earlier to the fact that there was a
19 significant change to the rehabilitation plan with the
20 2009 work plan variation. It's fair to say that prior 11.24AM
21 to this the rehabilitation requirements, particularly
22 for the end of the mine 's life, had been a bit
23 vague?---There had been a master or concept plan
24 arrangement in place, yes.

25 I say "vague", you say "concept plan". But there had only 11.25AM
26 been a fairly general idea that the mine would be
27 filled with water and there'd be some landscaping; the
28 specifics hadn't actually been pinned down in any
29 plan?---No, you're quite right. The reference was that
30 there would be filling of the void over many years. 11.25AM

31 That's going to take a lot of water?---It was going to take

1 a lot of water, and I think at the time or leading into
2 getting the variation approved - so there had been a
3 number of iterations with GDF Suez or discussions with
4 GDF Suez about a revised rehabilitation plan, was that
5 filling the void may not be achievable, and that there 11.25AM
6 may need to be an alternative plan to, if you like,
7 fill the void to a more practicable level or a level
8 that was more likely upon the mine life ending and then
9 the rehabilitation above that water line, because there
10 still is a plan to have water in the base of the mine, 11.26AM
11 and then above that water line there would be a greater
12 deal of rehabilitation to provide a safe and stable
13 environment and one that would best fit within the
14 landscape.

15 To be clear, you start at paragraph 85 of your statement 11.26AM
16 about rehabilitation of the mine. You've discussed
17 this already with Ms Petering, but the aim of
18 rehabilitation is to leave the mined area in a safe and
19 stable state that is capable of non-mining use at the
20 end of the mine life. Have I understood that 11.26AM
21 correctly?---That's right, yes.

22 So fire protection is a desirable by-product of that process
23 but it's not the main aim of the process?---I think
24 that's probably the right way of categorising it, that
25 the considerations relating to rehabilitation at the 11.27AM
26 end of mine life would be seen to have that safe and
27 stable environment, particularly in regards to how the
28 site would be revegetated, that it didn't increase or
29 pose an additional fire risk after that time.

30 Again returning to Attachment 12, if we can go to figure 6.1 11.27AM
31 on page 52 of the document. There are four blocks of

1 rehabilitation required under this plan, if I've
2 understood that correctly. The first of those is that
3 rehabilitation work is to be done in the areas that are
4 marked red on this map, and at the end of mining of
5 block 1C which is marked on the western side of the 11.28AM
6 map. To be clear about the timing of that, the
7 completion of mining of block 1C is proposed to be in
8 2019?---That's right, but once again that's, if you
9 like, the time is really dependent on when block 1C is
10 complete. So there may be a bit of movement in the 11.28AM
11 actual date or time, but that's the objective.

12 So it might finish earlier, it might finish later?---That's
13 right.

14 The intent of this plan is that, at the completion of mining
15 of block 1C this rehabilitation work will be completed; 11.29AM
16 is that correct?---That's our understanding, yes. Just
17 with that, though, given that block 1C, its completion
18 and that some of that overburden would, if you like, be
19 the last overburden or the last suitable overburden,
20 that it would finish maybe a little bit later, but the 11.29AM
21 bulk of it would be done by that time.

22 Looking at the work plan, the overburden mining is completed
23 some years before the winning of the coal?---That's
24 right.

25 So the overburden would be available well before the 11.29AM
26 completion of the mining of the coal in 2019?---I don't
27 disagree that all of the overburden would be large -
28 well, I don't disagree that most of it would be
29 available, I'm just saying there just could be just one
30 last area that at the end of the mine life - at the end 11.30AM
31 of, sorry, block C that would need to be re-distributed

1 at that time.

2 Mr Faithfull in his statement tells us that the

3 rehabilitation work that's marked in red on this map is

4 to commence at the end of block 1C. Is that your

5 understanding of the timing?---I don't agree with 11.30AM

6 Mr Faithfull's assessment of that.

7 Your assessment would be that the rehabilitation work would

8 be completed when block 1C is completed?---That's our

9 understanding.

10 To move through the next diagrams, that's block 1C, and if 11.30AM

11 things proceed as planned we can expect to see that

12 rehabilitation work completed in 2019. The second

13 block is block 2B on the following page, and the

14 additional rehabilitation work that's to be completed

15 at the end of that block is marked in blue on that 11.31AM

16 map?---Yes.

17 We see there it's the eastern and southeastern batters area.

18 That is to be completed, if things proceed according to

19 the work plan, by 2028; is that correct?---That's

20 right, yes. 11.31AM

21 The remaining two blocks, and we can probably look at this

22 just on figure 6.4 because they're both marked, the

23 yellow is the area to be completed at the end of

24 block 3 and the green is the area of rehabilitation to

25 be completed at the end of block 4, which includes the 11.31AM

26 Hazelwood Ash Retention Area in the northeastern

27 corner. Both of those blocks are expected to be

28 completed in 2031; is that correct?---That's correct.

29 Which is the planned end of the mine?---That's right at this

30 stage. 11.32AM

31 We do have a situation where the bulk of the rehabilitation

1 work is to be completed by the end of the forecast
2 mining licence period?---I think we would see that
3 there are a number of parts of the mine that would be
4 rehabilitated during the next - if you like, to the end
5 of the mine life period, and so, if you like, the 11.32AM
6 rehabilitation that's currently underway on the base
7 and then on elements of the eastern and northern
8 batters relate to the overburden that's proposed, and
9 the same goes for each of the, if you like, the steps
10 of the rehabilitation by 2031/2032. 11.33AM

11 In terms of actual work to rehabilitate the batters,
12 including the batters that are currently worked out and
13 won't be mined further, the work that is to be
14 completed in five years' time is the work marked
15 red?---Yes. 11.33AM

16 And then in another 14 years' time we can expect to see the
17 southern and southeastern batters
18 rehabilitated?---That's correct.

19 But the bulk of the work is not required to be done until
20 the end of the licence?---The remaining areas that 11.33AM
21 would complete the batter rehabilitation, that's
22 correct.

23 Just to be completely clear, the blank area where there's no
24 colour, the plan is that that would be filled with
25 water; is that correct?---There will be water in the 11.34AM
26 base of the mine, yes.

27 Although it's forecast that that would take some years to
28 fill?---That's right. The 2009 plan talks about a
29 level of water that is anticipated within - less than a
30 decade and then it would slowly perhaps - it would fill 11.34AM
31 slowly above that. Previous to that they were looking

1 at fill timeline of perhaps up to 500 years to fill the
2 void.

3 By which time you won't be in your current role?---I'd hope
4 not.

5 Again, the filling of the void with water is to commence at 11.34AM
6 2031?---The filling of the void would commence
7 following all of the operations and all of the
8 infrastructure; all of the operations ceasing and all
9 of the infrastructure being removed. There are other
10 considerations, though. A geotechnical specialist or 11.35AM
11 perhaps GDF Suez would comment on the need to be able
12 to keep the floor of the mine stable for a period of
13 time so that the pressures from the aquifers below the
14 mine level don't push up through the floor of the mine
15 and then lead to other, if you like, risks to the 11.35AM
16 stability. So over time there would need to be
17 sufficient material put on the floor of the mine and
18 then water would then fill and there would still be a
19 period of time where they might need to manage both
20 until it reaches a suitable or safe equilibrium. 11.35AM

21 The shaping of the batters and the replacement of
22 overburden, most of that work, as I understand the
23 current schedule, is planned to occur in the last three
24 years of the licence period?---It will occur - most of
25 the batter shaping will occur at the time of the 11.36AM
26 rehabilitation as indicated, but you've identified that
27 most of the batters are in later years, yes.

28 So that's the areas coloured in yellow and green on this
29 map?---That's right.

30 MEMBER PETERING: Just a couple of points of clarification, 11.36AM
31 please. Ms White, can we go back to the plan of 6.1

1 which is the end of block 1C. My understanding of what
2 I heard you say was that it was the Mine Regulator's
3 point of view that those red areas would be completed
4 by 2019?---That's correct, yes.

5 Could I just get a sense, how long do you think it would 11.36AM
6 take to undertake those bits of work to rehabilitate
7 those red areas?---Parts of those red areas are already
8 under rehabilitation now, so they're already being
9 addressed and parts have not. Just to point out the
10 most obvious area, overburden is being put on the mine 11.37AM
11 floor in that large triangular piece.

12 Would you like to use the famous ruler with the sticky thing
13 on the end to point those out.

14 MS RICHARDS: You win the prize for the witness with most
15 volumes, Ms White; no-one else has got to three yet. 11.37AM

16 MEMBER PETERING: Could you just repeat what you just said?
17 What you're pointing to us is?---I'm talking about
18 where rehabilitation or, if you like, where overburden
19 is currently being placed from the coal (indistinct)
20 operations. We have material already going into this 11.37AM
21 area here within the mine.

22 That's the only part that's been rehabilitated, that large
23 rectangle in the south?---I would have to confirm that
24 there have been other areas rehabilitated along here
25 not shaded red which were done prior to 2009. I'd have 11.38AM
26 to also refer to other documents to see if in part
27 further of this northern batter had been done. But
28 by-in-large the material that is currently being
29 extracted or the overburden is largely unsuitable to go
30 on the batters; it's more suited to go on the mine 11.38AM
31 floor.

1 So, who comes along and reviews the rehabilitation? Whose
2 role is it to do that?---My inspectorate.
3 Is that the local person?---Yes, based here in the valley,
4 yes.
5 And that's Mr Hayes?---No, the inspector here is Anne 11.38AM
6 Bignell. She reports to the Chief Inspector of Mines
7 or the General Manager of Operations.
8 Is that an annual visit?---Regularly inspectors visit the
9 mine to undertake a range of activities, including
10 progress with the work plan or if work is in accordance 11.39AM
11 with the work plan.
12 How often do they visit?---My understanding is they've
13 visited the mine at least - or discussed with the mine
14 management at least 12 times in the past 12 months and
15 that wouldn't be unusual. They would have regular 11.39AM
16 interactions with the operator of the mine relating to
17 their work plan and any undertakings.
18 As far as I understand, the current bits of red on this map
19 have to be completed by 2019 and I was asking you about
20 timing, so that still gives another five 11.40AM
21 years?---That's right, on the current schedule.
22 And so it's quite foreseeable that those remaining areas
23 could still be rehabilitated in five years?---That's
24 right, that's what we'd be seeking. Our assessment of
25 work plans would be about reaching that requirement or 11.40AM
26 those areas would be completed by then.
27 Just one other point of clarification. Ms Richards drew us
28 to progressive rehabilitation in the work plan, so
29 that's paragraph 6.5 which is on page 0752 of this
30 document. Could you just explain to me, "Progressive 11.40AM
31 rehabilitation staging/sequencing"? The

1 paragraph there reads, "There are two major tasks to be
2 completed using overburden: (1) Coverage of coal
3 batters to provide fire protection." Could you explain
4 to me what that paragraph is in relation to progressive
5 rehabilitation?---Progressive rehabilitation is a 11.41AM
6 requirement under the MRSDA, it's intended to ensure
7 that rehabilitation occurs in a timely way and reduces
8 or minimises the risks of unstable batters or other
9 aspects relating to instability. It also means that,
10 if you do progressive rehabilitation, if you like, the 11.41AM
11 liability for the entire rehabilitation is not left to
12 the end of mine life.

13 GDF Suez have provided this rehabilitation and
14 indicated that by doing this approach they will enable
15 fire protection, as well as ensure that they can grow 11.41AM
16 native vegetation. That's the approach that they're
17 adopting with this. They'll cover the coal batters to
18 provide fire protection and enable vegetation to grow
19 over the batters.

20 But I thought I heard you say that the DSDBI don't regulate 11.42AM
21 the coverage of the coal batters to provide fire
22 protection?---No, we don't, but GDF Suez have made this
23 comment, that the batters will be protected in such a
24 way that it will enable this.

25 And so, is that part of these rehabilitation parts that 11.42AM
26 we've just gone through in 1C and 2B? Is that linked
27 somehow?---The aspects that I look for or that my
28 inspectors look for are those that relate to ensuring
29 that the progressive rehabilitation deals with mine
30 stability and ensuring that we've got a stable land 11.42AM
31 form.

1 MS RICHARDS: In 2019 when we expect that the mining of
2 block 1C will be completed, what happens if Ms Bignell
3 or her successor arrives at the mine to find that the
4 rehabilitation that's required by the work plan hasn't
5 happened, for example because Mr Faithfull doesn't 11.43AM
6 think he needs to commence doing it until block 1C has
7 been fully mined? What enforcement or compliance
8 action can the inspector take?---I'm sure there would
9 be many conversations prior to that point in 2019 to
10 ensure that, if you like, that position is not left in 11.43AM
11 any doubt. I would say that there would be avenues to
12 correct any misunderstanding.

13 If we did get to that point in 2019 we could issue
14 notices or a penalty notice; s.110 for example which we
15 discussed earlier which has considerable powers 11.44AM
16 relating to rectification or management of particular
17 issues, so we can use those provisions.

18 So there could be an escalating compliance response?---Yes.
19 With the ultimate response being a stop work
20 notice?---Ultimately, if that was required, yes. 11.44AM

21 MEMBER CATFORD: Could I just ask a question, I'm trying to
22 follow the discussion. Who decided which areas to
23 rehabilitate and the timing of that? Does your
24 Department engage in that discussion?---We do engage in
25 the discussion but it's the responsibility of GDF Suez 11.44AM
26 to outline their rehabilitation plan to make sure that
27 they meet the requirements of the work plan. It will
28 be largely in GDF Suez's responsibility to identify how
29 they would do it. But I would say, they do that with
30 discussions with our inspectorate or with Earth 11.45AM
31 Resources Regulation, and those kind of discussions

1 would ensure that both ourselves and they had a shared
2 understanding of what were some of the limitations or
3 considerations in determining the pattern of
4 rehabilitation.

5 For example, and I'll just use this as an example, 11.45AM
6 the northern batters have a lot of infrastructure
7 adjacent to them relating to the mine's operations,
8 including the groundwater bores and ponds and
9 horizontal drainage into that batter. In those
10 discussions those kind of things would come up in those 11.45AM
11 discussions which would help us understand the pattern
12 for how rehabilitation would be carried out.

13 So you don't actually exercise any requirements about where
14 to rehabilitate, is that right? You're basically an
15 observer?---I don't know whether - being a passive 11.46AM
16 observer? I don't think that would be a good
17 description. I think the 2009 variation to the work
18 plan, which included the rehabilitation plan, was
19 prompted largely by the Department saying that we
20 didn't think the existing plan was going to work, and 11.46AM
21 so what was an alternative and how would we be able to
22 rehabilitate the batters above the water level. So, I
23 don't think "observer "in a passive sense is the way I
24 would describe it, I think it's more actively involved,
25 but it leaves, as is the right thing to do, the 11.46AM
26 responsibility for the plan is GDF Suez to prepare and
27 then undertake.

28 Could I just finally ask a question about your engagement in
29 fire prevention. Given that fire to stop the economic
30 production of the mine and power station, wouldn't the 11.47AM
31 Department have a view then about that, albeit maybe

1 workplace safety might be WorkCover's responsibility?
2 Under the Act the purpose is to encourage the use of
3 these natural resources, so if fire was preventing
4 that, and certainly we heard the fire came very close
5 to the power station and production could have stopped, 11.47AM
6 wouldn't the Department be actively interested in
7 avoiding such an event like that?---As the regulator I
8 don't have an interest in that particular matter other
9 than - and I'll provide some context, that the mine is
10 intended to provide coal to the power station, so its 11.47AM
11 overall objective is to be a mine that produces coal.
12 However, the matters relating to fire in the mine are
13 covered under the Occupational Health and Safety Act;
14 that's the way our regulatory framework has been
15 determined or divided between the regulators. If you 11.48AM
16 like, the matters relating to power supply and whether
17 that may be impacted are more of an interest in, if you
18 like, the energy sector development part of DSDBI, not
19 in my own.

20 Just finally, has that section expressed an interest in, if 11.48AM
21 you like, the sustainability of production and whether
22 regulation could assist that process?---I'm not aware
23 of a discussion such as that, no.

24 MS RICHARDS: While we're discussing the rehabilitation plan
25 that's in place, I'd like to raise with you a matter 11.49AM
26 that was raised by the Technical Review Board in its
27 most recent annual report, which is the replacement
28 Attachment 46 to your statement. It's in the executive
29 summary on page 4 of the document. At the very bottom
30 of the page there's a paragraph that reads, "The TRB 11.49AM
31 remains of the opinion that the original measures

1 proposed for the rehabilitation of the Latrobe Valley
2 mines [that's all three of them] fall well short of
3 what could reasonably be considered as adequate for
4 achieving long-term safe and stable batters from a
5 ground control perspective. Experience is now
6 revealing that rehabilitation is a far more complex
7 matter than envisaged when rehabilitation plans were
8 developed as part of the work plans for the mine.
9 Progress is being made in addressing these
10 shortcomings."

11.50AM

11.50AM

11 The Technical Review Board, as the title suggests,
12 is a Board appointed by the Minister under the Mineral
13 Resources (Sustainable Development) Act to provide
14 expert advice and it was prompted by a number of mine
15 stability issues both at - I think principally at
16 Yallourn?---That's right, there was a batter collapse
17 at Yallourn.

11.50AM

18 And subsequently there have been issues at

19 Hazelwood?---There has been, yes, with the northern
20 batter.

11.50AM

21 So mine stability is very much the Technical Review Board's
22 area of expertise. That paragraph identifies an
23 ongoing concern on the part of the Technical Review
24 Board about the adequacy of rehabilitation plans to
25 achieve long-term stability. That's not the first time
26 that opinion's been expressed by the Board, is
27 it?---No, they've expressed that prior to now, and in
28 previous reports or documents about stability they have
29 made reference to the fact that the brown coal mines in
30 the Latrobe Valley have complex stability issues that
31 have perhaps been underestimated or not adequately

11.50AM

11.51AM

1 characterised in the past.

2 How is that concern that's been expressed by the Technical
3 Review Board, most recently in its annual report for
4 the last financial year, how is that being addressed
5 with the rehabilitation plan for the Hazelwood 11.51AM
6 Mine?---The comments there are related to, as you've
7 outlined, to mine stability and the way that that is
8 being addressed is that we do annual geotechnical
9 audits of all the mines including Hazelwood. There is
10 a requirement for Hazelwood to prepare a ground control 11.52AM
11 management plan, and that is in preparation, that's a
12 primary means of being able to deal with mine
13 stability. There are ongoing monitoring of the
14 northern batters, real-time monitoring, there are a
15 series of infrastructures that have been built into the 11.52AM
16 northern batter to drain water out of the batter,
17 horizontal bore holes, horizontal holes, and there is
18 constant pumping and monitoring of the groundwater
19 levels.

20 My question was related specifically to rehabilitation plans 11.52AM
21 and the adequacy of the rehabilitation plans to achieve
22 long-term stability. This concern is expressed in
23 relation to the Latrobe Valley Mines, which I assume
24 includes Hazelwood ?---That's right, yes.

25 The Technical Review Board appears to be of the opinion that 11.52AM
26 the rehabilitation plan for all of the mines is not
27 adequate?---They refer to inadequacies in the
28 consideration of being able to address mine stability
29 issues adequately, that's what they're referenced to
30 and it's further elaborated on page 12 of the same 11.53AM
31 report.

1 So, take us to that?---Page 12 at the bottom of the page,
2 it's almost - - -
3 Word-for-word that paragraph?---"What could reasonably be
4 considered as adequate for achieving long-term safe and
5 stable batters from a ground control perspective." 11.53AM
6 That's a pretty serious concern - - -?---It is.
7 - - - being expressed by an expert group appointed to
8 express concerns about long-term stability issues;
9 what's being done?---That's what I was just
10 articulating around what's being done at 11.53AM
11 Hazelwood - - -
12 Specifically in relation to the longer term rehabilitation
13 plan?---The longer term rehabilitation plan will
14 incorporate - a ground control management plan is a
15 significant document, it talks about how the mine will 11.54AM
16 be retained in a safe and stable manner, it describes
17 the way the mine will work and better addresses the
18 requirements. Under the mines - - -
19 During the life of the mine?---During the life of the mine
20 and to enable it to be stable into the future. In 11.54AM
21 addition to that, the legislation and the regulations
22 define these mines as "declared mines", which means
23 that the mine operators are required to monitor perhaps
24 more often and more regularly and provide data to
25 support that their operations are occurring in a safe 11.54AM
26 and stable manner, so there are additional requirements
27 that Hazelwood and the other two Latrobe Valley Mines
28 are required to undertake.
29 In addition, we take the Technical Review Board's
30 observations and recommendations very seriously and 11.55AM
31 we've been able to incorporate a range of other

1 components; we've established a coal mining centre of
2 expertise at Federation University and things like that
3 to be able to build the capability of mine operators
4 and managers.

5 Has there been a review of the rehabilitation plan of the 11.55AM
6 Hazelwood Mine in light of this concern expressed by
7 the Technical Review Board?---I believe that the
8 rehabilitation approach as identified in the work plan
9 is consistent with the Technical Review Board's
10 understanding of what the rehabilitation program and 11.55AM
11 timing is. I believe the Technical Review Board,
12 though, what they're actually referring to is the
13 understanding and the necessary needs to keep batters
14 stable have not been adequately addressed, and with the
15 mine management and mine operators and ourselves, we 11.56AM
16 are attempting to better understand the risks and make
17 them stable.

18 I'm still not clear on the answer to my question. This
19 paragraph identifies very squarely as a concern the
20 adequacy of the rehabilitation plans for the mines 11.56AM
21 including Hazelwood. Has the rehabilitation plan for
22 Hazelwood been reviewed in light of this concern?---It
23 hasn't been reviewed in light of this concern, largely
24 because the report is not very old, it's only just been
25 released. But the considerations that they talk about 11.56AM
26 will be an ongoing feature of how we require
27 rehabilitation to be considered.

28 So the next question is, can the Mine Regulator, or
29 alternatively the Minister, prompt a review or require
30 a more stringent rehabilitation plan under the 11.57AM
31 MRSDA?---Yes.

1 Yes?---Yes.

2 Can you explain the mechanism for that? How does that
3 occur?---Either the Minister - the Department, the
4 Minister or the mine operator can seek a change.

5 I'd like to ask you about the rehabilitation bond that was 11.57AM
6 fixed for the Hazelwood Mine. In your first statement
7 you said you were not able to shed any light on how the
8 figure of \$15 million was arrived at, which is fair
9 enough, you weren't in the role in 1995, but since then
10 you have been able to uncover some documents that do 11.57AM
11 shed some light on that. They are set out in your
12 supplementary statement.

13 Again, I'll just put my summary understanding to
14 you and check whether I've got it right. Initially the
15 Mine Regulator at what was then the Department of 11.58AM
16 Agriculture, Energy and Minerals, so the predecessor of
17 DNRE, fixed the \$15 million on an interim basis while
18 estimates of costs were obtained from the mine
19 operator. Is that correct?---That's my understanding
20 of what happened. 11.58AM

21 Then there were some estimates provided and you've been able
22 to uncover one of the two documents or letters in which
23 detailed cost estimates were provided by the Hazelwood
24 Power Corporation. Then advice was provided. There's
25 a one-page brief that's provided to the acting 11.59AM
26 Executive Director, Resources Development from the
27 Manager, Minerals Petroleum and Operations on
28 4 December. As I understand it, the estimates
29 indicated that the total current liability for
30 rehabilitation was in the order of \$20 million, if we 11.59AM
31 can go to that document. This is at Annexure 49 to the

1 supplementary statement.

2 As I understand it, the total current liability
3 for rehabilitation was assessed then at \$20 million.
4 The practice at the time was to base a rehabilitation
5 bond on an estimate of the worst case liability, so if 12.00PM
6 the mine operator does no rehabilitation work during
7 the life of the mine; is that correct?---It's
8 generally, the rehabilitation is required to reach the
9 minimum standard that would be acceptable or
10 appropriate. 12.00PM

11 But the usual practice in setting a rehabilitation bond was
12 departed from in this instance because it was
13 considered unlikely that the mine would close before
14 its scheduled end of life and that it would not do the
15 progressive rehabilitation required of it?---It does 12.01PM
16 seem that - I can only go by what I see in the same
17 brief, is that they made some - if you like, they made
18 some context related discussion as to why they came up
19 with a different figure.

20 And a critical part of that was a requirement that the 12.01PM
21 company continue progressive rehabilitation and meet
22 its progressive rehabilitation obligations?---That's
23 right, yes.

24 I think we've already established that the amount of the
25 rehabilitation bond has not been re-assessed since 12.01PM
26 1995?---That's right, it was reviewed I understand in
27 2001 and it wasn't changed.

28 Was it a review of the amount of the bond in 2001?---I can
29 only say that they considered the bond as it was and
30 didn't change it, yes, as it currently stood at 12.01PM
31 \$15 million.

1 The approval of the expansion of the mine in 2009 may have
2 prompted - - -?---Yes.

3 - - - a review of the assessment methodology used by the
4 Mine Regulator for assessing rehabilitation bonds but
5 has not yet resulted in any reassessment of the

12.02PM

6 bond?---No. My understanding is that there was no
7 reassessment of the bond. I do believe, though, that
8 discussions were probably held at the time with GDF
9 Suez around whether the bond should be amended, but I
10 don't believe that there was any formal correspondence
11 at that time. I would say, though, that we've
12 re-invigorated, if you like, the bond and the
13 methodology, the rehabilitation bond and its
14 methodology over recent months. We did commence that
15 before this fire.

12.02PM

12.03PM

16 What's the reason why it's taken four years to - or it's
17 four years since you began reviewing the assessment
18 methodology and still you have no new assessment
19 methodology for rehabilitation bonds?---I really can't
20 comment on what happened prior to my time, other than
21 that it did appear from the records that there was an
22 intent to review rehabilitation bonds and that, as a
23 priority, I can only say that it just went down the
24 list, other matters happened that needed the attention
25 of the regulator, but we are attempting to rectify that
26 now.

12.03PM

12.03PM

27 You would agree, would you not, that it is time to review
28 the rehabilitation bond that's required of GDF
29 Suez?---We consider that, yes, that would be the case,
30 along with other mines.

12.03PM

31 It's highly unlikely that \$15 million would be adequate to

1 complete the rehabilitation works that are required at
2 the end of the 2031 licence period?---I believe that
3 you're correct with that assessment, though I would say
4 that GDF Suez are still required to do rehabilitation,
5 as I said earlier, regardless of the bond that's held, 12.04PM
6 yes.

7 What happens, and I'm not suggesting that this would be the
8 case for a moment, but what happens if at the end of
9 the licence period the licensee walks away without
10 completing its rehabilitation obligations?---If that's 12.04PM
11 the case, the bond can be withheld; there is also
12 another provision in the legislation that enables the
13 Minister to undertake the rehabilitation and then seek
14 the compensation for that from the mining licence
15 holder. 12.05PM

16 It's only the licensee that the Minister could look to for
17 compensation?---I would have to double-check that, but
18 I believe it's the licence holder, yes.

19 And so, the extent of compensation that the Minister might
20 recover would be limited by the assets of the licence 12.05PM
21 holder?---I can't estimate the amount, but there are
22 provisions in the legislation to seek the full costs of
23 any other rehabilitation that the Minister may seek or
24 may say is required.

25 The reason for having the rehabilitation bond is really by 12.05PM
26 way of a guarantee, is it not?---That's right, yes.

27 And so, it would be important that the rehabilitation bond
28 at least approximate the likely cost of the Minister
29 having to undertake the rehabilitation works?---It
30 could be in the same ballpark or vicinity of what the 12.05PM
31 Minister's costs could be. Look, there's no doubt that

1 a rehabilitation bond should reflect the risk profile
2 and be proportionate to the risks, and \$15 million in
3 today's terms seems to be an underestimate.

4 Particularly in light of the very large expansion of the
5 mine in recent years?---Yes. 12.06PM

6 Can I move now to another area and that is the history that
7 you've provided us in section E of your statement of
8 outbreaks of fire at the mine and can I thank you for
9 the very detailed outline that you've given.

10 Before I move into that history I just want to ask 12.06PM
11 you about the power or the requirement to notify the
12 Chief Inspector of Mines, and you refer to this at
13 paragraph 121 of your statement. The requirement to
14 notify the Chief Inspector of Mines is a reportable
15 event. A reportable event covers a whole range of 12.07PM
16 matters but includes a major outbreak of fire. A
17 number of the other reportable events are also matters
18 that one would expect would be in the area of the
19 Health and Safety Regulator's responsibility; is that
20 correct?---That's right, yes. 12.07PM

21 Are you able to enlighten the Board about what is the
22 purpose of that requirement to notify the Chief
23 Inspector of Mines of these reportable events that
24 would probably also have to be notified to VWA?---I
25 consider that it's a matter to be reported because it 12.07PM
26 may have an impact on the day-to-day operations or the
27 mining methods that are included in the work plan. It
28 could also have an impact of fire of a kind, may have
29 an impact on mine stability or other areas that we have
30 an interest in, and so it's a way of being able to 12.08PM
31 notify the Chief Inspector, of the Chief Inspector to

1 have a view about if there's any additional
2 requirements or whether we need to have an additional
3 interest.

4 Is there a routine consultation with the Victorian WorkCover
5 Authority that occurs after one of these 12.08PM
6 notifications?---I don't believe so. I would say that
7 we haven't had many notifications of this type.

8 It's a relatively new requirement, is it not?---That's
9 right, yes.

10 In fact, the notification of the fire in February 2014 at 12.08PM
11 the Hazelwood mine was the only notification of a major
12 outbreak of fire under this provision in
13 Hazelwood?---That's right.

14 The notification can just be oral, can be a telephone call
15 or a face-to-face conversation?---That's right, it 12.08PM
16 doesn't specify the nature of the contact or the
17 report.

18 So it can be in oral or in writing but, once the initial
19 notification has been made, the Chief Inspector can
20 request a detailed written report, can he not?---That's 12.09PM
21 right.

22 That report can request details of the impact of the event,
23 including on public safety, the likely causes, actions
24 that's been taken to minimise the impact and,
25 critically action that will be taken to prevent a 12.09PM
26 recurrence of the event. Has Mr Mitas requested such a

27 detailed written report in relation to this fire?---No,
28 he hasn't, and that is largely in response to the fact
29 that the fire continued for a long period, and during
30 that time it was determined that there would be an 12.09PM

31 Inquiry, and so, in discussions we agreed that there

1 would be the opportunity, and in fact the terms of
2 reference for the Inquiry were adequate to meet our
3 requirements for the mine fire.

4 Understood. I appreciate that what you've set out about
5 earlier fires is from what you've been able to extract 12.10PM
6 from archives and that you had little if any personal
7 involvement. I do want to ask you about a couple of
8 the more recent fires, and if we can move to
9 paragraph 156 where you deal with the fire that ignited
10 on 30 December 2005 in an old fire hole in worked out 12.10PM
11 batters in the southeastern corner of the mine. There
12 was a report prepared which you've provided to us at
13 paragraph 40 which was commissioned by the mine
14 operator, so it was a report for their own internal
15 uses. Have you been able to identify whether there was 12.11PM
16 any follow-up with the mine operator by the Mine
17 Regulator in relation to the implementation of the
18 recommendations made in that report?---I have no other
19 further information that I can add to that other than
20 that subsequently the mine operator produced a report 12.11PM
21 to say that they had undertaken the investigation and
22 they would deal with the matters as outlined in the
23 mechanisms that they've got there. I only have that
24 information to say that they would do that. I have no
25 reason to believe that they didn't undertake those. 12.12PM

26 This wasn't one of the fires where an inspector attended and
27 required certain action to be taken?---In this case my
28 understanding is that an inspector did - was notified
29 and was involved, but I'm not other than - I don't know
30 whether there was any further work that was undertaken 12.12PM
31 by an inspector some time after this.

1 That contrasts with the situation in relation to the 2006
2 fire, the October 2006 fire which you deal with
3 starting over the page at paragraph 158. You've
4 identified that there was an investigation jointly by
5 the CFA and the DPI and you've provided us with copies 12.13PM
6 of both the CFA's report and also the GHD report
7 commissioned by Hazelwood.

8 Then you identify at paragraph 167 that an
9 Inspector of Mines issued an improvement notice to the
10 licensee to require with the GHD recommendations. Is 12.13PM
11 that a standard compliance step after a major
12 incident?---I think it would be the case that at that
13 time the Inspector of Mines was responsible for
14 occupational health and safety as well as other matters
15 for the Mineral Resources Development Act. 12.13PM

16 As well as there being a report that records the causes of
17 the mine and the possible factors that influenced the
18 course of the fire, there are a number of
19 recommendations and these were given real teeth,
20 weren't they, by the serving of an improvement 12.14PM
21 notice?---That's correct.

22 Then, as you identify, from the beginning 2008 DPI, as it
23 still was, was not responsible for health and safety
24 and so we can look to VWA for action it took in
25 relation to the 2008 and 2012 fires?---That's correct, 12.14PM
26 yes.

27 The last area in your statement is Part G headed, "Review".
28 This is in response to an invitation to identify
29 whether there should be any changes to the regulatory
30 framework, either within the legislation that you 12.15PM
31 administer, or in relation to the division of

1 responsibility between your agency and other agencies.
2 Can you talk to the Board about the issues that you've
3 identified that may need to be addressed? One of those
4 relates to the prescriptive approach that's currently
5 taken in the MRSDA Act?---That's correct, yes. The 12.15PM
6 MRSDA Act as it currently exists is written in a
7 prescriptive form, so it provides a range of
8 considerations that are to be considered, for example
9 work plans or rehabilitation plans. That differs to,
10 if you say, more contemporary models which are based on 12.16PM
11 an outcomes focused or risk based analysis, and then
12 all risks are to be identified and then the mitigations
13 provided and then assessed as to their suitability or
14 not.

15 It has been identified that a prescriptive 12.16PM
16 approach may need to be modified to have more of that
17 risk based or outcomes focused regulations in the
18 future and that's been the subject of some recent
19 amendments to the legislation.

20 Which you identify in paragraph 184. We will then see a new 12.16PM
21 set of requirements for a work plan and what has to be
22 contained in a work plan. (b) and (c) are of
23 particular interest in the current context, so a work
24 plan needs to identify risks that the work may pose to
25 the environment, to any member of the public or to land 12.16PM
26 or property in the vicinity of the work, and to specify
27 what the licensee will do to eliminate and minimise the
28 risks as far as reasonably practicable. So to my mind
29 that includes the risk that worked out batters might
30 catch fire and burn for some time causing Morwell to be 12.17PM
31 blanked in smoke. Do you share that assessment?---They

1 could. They're very broad, if you like, provisions
2 that will be included. I believe, though, that I
3 should just mention that, if the VWA or the
4 Occupational Health and Safety Act already has the
5 provisions, there would need to be considerations so 12.17PM
6 that they weren't duplicative, but it does provide a
7 much broader assessment of risks than we currently have
8 now with the work plan that I have to currently
9 oversight.

10 You tell us that that provision's likely come into effect in 12.17PM
11 2016; that seems like a long lead-in period. Are you
12 able to explain that?---As the administrator of the
13 regulations, I don't actually submit these changes,
14 that's from the regulatory policy part of the
15 Department, but I would say, given that the process 12.18PM
16 that we would need to follow or that would need to be
17 followed to administer these or to introduce these
18 would probably require a regulatory impact statement
19 which takes a lengthy period of time, and I would think
20 the 2016 default date probably reflects that. 12.18PM

21 So it's the "must commence by", "if not proclaimed by will
22 come into effect"?---Will come into effect, yes.

23 Is there a need to put regulations in place to underpin this
24 change to work plan contents?---I believe that's the
25 most effective way to be able to articulate clearly to 12.18PM
26 licence holders and the public what is meant by these
27 changes, but sometimes regulations do sometimes follow,
28 but I think the best process or the best principle to
29 follow would be to have regulations.

30 Would that trigger a requirement for existing work plans to 12.19PM
31 be revised to bring them into conformity with what will

1 become section 40(3), or is there a transitional
2 phase?---I think there will be a transitional phase,
3 yes.

4 So we can't expect in the short term that this will have any
5 impact on the work plan that the Hazelwood Mine is 12.19PM
6 working under?---Not immediately, but it does flag a
7 very strong intention to change the approach to work
8 plans and, given that this is already in the public
9 domain, I would consider that a mine operator would
10 consider this in light of what they're doing today. 12.19PM

11 It does potentially give the Department Head of the
12 regulator the ability to oversee and to work with mine
13 operators about managing the risk of fire?---Yes, as
14 described in paragraph 186. Given that the terms are
15 somewhat different to the existing arrangements, it 12.20PM
16 would seem that the Department Head who is responsible
17 for work plans would have a broader pallet, if that's
18 the right way of describing it, a broader range of
19 risks to consider in a work plan. Once again, I'd
20 preface those remarks with, if we were to address fire 12.20PM
21 risk, that we would seek to have the appropriate
22 expertise to assist with that, given that we don't
23 currently deal with that in light of the work plan.

24 Another area for reflection is how well the division of
25 responsibilities between regulators has worked in the 12.21PM
26 current environment or has worked to address what is a
27 risk that worked out batters of exposed coal will catch
28 fire. Have you been involved in any discussion about
29 different ways of regulators working to address those
30 risks in future?---Yes, I have discussed regulatory 12.21PM
31 models along the lines of the one that we have where -

1 as a number of regulators with defined responsibilities
2 versus other models that tend towards more centralised
3 regulatory models that exist elsewhere; both models or,
4 if you like, the spectrum of those models exist in
5 other places.

12.21PM

6 My question was really more focused about how the various
7 regulators who have responsibility for regulating the
8 mine, which is specifically the Mine Regulator,
9 Victorian WorkCover Authority, the Fire Services and
10 possibly the EPA, how they can work better together in
11 future to manage the risk that we all clearly now know
12 exists. Any ideas?---I think a model that - the one
13 you described which is based on a collaborative model
14 has a lot of strengths and that each organisation has,
15 if you like, a depth of expertise that can be brought
16 to deal with a regulatory framework - that can
17 strengthen a regulatory framework for a very complex
18 mine such as the one at Hazelwood or other mines like
19 that.

12.22PM

12.22PM

20 I think what you're talking about is whether we
21 can improve practices to better account for all risks.
22 I'm sure there is room to move and I would be pretty
23 happy to be involved in ways of strengthening that
24 model.

12.22PM

25 Which agency would you see as being the lead agency in that
26 exercise?---I'm not sure whether I can point to a lead
27 agency, but I can see ourselves and the VWA in
28 particular having an interest in strengthening that
29 model.

12.23PM

30 The Board also asked you to address whether one possible
31 measure that could be taken to mitigate the fire risk

12.23PM

1 in the worked out batters in future would be bringing
2 forward rehabilitation works. Is that a feasible risk
3 reduction measure that might be taken in future?---I
4 think, if I point to paragraph 189, I would welcome the
5 opportunity to consider whether the rehabilitation plan 12.24PM
6 could be altered in a way that would have another, if
7 you like, objective which would be to mitigate against
8 fire risk. I think that's something that the fires
9 of February, just, if you like, would indicate that we
10 should and I'm happy to do that. 12.24PM

11 The other aspects that I say in paragraph 189 are
12 a series of considerations that, if we were to do that,
13 we'd need some answers to be able to determine if it
14 was feasible; it's not to say that it's not feasible, I
15 just think that there's a considered piece of work or 12.24PM
16 range of work that would need to be done and we'd need
17 to consult with GDF Suez around what can be achieved
18 given that it's actually up to them to be responsible
19 for rehabilitation.

20 So, quicker rehabilitation of the worked out areas of the 12.25PM
21 mine is one possible measure that could be taken to
22 mitigate the risks in the future, but it's a complex
23 area?---Yes.

24 And it would require a number of technical inputs before it
25 could be identified as a reasonably practicable 12.25PM
26 measure?---That's right, and even just sourcing
27 suitable overburden would be a major consideration.

28 I should cover that off. What is the issue with the
29 overburden that's been collected from stage 1?---You
30 need to talk to a soil scientist for all of the 12.25PM
31 technical detail, however my understanding is that the

1 overburden being produced is too wet and has unsuitable
2 characteristics to be used as batter stabilisation
3 material, so its most effective use is to be put on the
4 floor of the mine to provide stability to the floor.
5 The batter requires soils and overburden that will stay 12.26PM
6 in place, not erode and will also enable some other
7 form of cover, vegetative cover, to grow on them so it
8 needs to have that kind of characteristic.

9 Full rehabilitation of the worked out batters may be one
10 measure, but you would accept, I take it, that there 12.26PM
11 might be some measures short of full rehabilitation
12 that might achieve acceptable risk control?---Yes, and
13 that might include a range of measures from fire
14 suppression through to fire prevention actions which
15 we'd like to talk further with the Fire Services 12.27PM
16 Commissioner and the VWA.

17 Thank you, those are the questions I had for Ms White. Do
18 Members of the Board have any questions?

19 MEMBER PETERING: Thank you, Ms White. Just to clarify,
20 this week we're talking about regulatory compliance. 12.27PM
21 It's your view that the current mine owner has not
22 breached any of the MSD Act?---That is my view, yes.

23 MS RICHARDS: And that's directly related to the fact that
24 the first checkpoint, if you like, for progressive
25 rehabilitation under the current revised work plan is 12.27PM
26 2019?---That's right, for aspects relating to
27 rehabilitation, yes.

28 Thank you. I'm advised that Ms Nichols for Environment
29 Victoria has some questions.

30 MEMBER PETERING: Sorry Ms Nichols, just before you do, I 12.28PM
31 just want to clarify with Ms White about those

1 suggestions for improvement, and I welcome those and
2 appreciate that very much. I think you mentioned that
3 you would need some further professional advice or
4 someone to help drive some of these considerations, so
5 could you just talk about what would be a suggested way 12.28PM
6 to approach some of these modifications to either the
7 legislation or the regulations around inclusion of fire
8 risk? I think you talked about working with Victorian
9 WorkCover Authority or WorkSafe and the Fire Service
10 Commissioner, so could you just expand on that a little 12.28PM
11 bit further about next steps?---I guess what I would
12 say, this is my view around that, I think that would
13 require us to come together as that group, there may be
14 others that I haven't considered which would have an
15 interest, other Government agencies. I believe we 12.29PM
16 would need to have technical experts that would be able
17 to provide us with advice around mine stability and
18 issues relating to ensuring that the northern batter in
19 particular remains stable during any other
20 rehabilitation program that we may come up with. We'd 12.29PM
21 need to have fire expertise. We'd need to look to see
22 whether we could make all these changes within the
23 current regulatory frameworks that already exist, and
24 so it's a matter of practice, improvement, or in order
25 to clarify or to make it more obvious whether there 12.29PM
26 would need to be legislative or legal change, but I
27 think first up it would be about bringing the most
28 relevant people together with the expertise that would
29 enable robust consideration of what a rehabilitation
30 plan would look like if we were to consider or further 12.30PM
31 consider fire risk during the life of the mine and

1 mitigation.

2 I think the other part of it, though, just without
3 wanting to just go down the list, I noted some points
4 from (a) to (h); of course, the feasibility or the cost
5 of doing such works would ultimately have to be
6 considered as well. 12.30PM

7 Thank you.

8 <CROSS-EXAMINED BY MS NICHOLS:

9 Ms White, my name is Ms Nichols, I appear for Environment
10 Victoria. It's correct, is it not, that a cornerstone 12.30PM
11 of the Mineral Resources (Sustainable Development) Act
12 is the obligation on the licence holder to conduct
13 progressive rehabilitation during the life of the
14 mining works?---It is a requirement for progressive
15 rehabilitation under the Act. 12.31PM

16 Section 81 of the Act requires that the licensee must
17 rehabilitate the land in the course of doing work under
18 the authority and must, as far as is practicable,
19 complete the rehabilitation before the mine work
20 ceases. That's correct, isn't it?---That's correct. 12.31PM

21 You explain in your statement that the rationale for that is
22 to limit the risk that all of the mining or all of the
23 rehabilitation will not be completed by the end of the
24 mining work?---But in addition to that it's also about
25 being able to do rehabilitation during the life of the 12.31PM
26 mine to protect the mine from other matters which may
27 be - you know, stability issues or something like that.

28 Indeed, so there's really a dual purpose; one is to make
29 sure that, once you get to the end of the mining life,
30 rehabilitation is done and you can be satisfied by 12.31PM
31 having it done during the life of the mine that it will

1 be finished when the mine is finished, but also there
2 are protective functions to be served by the
3 rehabilitation that occurs along the way. That's
4 correct, isn't it?---That's correct.

5 In the context of the mining licence, that is reflected in 12.32PM
6 Condition 15 which requires that progressive
7 rehabilitation be undertaken?---That's right, that's a
8 requirement in the licence and also in the legislation
9 more broadly.

10 In the original work plan, that requirement was really to be 12.32PM
11 implemented in five-year rolling plans which were to be
12 updated on an annual basis?---That's right, yes.

13 The master plan for the rehabilitation concept which
14 commenced in 1996 anticipated that there would be three
15 stages; an operative phase for parts of the mine, 12.32PM
16 post-operative and mine closure phase, is that
17 right?---(No audible answer).

18 In relation to post-operative, which relates to parts of the
19 mine as they finish their working life, it provided
20 that during the life of the mine, the post-operative 12.33PM
21 phase, rehabilitation would occur progressively and at
22 the earliest practical opportunity after the land is no
23 longer required for rehabilitation?---That's how it's
24 written, yes.

25 Is that still the requirement?---The mining licence 12.33PM
26 conditions are still there and in place. The work plan
27 has been varied a number of times and the
28 rehabilitation plan from 1996 has been changed and was
29 changed in 2009.

30 Yes, but it's still the requirement that during the life of 12.33PM
31 the mine progressive rehabilitation occur at the

1 earliest practical opportunity after the land is no
2 longer required for operations?---That's correct, yes.
3 On a slightly different topic, you don't disagree, do you,
4 that exposed coal in a brown coal mine, especially when
5 it exists in high vertical walls in worked out batters, 12.34PM
6 is a known fire risk?---Exposed coal is a fire risk,
7 yes.

8 That's especially relevant on hot windy days such as are
9 experienced in February or thereabouts in the Latrobe
10 Valley?---Coalfaces are susceptible to fire in a 12.34PM
11 variety of weather conditions, but those ones in
12 particular would raise the risk.

13 This particular mine, the Hazelwood Mine, exists in a high
14 bushfire risk area?---I'm aware of that, yes.

15 Without repeating the matters Ms Richards took you to, it 12.34PM
16 has been known by the Mine Regulator for many years
17 that worked out batters do pose a risk of quickly
18 escalating fire which is difficult to contain?---I
19 would say that the regulators, ourselves and VWA are
20 aware that fire risk in a mine is high and that fires 12.35PM
21 can quickly take hold, yes.

22 And so, do you agree with the proposition that, in relation
23 to controlling the risk of fires in coal mines,
24 particularly brown coal mines, the emphasis needs to be
25 on prevention at least as much as it is on 12.35PM
26 suppression?---You're now stepping outside the area of
27 my expertise and where I regulate in the MRSDA, so
28 matters relating to fire prevention and suppression are
29 probably best asked to others.

30 In the context of rehabilitation you say in your statement 12.35PM
31 that in relation to fire safety rehabilitation is

1 managed by the mine's Code of Practice; is that
2 correct?---Sorry, which paragraph are you referring to?
3 In paragraph 93 of your statement?---At the time of 1996
4 that's the case.

5 Is that still the case, given that there is a revised 12.36PM
6 version of the Code of Practice and has been since that
7 time?---I'm not aware of whether it is still utilised;
8 I am no longer responsible for matters relating to
9 fire.

10 I just want to ask you some questions about the nature of 12.36PM
11 rehabilitation. It's correct, is it not, that whilst
12 rehabilitation is a process of restoring land that's
13 been used in a mine to its earlier capacity, it also
14 can serve as a matter of practice a fire mitigation
15 function, can't it?---It could in another regulatory 12.37PM
16 model, but under the framework that I work within,
17 which is under the MRSDA, it doesn't have a function as
18 you describe.

19 I'm asking you about the practicality of this batter; it's
20 well-known, is it not, to the Mine Regulator that 12.37PM
21 covering exposed coal batters with overburden or
22 alternatively with soil or clay will reduce fire
23 risk?---It's known that, I would agree with you, that
24 covering exposed batters with overburden would assist
25 for fire mitigation purposes, but that's not the 12.37PM
26 purpose under which I regulate rehabilitation plans.

27 Can I ask you just briefly to have a look at the 2009 work
28 plan. Do you have a copy of that there?---Yes.

29 It may actually come up on the screen. If we can be shown
30 please paragraph 6.5 of the document, I just want to 12.38PM
31 take you back very briefly to something Ms Petering

1 took you to a moment ago. Have you got paragraph 6.5
2 there?---Yes.

3 You're familiar now with the statement that, "There are two
4 major tasks to be completed using overburden: (1)
5 coverage of coal batters to provide fire protection and 12.38PM
6 a nutrient base to support plant growth that in turn
7 provides long-term batter stability; and (2) placement
8 of the balance of overburden on the material on the
9 floor of the mine." In relation to these
10 rehabilitation and work plans, these documents are 12.38PM
11 approved by the Mine Regulator, aren't they?---That's
12 correct.

13 And so, the approval process for a document such as this one
14 would involve people in your Department going through
15 this document very carefully and checking each of the 12.39PM
16 statements made in the document to see whether it
17 conforms with regulatory policy?---In accordance with
18 the regulatory policy under the MRSDA, yes.

19 A mining operator cannot engage in mining activities unless
20 it has a work plan which is approved by the mining 12.39PM
21 regulator, can it?---That's right, the Department Head
22 is responsible.

23 When you were answering Ms Petering's questions a short
24 while ago you referred to this part of the work plan or
25 the rehabilitation plan as a comment by GDF Suez?---I 12.39PM
26 think I noted that that was GDF Suez's objective, where
27 they noted that they would be able to rehabilitate the
28 batters to also enable fire protection.

29 But that comment, if you like, appears in a document which
30 has been approved by your Department?---That's correct. 12.39PM
31 It acknowledges, doesn't it, that an important practical

1 aspect of rehabilitation when it concerns covering
2 exposed coal batters, is to prevent fire?---GDF Suez do
3 acknowledge that, but I would once again say that under
4 the regulatory framework that I'm responsible for, that
5 that is not a factor for us - for me. 12.40PM

6 As a matter of fact, though, your Department is aware that
7 covering exposed coal batters with rehabilitation
8 material, including overburden, is a very important and
9 effective fire risk mitigation strategy?---And that is
10 part of the rehabilitation plan for the end of mine 12.40PM
11 life, where following on from the mine's activities
12 that would be rehabilitated and be safe, stable and
13 that it doesn't increase the fire risk post its life,
14 yes.

15 But also it has the same function in the context of 12.41PM
16 progressive rehabilitation, doesn't it?---It could have
17 the same function, but that would not be a primary
18 reason for us to seek progressive rehabilitation, which
19 does relate to the safe and stable batters of the mine.

20 But it would be a reason to seek it, wouldn't it?---It could 12.41PM
21 be a reason, but not within my regulatory remit.

22 Would you accept then that, if it can have a consequence in
23 terms of fire mitigation, that decisions made by the
24 mining regulator to enforce or not to enforce
25 rehabilitation requirements for the covering of coal 12.41PM
26 batters could have an effect on fire risk?---The

27 rehabilitation that I'm required to oversight is
28 rehabilitation to be completed during the life of the
29 mine, and in this case it's up to 2032. If there are
30 other considerations relating to fire or some other 12.42PM
31 risks that could be considered in that, I'm quite happy

1 to have the other regulators or other agencies approach
2 me and they have not.

3 As a matter of fact, if the mining regulator makes the
4 decision, for example to require the coverage of coal
5 batters for whatever reason as a part of rehabilitation 12.42PM
6 or not to require it, that kind of decision can
7 practically impact on the risk of fire at the
8 mine?---As a mining regulator, and I'm not the only
9 mining regulator, but as a mining regulator with the
10 responsibilities that I have to oversight, the matters 12.42PM
11 that I deal with are not exactly as you've just
12 described them. Given that the rehabilitation plan is
13 intended for a stable, long-term arrangement, that is
14 what my regulatory oversight is largely to do.

15 Covering of coal batters for other reasons can also be 12.43PM
16 included, but it hasn't been included in the
17 rehabilitation plan and it's not included in the
18 conditions or, if you like, the requirements of a
19 rehabilitation plan to date.

20 Well, it is, with respect, included in the rehabilitation 12.43PM
21 plan, is it not, at 6.5?---GDF Suez have provided that,
22 which demonstrates their purposes; it's not required in
23 the schedule that refers to rehabilitation plans in the
24 MRSDA.

25 So, is that the logic with which you approach this question, 12.43PM
26 to look at the items in Schedule 15 and to determine by
27 reference to that schedule whether you are required to
28 regulate for those purposes?---That's correct.

29 Finally I'll just put this to you: What I'm really saying
30 is that a consequence of what you regulate, or fail to 12.44PM
31 regulate according to your set of statutory powers,

1 could be and likely is to affect fire risk at the mine
2 or the mines you regulate?---I don't think I agree with
3 your premise.

4 Are you suggesting that it would be appropriate for the
5 mining regulator to ignore the risk of a fire risk that 12.44PM
6 might arise from the failing to enforce or enforcing a
7 requirement to cover exposed coal batters?---I'm not
8 saying that I was remiss or I failed to undertake my
9 duties. I'm actually saying that the duties that you
10 are ascribing to me are not the ones in the Act. 12.44PM
11 That's all I'm trying to clarify.

12 But you're not suggesting, are you, that when considering a
13 rehabilitation plan, that the mining regulator might,
14 among other reasons, decide that it is appropriate to
15 require the covering of exposed coal batters, provided 12.45PM
16 it was consistent with other objectives, because it
17 assisted fire protection in the mine?---It's really not
18 currently in the MRSDA, but I on behalf of the Minister
19 or the Deputy Head have those powers. It could be in
20 other regulatory frameworks and I suggest the 12.45PM
21 Occupational Health and Safety Act already has those
22 provisions.

23 Are you saying, to be clear, that it's not permissible for
24 the mining regulator to take into account the risk of
25 fire that might be caused by exposed coal batters not 12.45PM
26 being rehabilitated?---I'm saying that another agency
27 with responsibilities for the mining framework does
28 have those already.

29 To accept that, is it impermissible for a mining regulator
30 to take into account the risk of fire in a mine that 12.46PM
31 might be caused or enhanced by a failure to cover up

1 exposed coal batters?---Would you be able to just break
2 that sentence up into two or three parts because I feel
3 like I've answered the question and I'm unsure of which
4 part I haven't?

5 Yes, certainly. Let's assume you might have a number of 12.46PM
6 objectives you want to address when you are deciding to
7 approve a rehabilitation plan or require certain
8 elements to be in that plan. Let's assume for the
9 purposes of the question that the rehabilitation issue
10 you are considering is whether or not exposed coal 12.46PM
11 batters should be rehabilitated by covering. Let's
12 assume for the purposes of the question that that is
13 relevant for some purpose other than fire,
14 right?---Rehabilitation of the coal batters according
15 to legislation, that's the MRSDA, is around ensuring 12.47PM
16 that there is a safe and stable end position for the
17 mines. If it was to include other risks that needed to
18 be addressed, of course they could be considered; they
19 are currently not, but I'm open to any, if you like,
20 other options that could assist. 12.47PM

21 Thank you, I think that answers my question?---Okay.

22 Just in relation to the fire that commenced on 9 February
23 this year, at the time of commencement of the fire
24 there were approximately 3,000 hectares in the mine
25 that had been mined out and was, all things being 12.47PM
26 equal, available for rehabilitation and not
27 rehabilitated; is that correct?---I think I would say
28 that there are parts of the mine that have had some
29 rehabilitation since 1996 when the mine was privatised.
30 There are rehabilitation areas on the floor of the mine 12.48PM
31 and in some areas around the batters. At the time of

1 the fire, though, many of the areas in the northern
2 batter had not been fully rehabilitated, and largely
3 because of the infrastructure that exists.

4 Do you know whether or not the unrehabilitated area measured
5 about 3,000 hectares?---It would be in that order. 12.48PM

6 And that the fire burned in various parts of mine, but
7 including in the southeastern section of the eastern
8 batters where remediation was scheduled to commence in
9 2028; is that right?---I'd have to just double-check
10 but if you're sure, I'll go with that. 12.48PM

11 It also burned in parts of the northern batters where some
12 rehabilitation had been conducted, is that
13 right?---That's right, there has been some in the
14 northeastern corner.

15 Does your Department have a standard against which it checks 12.48PM
16 whether sufficient application of overburden has been
17 applied to exposed coal batters?---At the time of the
18 work plan being approved, there is an extensive
19 description of how the winning of coal would occur and
20 how the overburden will be removed and then distributed 12.49PM
21 around the mine to provide the rehabilitation, so yes,
22 we do monitor that.

23 Is there any standard concerning the thickness with which
24 overburden material will be applied to exposed coal
25 batters?---I believe that there are some standards that 12.49PM
26 relate to ensuring the batters are of a suitable slope
27 so that they remain stable, and that they are covered
28 with adequate overburden and topsoil to enable
29 revegetation.

30 Do you know whether that standard had been applied and 12.49PM
31 inspected against in relation to the parts of the

1 northern batters that had been rehabilitated and burnt
2 in the fire?---I have no reason to believe that the
3 standards have not been met.

4 But do you know whether an inspection was carried out before
5 the fire to test that issue?---The areas that have been 12.50PM
6 rehabilitated, and this goes to your earlier questions,
7 the area that was being rehabilitated were not subject
8 to fire in any large extent.

9 Some were though, weren't they?---In some areas, yes, but
10 that area in the northeastern corner in particular not 12.50PM
11 so.

12 But some parts of the northern batters were?---Oh, yes, for
13 sure, yes.

14 Is it correct that fire burned in some parts of the
15 unremediated parts of the mine that had been mined out 12.50PM
16 for quite some years?---The northern batter, in
17 particular the northeastern corner, was where the mine
18 started in the late 1950s, so it had been worked out
19 many years ago.

20 Is the implication then that, since work had commenced in 12.51PM
21 that area, nothing had been done to protect the exposed
22 coalfaces?---I don't think I would describe it as
23 "nothing". There had been some rehabilitation as I
24 mentioned in that northeastern corner and on the floor
25 of the mine where the ash is distributed. In regards 12.51PM
26 to the rest of the batters, from the time of the
27 privatisation or prior to that time it was always
28 envisaged that the lake would be filled and there
29 wasn't a deliberate plan to rehabilitate batters from
30 the floor to the surface because it was believed that 12.51PM
31 they would fill with water.

1 I think Ms Richards took you to this before, the filling of
2 the void with water was anticipated to take possibly up
3 to 500 years; is that right?---So it says, yes.

4 Mr Faithfull gives some evidence about the current or
5 revised plan for the filling of the void with water. 12.52PM
6 Is this correct, that even the filling of the reduced
7 amount of the void that will now be filled will take,
8 in the first instance, about six years to do the first
9 part of that?---That's the plan, yes, to use that
10 six-year level. 12.52PM

11 And then it will take how much longer to reach the desired
12 final level for filling the void?---It's then
13 anticipated that the water level will rise very slowly
14 over time and that the batters will be rehabilitated
15 for a safe and stable environment to that water level. 12.52PM

16 When you say "slowly over time", can you say a matter of
17 decades or longer?---It is likely to be decades, yes,
18 but the rehabilitation does come down to the water
19 level, and even below the water level because there is
20 a need to put overburden on the floor of the mine. 12.53PM

21 Whilst the void is waiting for the water to fill it, the
22 exposed coal batters will be left uncovered; is that
23 right?---There are progressive rehabilitations from now
24 until 2032 to ensure that the batters are rehabilitated
25 so that they will not be exposed post the mine life. 12.53PM

26 Will there be batters in the part of the mine that will
27 eventually be filled with water?---My understanding of
28 that, that there will be minimal water on the northern
29 end of the mine which would necessitate the batters on
30 the northern side of the mine to be rehabilitated more 12.53PM
31 fully, and then, as you move across the mine, there

1 will be less, if you like, depth of batter that will
2 need to be rehabilitated with no overburden and so on.
3 But there will be some batters in parts of the mine that
4 will eventually be submerged in water, but which will
5 be exposed until that occurs?---I think, given that 12.54PM
6 it's the six-year water level, the amount of batter at
7 that time will be far less than the full extent that
8 you see today.
9 But for the batters that will be submerged in water
10 eventually, the plan is to wait until they're 12.54PM
11 submerged?---That's correct.
12 Can I ask some questions about the 2009 plan. Do you have
13 the rehabilitation plan there? Can I ask you to have a
14 look at paragraph 6.1. Right down the bottom of the
15 page there is the comment under the heading, 12.55PM
16 "Infrastructure." At the very last sentence,
17 "Opportunities for progressive rehabilitation are
18 therefore not necessarily consistent with opportunities
19 for access to areas requiring rehabilitation." I'm
20 sorry, I should have read the sentences preceding that 12.55PM
21 which is that, "Rehabilitation options and scheduling
22 of rehabilitation are subject to a number of sighting
23 and timing constraints. IPRH operating infrastructure
24 on permanent batters prevents access and IPRH and
25 community infrastructure around the mine perimeter 12.56PM
26 affects the ability to cut batters back and reduce
27 slopes." Is that the infrastructure matter you
28 referred to before?---Yes, it is.
29 Just in that context, can I ask you to have a quick look at
30 the progress report which is attached as Appendix B to 12.56PM
31 the rehabilitation plan. Can you please go to page - I

1 don't think it has page numbers - the reference on the
2 top right-hand corner ends in .0819 and it's under the
3 heading, "(2) Other overburden dumps rehabilitation
4 projects." Do you have that?---No.2, "Other overburden
5 dumps?

12.56PM

6 Yes?---Yes.

7 The last sentence there reads, "The mine permanent northern
8 perimeter batters have not been rehabilitated due to
9 the large amount of infrastructure remaining which is
10 still required for many years to come." That comprised
11 part of the 2008 progress report which was attached to
12 the work plan. Mr Chairman, is that a convenient time?

12.57PM

13 CHAIRMAN: I suppose it is. I'd still like to hear from
14 other people as to how long they are likely to be. I
15 then refer back to Ms Richards.

12.57PM

16 MS RICHARDS: I have had no indication from anyone else that
17 they have questions for this witness.

18 MS DOYLE: I will have about 15 minutes of questions.

19 CHAIRMAN: How long do you think you will be, Ms Nichols?

20 MS NICHOLS: I will be no more than 20 minutes, probably 15.

12.57PM

21 CHAIRMAN: That sounds like half an hour, and therefore it's
22 inappropriate to just do it now and therefore we'll
23 just have to make allowances for whatever happens this
24 afternoon. Yes, we'll adjourn now until 2 o'clock.

25 <(THE WITNESS WITHDREW).

12.58PM

26 LUNCHEON ADJOURNMENT

27

28

29

30

31

1 UPON RESUMING AT 2.00 P.M.:

2 <KYLIE WHITE, recalled:

3 MS NICHOLS: Ms White, before lunch I was asking you some
4 questions about the qualification in the 2009
5 rehabilitation plan concerning the necessary removal of 02.04PM
6 infrastructure works. Do you recall that?--Yes.

7 Can I mention to you some evidence that Mr Faithfull of GDF
8 will give in the Inquiry, and that is in short terms
9 that, broadly speaking, the steps involved in relation
10 to rehabilitation of the batters of the mine include 02.04PM
11 the following: First, stability assessments are
12 required; second, placing and then undertaking for the
13 rehabilitation works; third, the mining infrastructure
14 situated in the vicinity of the batters that will need
15 to be removed is identified and, depending on what the 02.04PM
16 infrastructure is and what stage of the sequence has
17 been reached, infrastructure which is required for the
18 ongoing operation of the mine needs to be rebuilt in a
19 different location. Mr Faithfull goes on to describe
20 another three stages in rehabilitation. 02.04PM

21 Having regard to that evidence, what I would
22 suggest to you is that the need to remove
23 infrastructure which is in the vicinity of parts of the
24 mine that need to be rehabilitated is in and of itself
25 a necessary part of rehabilitation. Would you agree 02.05PM
26 with that?---The removing of the infrastructure is part
27 of rehabilitation; post mining is complete all
28 infrastructure is to be removed from the site.

29 What I would suggest is that it's part of progressive
30 rehabilitation as well, meaning that when one part of 02.05PM
31 the mine is ready for rehabilitation and is no longer

1 being mined, infrastructure new to that part needs to
2 be moved in order that that part can be rehabilitated.
3 That's correct, isn't it?---No, I don't think I would
4 agree entirely with your statement, though I see your
5 logic. The mine has a range of infrastructure that 02.05PM
6 needs to be in place for a number of years regardless
7 of whether - or even when the batters or the mining has
8 been completed and it's no longer an operational part
9 of the mine. I think things such as the ponds that
10 exist at the bottom of the area that has been worked 02.06PM
11 out, the bores that have been constructed for ground
12 water control pump, the horizontal bores that exist in
13 the northern batter for stability are all ongoing
14 requirements at the moment of the mine. It may not be
15 the working face, they may not be coaling, but all that 02.06PM
16 infrastructure is required.

17 What Mr Faithfull seems to be suggesting is that it may be
18 necessary to move the infrastructure in order that
19 rehabilitation can occur?---And that would be the case
20 over time; it's a matter of whether that infrastructure 02.06PM
21 can be moved in a way that still effectively enables
22 groundwater control and stabilisation of the batter, as
23 well as enabling rehabilitation.

24 In relation to the comments at the document I took you to
25 before lunch in the 2008 progress report on the 02.07PM
26 rehabilitation plan, where it was said, "The mine
27 permanent northern perimeter batters have not been
28 rehabilitated due to the large amount of infrastructure
29 remaining which is still required." What assessment
30 did the Mine Regulator do about the feasibility of that 02.07PM
31 infrastructure being removed?---I don't believe that we

1 did a feasibility analysis of that; the mine
2 infrastructure as it exists now is still required.
3 There are other areas of the mine that could be
4 progressively rehabilitated while leaving that
5 infrastructure intact and to do the job that it's 02.07PM
6 doing. I wouldn't want to underestimate the extent of
7 that infrastructure or the value it provides in keeping
8 the mine stable, which is another key issue for us.

9 Yes, but you're saying that the Mine Regulator took for
10 granted what was said there and did not itself assess 02.08PM
11 whether that infrastructure could be moved somewhere
12 else in the mine so that the mine perimeter - northern
13 perimeter batters could be rehabilitated?---As I
14 mentioned, the infrastructure that is within and
15 adjacent to that northern batter is still an essential 02.08PM
16 part of the working of the mine. I see your point
17 about whether it could be moved, however could I say
18 that that's a very complex operation, to consider
19 whether for example the ponds and the groundwater bores
20 could be moved and still undertake the task that's 02.08PM
21 required of them to keep the mine stable. So, I'm not
22 trying to say that they couldn't be moved; I think,
23 given that the job that they're required to do is being
24 done at the moment, and there is no requirement to move
25 them yet because there are other areas that could be 02.09PM
26 rehabilitated, I would accept that the infrastructure
27 is in the right place.

28 But there was no consideration by the Mine Regulator about
29 whether or not they could be moved at the time?---As I
30 mentioned, given that it provides an essential function 02.09PM
31 of the mine's operations, there was no requirement for

1 us to consider an alternative place.

2 Is the consequence then that, having regard to that, the
3 desirability of leaving that infrastructure in place is
4 effectively traded off against the opportunity to
5 rehabilitate that part of the mine at that time?---I 02.09PM
6 don't know whether I would put it as a trade-off but
7 there is an opportunity to schedule the rehabilitation
8 for the end of mine lifeworks for later in the life of
9 the mine.

10 But the necessary consequence of leaving mine infrastructure 02.09PM
11 in place and not moving it is that that part of the
12 mine adjacent to the mine infrastructure cannot be
13 rehabilitated until that equipment is either moved or
14 decommissioned?---That's correct, but I would also
15 restate the significance of that mine infrastructure to 02.10PM
16 ensuring that the mine can operate on its day-to-day
17 operations.

18 Does the Mining Regulator accept that it has a role in that
19 context for making its own determination about whether
20 it is appropriate that mining infrastructure be 02.10PM
21 removed?---If, as the Mining Regulator, we had an issue
22 with the location of infrastructure or believed there
23 was a better alternative, we would express that view.

24 At paragraph 108 of your statement you indicate that the
25 lack of availability of overburden is a constraint to 02.10PM
26 rehabilitation. Do you recall that?---Yes, that is at
27 paragraph 108.

28 You say as a result of that that to manage this constraint
29 the plan has identified four stages for replacement of
30 overburden and we've discussed the four stages with 02.11PM
31 Ms Richards this morning. What investigations have the

1 Mining Regulator done about whether in fact material to
2 cover over batters and to be used in rehabilitation
3 could be proactively sourced from other parts of the
4 mine rather than simply using a material that is a
5 by-product of mining operations?---The current plan
6 that's approved accepts that the overburden from coal
7 winning activities would be used to rehabilitate the
8 mine.

02.11PM

9 Yes, that is clear, but has the Mining Regulator
10 investigated doing it differently by taking material
11 that can be used for rehabilitation from parts of the
12 mine that aren't actually being mined?---Since the fire
13 we have had some initial consultations internally about
14 what are the opportunities to use other opportunities
15 for overburden; they have included whether it would be
16 feasible to take material that's currently
17 rehabilitated in the east and western overburden dumps
18 outside the mine. We've had conversations, we haven't
19 reached a conclusion. We've also looked to see and can
20 confirm that the overburden that's currently being
21 removed does not have the characteristics required to
22 go on batters.

02.11PM

02.12PM

02.12PM

23 Those sorts of conversations, if I can put it that way, were
24 not something that the Mining Regulator did before the
25 Hazelwood Fire?---No, that's correct.

02.12PM

26 Mr Faithfull says in his statement that so far 431 hectares
27 of the mine have been rehabilitated. You agreed this
28 morning that about 3,000 hectares were unrehabilitated.
29 On my maths, that gives us about 14 per cent of the
30 area of the mine that could be rehabilitated, and that
31 has occurred in the years 1996-2014, which is give or

02.13PM

1 take 18 years. That leaves the years 2014-2032, is
2 it?---That's the end of the mine life proposed, yes.
3 Why is it that DSDBI considers that 14 per cent is an
4 adequate remediation percentage to date?---I think it's
5 about understanding what's happened in time. At the 02.13PM
6 time of privatisation in 1996 there was little
7 rehabilitation planned given the idea that the void
8 would flood. From 1996-2009 the expansion of the mine
9 happened which also enabled and allowed for further
10 reflection or further consideration of what would be an 02.13PM
11 appropriate rehabilitation plan, and so since that time
12 we have then developed a different rehabilitation plan
13 that incorporates covering or, if you like, laying back
14 batters, then covering them with material right down to
15 what would be the six-year water level which is, if you 02.14PM
16 like, what the water level is after six years of no
17 pumping.
18 But we come back to a figure of 86 per cent of 3,000
19 hectares and an even greater percentage of about 5,000
20 hectares which is about the total area of the mine that 02.14PM
21 remains to be rehabilitated with less than half of the
22 mine's life to go. I would suggest to you that the
23 rehabilitation plan to date does not provide sufficient
24 specificity to allow the Mining Regulator to determine
25 that that amount of rehabilitation can be done within 02.15PM
26 the time?---I don't have any reason to doubt that GDF
27 Suez can do the rehabilitation; it's what they
28 themselves have proposed, it's what they've agreed to
29 do and we've approved that. I understand that the mine
30 is large and that for many years there was very little 02.15PM
31 rehabilitation, particularly of the batters, but since

1 2009 there has been a changed arrangement for
2 rehabilitation.

3 But all you really have to go on is the fact that GDF has
4 agreed to do it and has agreed to do it in some years
5 hence?---It's underway now, yes.

02.15PM

6 What analysis has your office taken to reassure itself that
7 GDF will have the capability, the resources and the
8 willingness to get the remainder of the very large
9 proportion of the remainder of the rehabilitation done
10 by the time at which the mine closes?---To use current
11 practice as an example, we would review the - we do
12 review the rehabilitation plan along with other aspects
13 of the work plan on a regular basis. We would be
14 monitoring - we do monitor the rehabilitation progress
15 and we do seek from GDF Suez agreement that they will
16 follow the rehabilitation plan as it's defined.

02.16PM

02.16PM

17 When you say GDF is compliant, what you mean is that needs
18 to be understood in the context that it's not required
19 really to do anything further on rehabilitation until
20 2019; that's right, isn't it?---The block 1C
21 rehabilitation is required to be completed by 2019
22 according to the work plan.

02.16PM

23 That's the only obligation on it for rehabilitation under
24 the work plan, isn't that right?---That's correct.

25 So saying that it is compliant does not allow either your
26 office or this Inquiry to make any conclusions about
27 the capacity or willingness that GDF has to complete
28 the very large amount of remaining rehabilitation work
29 by the time of the mine's end?---I can only point to
30 the fact that GDF Suez are a large mining operation who
31 can bring all the resources of such an organisation to

02.17PM

02.17PM

1 such efforts as you've described, and I have no reason
2 to doubt that they can meet the requirements of the
3 rehabilitation plan.

4 Who determines, under the rehabilitation plan, when various
5 parts of the mine will be rehabilitated?---GDF Suez 02.17PM
6 produced the rehabilitation plan. There's
7 opportunities and there were opportunities of
8 discussion about that with my inspectorate around what
9 their approach would be. The discussions that, if you
10 like, proceeded before the work plan talked about 02.18PM
11 changing the rehabilitation plan from a full flood or
12 mine void flooding operation to the one that's
13 currently included in the work plan.

14 You've mentioned on a few occasions discussions. Just to be
15 clear, what do you understand the role of your office 02.18PM
16 to be in approving the rehabilitation plan?---We
17 approve it.

18 Does that mean that you take responsibility for the content
19 of it?---As mentioned, the mine operator has the duty
20 to produce that and we have the responsibility of 02.18PM
21 providing the regulatory oversight.

22 But you don't determine when it is that progressive
23 rehabilitation will occur under the rubric of that
24 plan?---I think largely GDF Suez can produce a
25 rehabilitation plan according to the requirements, to 02.19PM
26 have it progressive, and to be complete at end of mine
27 life. We would have an input if we considered that
28 there was something that was outstanding that should
29 have been considered and wasn't, but it's largely their
30 plan. 02.19PM

31 But it's a very important regulatory document, isn't

1 it?---The work plan is, yes, it's the key regulatory
2 document for the regulation of the Minerals Resources
3 (Sustainable Development) Act.

4 Can I ask you some questions about the bond and I'll just
5 try and ask you some things that Ms Richards hasn't
6 asked. One of the purposes of the bond is to provide
7 an incentive to the mine operator to finish the
8 rehabilitation within the life of the mine, isn't
9 it?---That's correct.

02.19PM

10 Would you agree that where a bond is grossly inadequate,
11 that does not provide a good incentive to the mine
12 operator to complete the work within the time
13 finished?---As I mentioned earlier, the rehabilitation
14 bond is one aspect that, if you like, acts as a means
15 of providing a surety for rehabilitation. The other
16 aspects that need to be considered in this, along with
17 the rehabilitation bond, are the requirement of the
18 operator to complete rehabilitation during the time
19 regardless of the bond being held, and also that, if
20 needed, there are powers in the legislation to require
21 additional rehabilitation to the bond and the licence
22 holder can be made to pay for those.

02.20PM

02.20PM

02.20PM

23 But that hasn't been exercised in this case, has it?---No,
24 there has been no requirement.

25 Can I just ask you briefly about some documents you have
26 attached to your second statement concerning the bond.

02.21PM

27 Can I ask you about the briefing paper from the
28 Department to the acting Executive Director from the
29 Manager of Minerals and Petroleum Operations dated
30 4 December 1995. You have that document?---I have got
31 that, yes.

02.21PM

1 You will see there that at paragraph No.8 it says that,
2 "Bonds are usually based on an estimate of worst case
3 liability during the life of the mine. To set a bond
4 for this site based only on end of life costs would be
5 a departure from this practice. However the importance 02.22PM
6 of the mine as part of the State's power infrastructure
7 means it's very unlikely to close before the scheduled
8 end of life. It can therefore be argued that provided
9 progressive rehabilitation is kept up, the potential
10 liability to the State is only the cost at closure." 02.22PM

11 Would you agree that the entire rationale for
12 departing from the usual practice in the case of this
13 bond for this mine is that progressive rehabilitation
14 be kept up?---I can only interpret the meaning as it's
15 written here, in that they've provided a number of 02.22PM
16 rationales, if you like, or a rationale for why the
17 bond should be at the level it is.

18 But in terms of limiting it to the end costs, that was
19 predicated on the need for progressive rehabilitation
20 to be kept up, wasn't it?---That's the way that that 02.22PM
21 document is written, yes.

22 I accept, Ms White, that you're not the author of the
23 document. So that would be one factor in determining
24 the adequacy of this bond, looking at the extent to
25 which progressive rehabilitation has occurred during 02.23PM
26 the life of the mine?---That's the way that I would
27 interpret that, yes.

28 Do you know whether the rehabilitation bond has been indexed
29 at all? I suggest it appears not to be?---That's my
30 understanding, it has not. 02.23PM

31 Under s.79A of the Act, no doubt you're aware that the

1 Minister may require an authority holder to undertake
2 an assessment of the authority holder's rehabilitation
3 liability under s.78 or 78A for the purposes of
4 determining the amount of a rehabilitation bond or
5 reviewing the amount of a rehabilitation bond entered 02.23PM
6 into or to be entered into." Are you aware of that
7 passage?---Yes.

8 Has that requirement ever been used in this case?---Not to
9 my knowledge.

10 Can I return very briefly to the briefing document. I 02.24PM
11 appreciate you're not the author of this document but
12 on the basis that you've done some research into the
13 archives I'll ask you this question. Under the
14 heading, "Recommendation", it is said at paragraph 9,
15 "We recommend that we maintain the present nominated 02.24PM
16 bond of \$15 million to cover the end of life costs.
17 10. We agree not to seek further bond against the
18 current liability for works which are carried out on a
19 progressive basis during the life of the mine." Do you
20 know whether the Department or the Minister agreed with 02.24PM
21 GDF Suez not to seek a further bond?---I'm not aware
22 that there was any correspondence to that effect with
23 GDF Suez or its previous company.

24 To be clear, are you saying you just don't know the answer
25 to the question or you believe no agreement was made 02.25PM
26 or?---I'm not aware of any such agreement. I could
27 be - no, I'm not aware of an agreement like that.

28 So you don't really know the answer to the question?---I
29 don't believe it exists, only because in our research
30 this is what we've discovered. 02.25PM

31 Are you aware that in 1993 the Auditor-General produced a

1 report into open cut production in the Latrobe
2 Valley?---No, I'm not aware of that.

3 With the Board's leave, can I provide a copy of that
4 document to Ms White and to the Board?

5 CHAIRMAN: Sorry, what do you have in mind? 02.25PM

6 MS DOYLE: It is a document entitled, "Victorian
7 Auditor-General's Office. Special Report No.24. Open
8 cut production in the Latrobe Valley." It refers to
9 some rehabilitation costs. If you will receive it, I
10 would like to provide a copy to you and to Ms White. 02.26PM

11 CHAIRMAN: I'm not sure. Is there any other way? Just
12 because it comes in no particular way I'm not sure how
13 it's going to be linked into other material.

14 MS RICHARDS: I'm not sure of the utility of asking this
15 witness about a 1993 document that she says she doesn't 02.26PM
16 know about.

17 MS NICHOLS: I can deal with it another way.

18 CHAIRMAN: Yes, if it can be, seeing the witness says she
19 doesn't know.

20 MS NICHOLS: I'll just tell you briefly. In that report the 02.26PM
21 Auditor-General reported that, in the context of the
22 SECV being responsible for mines in the Latrobe Valley
23 that it was estimated by the Latrobe Regional
24 Commission that total costs for funding land
25 rehabilitation and open costs alone would be in the 02.27PM
26 vicinity of \$125 million, and it was said, "This
27 estimate is comparable with New South Wales
28 rehabilitation costs where security deposits for up to
29 \$32,000 per hectare are required to cover the full
30 costs of rehabilitation." 02.27PM

31 Do you know whether that report was ever

1 considered by your predecessors?---I'm sorry, I don't.
2 Thank you. Can I just finish by asking you some questions
3 about the regulatory paradigm that are addressed
4 towards the end of your first statement. At
5 paragraph 180 you say, "The existing statutory
6 framework is not the best tool to require work plans
7 and/or rehabilitation plans to address fire risk.
8 Statutory framework takes a prescriptive approach to
9 the content of work plans and rehabilitation plans."

02.27PM

10 You go on to illustrate that proposition by
11 reference to Schedule 15 of the regulations. Do you
12 have Schedule 15 there? It's at KAW-5?---I do.

02.28PM

13 If it you look at that document for a moment, it's headed,
14 "Part 1 - Information required in a work plan for a
15 mining licence"?---Yes.

02.28PM

16 If you go over to section 6, it requires a rehabilitation
17 plan that addresses concepts for end utilisation,
18 includes a proposal for progressive rehabilitation, and
19 includes proposals for the end rehabilitation of the
20 site, including final security and removal of plant and
21 equipment. I'd like to suggest to you, Ms White, that
22 nothing in that schedule precludes the Mining Regulator
23 from taking into account the risk of fire within the
24 mine that might arise from decisions made in the course
25 of regulating rehabilitation?---It defines what a
26 rehabilitation is under the MRSDA Act as you've
27 described, but there are other requirements that are
28 around identifying fire and the risk of fire in other
29 legislation.

02.29PM

02.29PM

30 Do you read this schedule as restricting what may be in a
31 rehabilitation plan?---It does, it specifies what

02.29PM

1 should be in a rehabilitation plan to enable end use to
2 be determined.

3 So you read that schedule as excluding any consideration
4 that's not mentioned in that?---That's correct.

5 Can I ask you, at paragraph 182 of your statement you 02.30PM
6 mention that a better system would require mining
7 operators to identify risks and formulate the manner in
8 which they would be addressed, and then the regulator
9 would act as an auditor and advisor. Do you see that
10 role as described there as being a more passive or a 02.30PM
11 more active role than the regulator is currently
12 taking?---I don't think I would describe either or one
13 or the other as more active or more passive. They are
14 different models to have as a regulatory framework.
15 The current one is prescriptive and so could be seen to 02.30PM
16 define through a list what needs to be considered.

17 The second model relates to identification of
18 risks and then apply the mitigation response to them,
19 so they're two models. A prescriptive model can
20 sometimes be seen as, if you like, provides the 02.31PM
21 definitive list and does preclude other considerations.
22 A risk-based model is a broader model and within the
23 legislation could, if you like, have a broader range of
24 considerations or identification of risk.

25 At paragraph 189 of your statement you say, "If the Board 02.31PM
26 were to consider that mitigation of fire risk ought to
27 be addressed in part or whole in a work plan or
28 rehabilitation plan, a range of matters would need to
29 be considered." You're not suggesting there, are you,
30 that those matters haven't already been considered by 02.31PM
31 the Department?---No, I'm actually saying that there is

1 a range of matters there that we've identified, and it
2 may not be complete or comprehensive, but it's a range
3 of matters that we believe need to be considered in
4 light of whether we take a different approach to
5 rehabilitation that would include fire prevention. 02.32PM

6 There are a number of factors there about which quite a bit
7 is already known, aren't there? For example, (a)
8 whether exposed coal batters ought to be covered or
9 wetted with sprays. There's a lot known about the
10 implications of doing those things, isn't there?---I 02.32PM
11 think it's just about saying that there's probably a
12 range of options that could be considered in order to
13 come up with the best possible of rehabilitation plan
14 to best meet a broader suite of objectives, including
15 fire. 02.32PM

16 Can I ask you about (g), you mentioned the cost of works.
17 Surely, any cost ought also to be considered in the
18 context of the cost or the potential cost of a serious
19 outbreak of fire from the mine? Would you agree with
20 that?---Given that fire is something that needs to be 02.33PM
21 addressed in existing legislation, I would think that
22 the cost of such work that would be intended to
23 minimise fire risk is a consideration already. It's a
24 note here that the cost of such work, particularly
25 around not only additional infrastructure, but we also 02.33PM
26 know the considerations that would be needed to do
27 earthworks as well as maintain stability could be a
28 very large sum, they could be very expensive works.

29 You say at paragraph 190, "The licensee is in a better
30 position than me or DSDBI to identify matters before 02.33PM
31 deciding whether and how to prepare a proposal to

1 accelerate or modify rehabilitation of the exposed
2 coalfaces at Hazelwood Mine." Surely the Mine
3 Regulator has a role in deciding whether or how to
4 prepare a proposal to accelerate or modify
5 rehabilitation of coalfaces. Would you agree with 02.34PM
6 that?---I would say that the Regulator does have a role
7 in the oversight of this. This point goes to the
8 issues that the mine operator is in the best place to
9 identify the risks and the range of ways of being able
10 to mitigate them. We had a discussion before about a 02.34PM
11 prescriptive approach. A prescriptive approach from a
12 Regulator then defines the exact way in which things
13 are to be done. There is perhaps some benefit in
14 considering alternative ways of being able to mitigate
15 against risk, including fire in this case, and that GDF 02.34PM
16 Suez who know their mine well and also the capacity
17 that they have or capability they can bring to work
18 such as rehabilitation are in the best position.

19 But ultimately it's the Mine Regulator's job to consider and
20 decide whether or not those risks have been properly 02.35PM
21 and sufficiently identified, isn't it?---To be
22 satisfied, yes.

23 Thank you, Ms White. I have nothing further, Mr Chairman.

24 <CROSS-EXAMINED BY MS DOYLE:

25 Ms White, my name is Rachel Doyle, I appear for GDF Suez. 02.35PM

26 Earlier on in your evidence you were taken to an
27 attachment to Mr Lapsley's statement. It's mentioned
28 in paragraph 210 of his statement, it was put up on the
29 screen for you, the Gippsland Strategic Fire Management
30 Plan 2013. I'm hoping we can return to that briefly. 02.35PM

31 I took it from your evidence, Ms White, that you said

1 that neither you nor your mine regulation part of the
2 Department had been consulted in the development of
3 this Strategic Fire Management Plan?---We haven't been
4 a part of that to my knowledge.

5 In the early couple of pages of the document it seems to be 02.35PM
6 authored, or at least to have been overseen by Mr Mark
7 Potter, who I think is styled as the Manager of the
8 Regional Strategic Fire Planning Committee, and you can
9 see there, it's up on the screen, the page where that's
10 suggested. To what Department within Government does 02.36PM
11 this Management Planning Committee report? Where is it
12 housed?---I'm sorry, I can't tell you that. I don't
13 know.

14 Have you seen Mr Pullman's statement? He's a representative
15 of Latrobe Valley City Council, have you had the 02.36PM
16 opportunity of reading his statement?---I've only been
17 made aware of some of the content; I haven't read it.

18 At paragraphs 48-49 of his statement he says the council
19 haven't been consulted about this document that's up on
20 the screen. I don't know whether you were aware of 02.36PM
21 that or not?---No, I wasn't aware of that.

22 Your Department as the Mine Regulator hasn't been
23 consulted?---Not that I'm aware.

24 Our enquiries so far indicate that GDF Suez hasn't been
25 consulted. Do you know who has played a role in it? 02.36PM

26 MS RICHARDS: If I could just object to this
27 cross-examination. The document identified at 48 and
28 49 is an entirely different plan in Mr Pullman's
29 statement. It's the Coal Strategic Plan, not the
30 Regional Fire Management Plan. 02.37PM

31 MS DOYLE: I'll take that on notice. But you haven't played

1 a role in this document and you don't know who has
2 played a role in its development?---I'm not aware that
3 we were involved in the production of this document and
4 I had that from my Regional Inspectorate Team.

5 This afternoon you were asked some questions about the 02.37PM
6 requirements for progressive rehabilitation. Just
7 before lunch you were asked by Ms Nichols about s.81
8 under the Act, and it was suggested to you that that
9 provision requires a mine operator to achieve
10 progressive rehabilitation at the earliest practical 02.37PM
11 opportunity after the land is no longer required for
12 operations. You recall you had a discussion about
13 that. I want to ask you, though, about where that
14 requirement finds life. If we go to the licence
15 itself, I think that's Attachment 3 to your statement, 02.37PM
16 perhaps if that can be brought up. Can I ask you to
17 look at clause 15.1. That's one of the conditions in
18 the mining licence which is titled, "Progressive
19 rehabilitation." Can you see in 15.1 it says that it
20 will be conducted as per the rehabilitation plan. I 02.38PM
21 take it, that's a reference to the work plan as varied
22 or as in place from time to time?---Yes.

23 Without going to the work plan, let me know if you need to,
24 but I wanted to ask you some general propositions about
25 where we would find notions of practicability in the 02.38PM
26 work plan. I take it from looking at the work plan
27 many factors are weighed when considering what aspects
28 of rehabilitation progressively are practicable. Would
29 you agree with that?---I think there are many
30 considerations, yes. 02.39PM

31 One of them is, what is the plan at the end of the life of

1 the mine, so what are we aiming for?---That's right.
2 One of them is, what are the planned works or the coal
3 winning activities within the mine and in what sequence
4 will they be undertaken?---That's right.
5 One of them is this question of infrastructure that you've 02.39PM
6 been asked questions about. Within the work plan
7 there's a reference to infrastructure for the mine but
8 also community infrastructure. Would you understand
9 community infrastructure to include, by way of specific
10 example, some infrastructure that's above the northern 02.39PM
11 batters to this mine - namely, a freeway and
12 powerlines?---Yes, and there's a drain as well.
13 It seems also from looking at the work plan that questions
14 of feasibility are also given consideration when one
15 looks at what will be practicable progressive 02.39PM
16 rehabilitation?---There are those considerations;
17 they're not specified directly in the legislation, but
18 you actually do need to be able to rehabilitate it
19 effectively.
20 I take it from some of the answers that you have given today 02.40PM
21 that there is a question under the rubric of
22 feasibility of the suitability of the overburden
23 material?---Yes.
24 For placing it on batters?---Suitability of material, yes.
25 There is also I take it the question of the slope at which 02.40PM
26 the batters are when the material is placed on them; in
27 other words, a sharp incline might be safe or unsafe
28 depending on the design of the mine and the type of
29 material placed on it?---That's right, you generally
30 have a lower sloping batter. 02.40PM
31 Is it the case that one of the considerations that you as

1 the Mine Regulator look at is whether or not any end of
2 life rehabilitation as well as progressive
3 rehabilitation will impact negatively on the stability
4 of the mine in terms of the slope of the batter and the
5 suitability of the material placed on it?---Yes, that's 02.40PM
6 correct. We look at stability both during the time the
7 mine's operating and in the works proposed for
8 rehabilitation.

9 During the morning Ms Petering asked you whose
10 responsibility it was to monitor compliance with the 02.41PM
11 rehabilitation program under the current plan, and you
12 said that Ms Anne Bignell within your Department has
13 direct responsibility for this mine, if I understood
14 you correctly?---That's right, she's the inspector here
15 based in Gippsland. 02.41PM

16 I take it then that it would be part of her responsibility
17 to monitor compliance with the plan generally but also
18 with respect to any milestones with respect to
19 progressive rehabilitation?---Yes, that would be my
20 understanding of her role. 02.41PM

21 I think you said that your understanding is she's visited
22 this mine about 12 times a year or roughly once a
23 month?---Yes, about that many times, yes. I can't be
24 categorically more specific, but about that many times.

25 You would suspect, if she detected any failure in complying 02.41PM
26 with progressive rehabilitation plans that she would
27 speak to the mine owner first but, if necessary, report
28 that back up the chain to you within the
29 Department?---I would expect that would be the case if
30 there was a milestone that had been met - or a 02.42PM
31 milestone that had been reached but the expectations

1 hadn't been met.

2 Is it the case, Ms White, that in the development of the
3 progressive rehabilitation plan that's housed within
4 the work plan, that the Department also has the
5 opportunity to contribute to progressive drafts of that 02.42PM
6 document and make suggestions as it's in
7 development?---We can be provided with drafts or there
8 can be discussions or meetings about the effectiveness
9 of what's proposed, yes.

10 Following the submission of the 2009 work plan for approval 02.42PM
11 by the Department, it's not the case, is it, that
12 either Ms Bignell or any other officer from your
13 Department has said that the plan needs to be first of
14 all changed in order to speed up or change the
15 progressive rehabilitation targets?---There hasn't been 02.42PM
16 that meeting or correspondence, no.

17 Nor has there been an occasion where Ms Bignell has
18 suggested that targets within the plan are not being
19 met?---I have no reason to believe that's happened; I'm
20 not aware of it. 02.43PM

21 This afternoon it was suggested to you, as a basis for
22 elucidating some percentages of rehabilitated parts of
23 the mine compared with unrehabilitated parts, that
24 there are some 3,000 hectares of unrehabilitated zones
25 or areas within the mine. I just want to go back to 02.43PM
26 that for a moment if I might, Ms White. The total area
27 covered by the mining licence is approximately 3,000
28 hectares; do you understand that to be the case?---I
29 understand that's roughly approximately right, yes.

30 But that's not a good descriptor of the amount of 02.43PM
31 unrehabilitated area within the mine. The

1 unrehabilitated area within the mine is that which is
2 disturbed by coal winning activities or is planned to
3 be dis turned by coal winning activities?---Or other
4 activities that may be undertaken on the site, whether
5 it be road construction or something else. 02.44PM

6 And presently it's anticipated that the total area disturbed
7 by either the coal winning activities or the subsidiary
8 activities you've just described, at the end of life of
9 mine will have been throughout the life of the mine
10 more like 1,500 hectares?---I can't estimate that. I 02.44PM
11 was working on a figure that was put to me by the
12 Environment Victoria figure.

13 So that wasn't based on your own research?---No.

14 This morning you were taken by Counsel Assisting to the
15 previous work plan, the 1996 work plan, and there is 02.44PM
16 one aspect of about that I want to ask you about.
17 That's also attached to Statement 3 to your statement,
18 and I want to take you to page 63 of that document, so
19 it sits in behind the licence. Page 63 of the old work
20 plan, the 1996 work plan that sits in that attachment 02.45PM
21 behind the licence itself, behind the gazette. I'm
22 using the numbers at the top right-hand, but in terms
23 of the document code it ends with 0396?---Are you
24 referring to the page that starts with 7.4?

25 That's right, Bushfire Mitigation Program. The code that 02.45PM
26 starts with DSDBI is 0007.0001.0396. You were taken to
27 this this morning and you were asked some questions
28 about paragraph 7.7?---Yes.

29 It says there that HPC adheres to the Latrobe Valley policy,
30 I'll just call that the 1994 policy for now. Then your 02.45PM
31 attention was directed to the reference to, at the

1 bottom of that page, "A network of water reticulation
2 sprays that has been established." And you recall you
3 were also taken to a difficult to read map that's said
4 to depict that. As I read clause 7.7, Ms White, that
5 is stating, is it not, that the touchstone here is
6 compliance with the 1994 code or policy as varied from
7 time to time or in place from time to time?---It makes
8 reference to two parts; it makes reference to the
9 policy as well as then a second part relating to water
10 reticulation.

02.46PM

02.46PM

11 I'd suggest to you that what it says is, there is an
12 extensive network as per the attached map, but that
13 what it imposes as a requirement is compliance with the
14 standards housed in the 1994 code?---I would agree with
15 that.

02.46PM

16 And that, if it be the case that there is a change to the
17 water reticulation network, so long as the standards in
18 the 1994 code are met, that that would constitute
19 compliance with the requirements in 7.7. Do you agree
20 with that?---Yes.

02.47PM

21 You were also asked some questions - now moving back to the
22 current work plan - some other questions about the 2009
23 plan. You were taken to some coloured maps and to
24 parts of that plan and some aspects of Mr Faithfull's
25 evidence, anticipated evidence, were put to you.
26 There's a matter I need to explore with you in relation
27 to that.

02.47PM

28 When you were taken to the map that's titled,
29 "Figure 6.1" on page 6.6 in that 2009 work plan. Do
30 you recall, this is the one with some of the red
31 blocking and the 1C?---Yes.

02.47PM

1 When you were asked about that you suggested that this
2 capsulates a requirement that those red areas be
3 rehabilitated by 2019?---Yes.

4 Mr Faithfull's evidence is different to that. His evidence
5 is that, when read as a whole, this work plan makes it 02.48PM
6 clear that those rehabilitation works marked in red
7 commence at 2019?---I don't agree with Mr Faithfull's
8 interpretation.

9 I understand that and in fairness I need to show you some of
10 the aspects of the plan that inform his different 02.48PM
11 readings. Can I take you back to page 6-3 in the same
12 document where there's a clause headed, "6.5 -
13 Progressive Rehabilitation, Staging/Sequencing."
14 Page 6-3 appears at the bottom of the page that I want
15 to direct your attention to. There's a clause titled 02.48PM
16 "6.5 Progressive Rehabilitation Staging/Sequencing."
17 You see there that it talks about the use of overburden
18 materials being determined by taking into account the
19 nature of the material?---Yes.

20 During your evidence this morning you've emphasised a number 02.49PM
21 of times that the nature of the material is significant
22 and that, if the material doesn't bear the right
23 qualities, it can be unsuitable for being used to cap
24 batters. Do you agree with that?---That's right, yes.

25 You see in this section here, having mentioned that, there's 02.49PM
26 then a reference to two major tasks to be completed
27 using overburden and then you've been taken to aspects
28 of the next two points, (1) and (2). I want to direct
29 your attention to the next paragraph where it says,
30 "Overburden from mining blocks 1A, 1B and 1C comprises 02.49PM
31 significant volumes of fine grained sands from the

1 former Morwell River. These sands are saturated and
2 are most suited for placement on the floor of the mine,
3 could be used for batter coverage, however needs time
4 to allow dissipation of water which otherwise builds
5 unacceptable pressures. Given that the mine's high 02.49PM
6 production needs do not allow sufficient time for
7 dissipation, the material is considered unsuitable for
8 batter coverage under this plan." Then it goes on,
9 "Overburden from 1A, B and C is planned to be placed on
10 the floor of the pit." 02.50PM

11 Pausing there, can I suggest to you that reading
12 the statement on the face of this document when one
13 reads the coloured maps with this section is that all
14 overburden from 1A, B and C by dint of its unsuitable
15 nature is to be placed on the floor of the mine and not 02.50PM
16 to be used to cap exposed batters?---The way it's
17 written there, though, does not relate to the map which
18 indicates that rehabilitation would be completed,
19 because it's actually dated 2015-2019.

20 But the difficulty is, if you go to the bottom of the 02.50PM
21 page we're looking at, "A series of conceptual staged
22 plans are provided as follows: Stage 1, figure 6.1
23 shows mining at the end of block 1C." When one looks
24 at Mr Faithfull's statement, that is the touchstone to
25 which he refers, isn't it, end of mining at 2019 and 02.51PM
26 then commence rehabilitation? Can you see that that
27 reading is open?---I can see that that would be the
28 interpretation, but it's not the interpretation that
29 myself or my inspectorate have.

30 In light of that though, given that that paragraph says that 02.51PM
31 all the overburden available from 1A, B and C is going

1 in the floor of the mine, where does the plan say that
2 one gets the overburden for for coverage of the red
3 bits, if I can put it that way, in the map that we were
4 looking?---I would leave that to GDF Suez to determine
5 where they would source the material. 02.51PM

6 Acknowledging as you do that sourcing of the material with
7 the right characteristics is essential to ensure mine
8 stability?---That's right, and GDF Suez are aware of
9 that too.

10 We spoke earlier about Ms Bignell. I assume you don't 02.51PM
11 expect that she will wait until 2019 and then indicate
12 whether there's been any shortcoming in adherence to
13 this plan; you'd assume it's something she's been
14 looking at thus far?---That's right.

15 Have you had an opportunity to look at the statement of 02.52PM
16 Mr Incoll who is proposed to give expert evidence in
17 these proceedings?---I have looked at his statement;
18 not in depth, you'll need to point me.

19 I only want to ask you about one thing and there's no need
20 to go to it because it really generates a general 02.52PM
21 question. At paragraph 281 of his statement he gives a
22 suggestion for some temporary rehabilitation. One of
23 the elements seems to be a suggestion that what could
24 be done is, rather than going to the end of life model
25 of rehabilitation where one lays back batters and then 02.52PM
26 puts overburden on them, that one might put some
27 overburden on some batters now before they're laid
28 back. Do you understand the concept without having
29 necessarily gone into the detail of his statement?---I
30 think I understand what he might have said. 02.52PM

31 Would you agree that that poses a number of complex

1 questions of feasibility because of the steep slope
2 that one would then be placing overburden on if one
3 hasn't laid the batters back?---I think there is a
4 couple of matters there, one is around the steep slope,
5 but in part it's also about whether it could exacerbate 02.53PM
6 the stability of those batters without reforming them,
7 particularly if we're talking about the northern
8 batters which have already got a known stability
9 question over them and are being monitored on a daily
10 basis; the concern would be whether that approach would 02.53PM
11 deal with the other risks that the mine has.

12 I take it then that you would suggest that those criteria
13 you've got listed in paragraph 189 of your statement
14 would be a good model to check the Incoll proposal
15 against; that those are the kinds of things that you 02.53PM
16 should check it against?---That's a list that we
17 determined or that I determined would be a list that we
18 should consider; I'm not sure of Mr Incoll's, if you
19 like, his assumptions but I still think our list would
20 be a good starting point. 02.53PM

21 The final couple of matters I want to ask you about - I know
22 you said you haven't gone into the detail of
23 Mr Pullman's statement; very early on in his statement
24 he indicates that three plantations have been committed
25 to be established within a kilometre of the mine and he 02.54PM
26 makes the point that the council doesn't have any
27 particular capacity to deal with that because no
28 planning permit's required.

29 Can I ask you about your role as Mine Regulator in
30 that regard? Looking at your statement, the terms of 02.54PM
31 the Act, the licence and the work plans, I can't see

1 anywhere in there any power on the part of your
2 Department to direct anyone other than the owner of the
3 mine to reduce risks to the mine.

4 What I'm coming to is this: I take it that you
5 don't have any power to engage with plantation owners 02.54PM
6 about the risk they pose to mines as opposed to vice
7 versa?---I don't have powers of other landholders such
8 as plantation owners.

9 Finally I want to ask you about the bond material that's
10 attached to your supplementary statement. Go back 02.54PM
11 first of all to that document that you've been taken to
12 a couple of times, the memorandum from 1995, dated
13 4 December 1995. Again, with all of the caveats you
14 didn't write it and you essentially sourced it from
15 archives, is it your understanding that this is a 02.55PM
16 communication from the then owner or operator of the
17 mine which was Generation Victoria during the period
18 between being wholly state-owned and moving to
19 privatisation? In other words, it's pre-sale to GDF
20 Suez predecessors?---Yes, it's dated 1995. 02.55PM

21 As the sale is afterwards we can assume that this
22 information comes from those at Generation Victoria who
23 were charged with the responsibility of running the
24 mine; the estimates that it's built on comes from
25 them?---I can only assume that that would be the case 02.55PM
26 as you have based on the information there.

27 A reasonable assumption would also be that, when the authors
28 of these documents are talking about end of life of
29 mine, they're of course talking from a 1995 mindset
30 which is with respect to a smaller mine with different 02.56PM
31 qualities and a different sequence of work predicted at

1 that stage?---At that time the mine was not anticipated
2 to be the size as it is today.

3 It's been suggested to you a couple of times today that the
4 bond ought to represent at least in part the possible
5 costs of rehabilitation. I took it from a couple of 02.56PM
6 the answers you gave that you might also agree that it
7 is also intended to guard against what the risk is
8 assessed to be of the entity not fulfilling its
9 responsibilities with respect to its work plan and its
10 mining licence?---The rehabilitation bond is expected 02.56PM
11 to quantify the risks that would need to be
12 rehabilitated if it was not done so by the operator.

13 And thus far I think you said a moment ago in answer to one
14 of the last questions you were asked, thus far you have
15 no basis on which or no reason for which to consider 02.57PM
16 that the current obligations of GDF Suez wouldn't be
17 met pursuant to the plan?---I have no reason to
18 disagree with that, and just along the lines of that,
19 rehabilitation is required as part of the work plan.

20 I have no further questions for Ms White. 02.57PM

21 DR WILSON: One question only, if I may.

22 <CROSS-EXAMINED BY DR WILSON:

23 Ms White, before lunch you said that if you relied on rain
24 water alone, it could take up to 500 years to fill the
25 void. Do you recall giving evidence along those 02.57PM
26 lines?---It was - that statement has been included in
27 previous documents, yes, relating to this mine.

28 We have heard several dates for rehabilitation, but assuming
29 you don't rely wholly on rain water to fill the void,
30 in what year according to the current plan would 02.57PM
31 rehabilitation of the mine be completed?---2032 is the

1 estimated mine life and completion of the mining as it
2 exists in the current footprint. Post that time there
3 would then be the removal of infrastructure and all
4 other requirements, and then we would move to - the
5 rehabilitation plan envisages a six-year refill level, 02.58PM
6 so that would be the level of the mine after letting
7 six years of natural water recharge into that mine be,
8 if you like, the base of the water or that would be the
9 extent of the water and rehabilitation of the batters
10 would come down to that level. 02.58PM

11 Thank you.

12 <RE-EXAMINED BY MS RICHARDS:

13 Just a couple more questions in re-examination arising out
14 of some questions that Ms Doyle for GDF Suez asked you.
15 It was put to you, Ms White, and it may help to have 02.58PM
16 the document in front of you, it's Attachment 3 to your
17 statement which is the original gazettal. If we go to
18 page 63 of that document where the Fire Protection
19 Policy is dealt with. Ms Doyle put to you that what
20 mattered for the purpose of this document was 02.59PM
21 compliance with the Mine Fire Service Policy and Code
22 of Practice, and that it would be possible to change
23 the water reticulation system as long as it was
24 compliant with the Code of Practice, and you agreed
25 with that proposition?---That would be my 02.59PM
26 understanding.

27 What is the process for determining whether a change to the
28 water reticulation system complies with the Code of
29 Practice? Is that just a matter that's left to the
30 mine operator to determine for itself?---Given that I 03.00PM
31 haven't done this, I would envisage that the approach

1 would be that GDF Suez would specify to the Regulator
2 that they are compliant with the code because of these
3 reasons and that they would be assessed and considered
4 as adequate.

5 The Regulator up to 31 December 2007 was DPI, or the Mine 03.00PM
6 Regulator?---That's right, yes.

7 And on 1 January 2008 it's been the Victorian WorkCover
8 Authority. It would be reasonable to expect, would it
9 not, that if there was a proposal to remove pipes in
10 the water reticulation system that's annexed to this 03.00PM
11 work plan, that there would at a minimum be a risk
12 assessment done?---I would envisage that a risk
13 assessment or possibly something that would say, is
14 there an alternative that is contained within the Fire
15 Code that would mean that the mine is still compliant 03.01PM
16 with the Fire Code Policy.

17 Ms Doyle also put to you that rehabilitation in relation to
18 mining block 1C should commence at the end of that
19 block in 2019 because the overburden from that block is
20 unsuitable for rehabilitation purposes. You, as I 03.01PM
21 understood your evidence, did not agree with that
22 interpretation of the rehabilitation plan. Can I draw
23 your attention to - this is in Attachment 12 to your
24 statement, the 2009 work plan variation - can I draw
25 your attention to table 5.1 on the 24th page of the 03.02PM
26 document. The page number is 5-2 on the bottom. Table
27 5.1 is the one I wanted to direct your attention to.
28 That sets out the mining schedule, does it not, and
29 there are separate schedules for overburden and
30 coal?---Yes, that's right. 03.02PM

31 We can see in that schedule that overburden is removed for

1 phase 2A between 2016 and 2017, so that overburden
2 would presumably be available for rehabilitation works
3 in 2018 and 2019?---I would say they would be
4 available.

5 Similarly, the overburden removal in phase 2B commences in 03.02PM
6 2018, so that overburden would be available for use
7 from that date?---That would be my assumption as well.
8 Which tends to support your interpretation with the
9 scheduling?---I'd like to think so.

10 I have no further questions for Ms White, may she be 03.03PM
11 excused.

12 CHAIRMAN: Yes. Thank you.

13 <(THE WITNESS WITHDREW)

14 MR ROZEN: While some folders are being re-organised, I can
15 indicate the next witness will be the community witness 03.03PM
16 for today, Mr Robert Gaulton. We're ready for
17 Mr Gaulton, please, to come to the witness box.

18 <ROBERT JOHN GAULTON, sworn and examined:

19 Afternoon, Mr Gaulton?---Good afternoon.

20 Could you please repeat for the transcript your full 03.05PM
21 name?---Robert John Gaulton.

22 Can you tell us your address please, sir?---93 Kelso Road,
23 Yallourn North.

24 Mr Gaulton, you have lived in the valley for some
25 42 years?---Correct. 03.05PM

26 And you, whilst living in the valley, have spent many years
27 working in and around all three of the open coal
28 mines?---23-24 of those years.

29 For the purposes of the Inquiry you have made a witness
30 statement; is that right?---Correct. 03.05PM

31 There are two attachments to this statement which I'll ask

1 was indeed.

2 But ultimately by the time you finished you were a member of

3 a team and part of your responsibilities included

4 training other members of that team; is that

5 correct?---That's correct, training and supervising 03.07PM

6 other members of the Earth Sciences Teams.

7 Since taking a package from the SECV you have firstly

8 completed your PhD studies and, secondly, spent some

9 time doing some consulting work for each of the three

10 open cut coal mines in the valley; is that 03.08PM

11 right?---That is correct. I have undertaken consulting

12 work at each of the three open cut mines, not

13 necessarily as a client in a direct sense, but in some

14 cases yes, but as an employee of other consultancies.

15 At paragraph 8 of your statement, no doubt drawing on your 03.08PM

16 extensive experience working as a geologist in the

17 various brown coal mines, you set out in considerable

18 detail the geological explanation for why brown coal

19 (a) is so flammable when it dries out, and (b) why it's

20 so difficult to put brown coal fires out?---Yes. 03.08PM

21 The Inquiry will also have the benefit of hearing evidence

22 from Professor Cliff later in the week on a similar

23 topic. I was drawn to what you say at paragraph 12

24 about the extent to which brown coal as it exists in

25 the Latrobe Valley dries out; that it goes from some 03.09PM

26 two-thirds moisture content down to 20 per cent or a

27 fifth; is that correct?---I believe that's correct.

28 Can you just for our purposes give an understandable to the

29 lay person explanation for those particular

30 characteristics that you identify of brown coal; what 03.09PM

31 makes it so flammable and why it's so hard to put brown

1 coal fires out once they start?---Allow me to premise
2 my statement by indicating quite clearly that I am not
3 an expert on the combustion of brown coal, however I do
4 have some understanding of the nature and structure of
5 brown coal.

03.09PM

6 First of all, the porosity of brown coal, which is
7 a measure basically derived by taking the difference
8 between the size of a given quantity of brown coal as
9 determined by immersion in mercury and then dividing it
10 by the penetration by helium, gives a porosity of brown
11 coal typically in the range of about 40 per cent. That
12 porosity changes as the brown coal desiccates. That
13 will reduce to about 20 per cent. Brown coal, if you
14 like, is analogous to a sponge, in fact most coals are
15 but some are far more porous than others. Brown coal
16 represents a higher level porosity. Brown coal is not
17 much more advanced really than peat or lignite.

03.10PM

03.10PM

18 It has been estimated by the HRL scientists in the
19 old State Electricity Commission of Victoria that in
20 moist brown coal, with its intrinsic porosity of
21 40 per cent, that the total surface area of the coal,
22 the individual macerals which make up the coal, is of
23 the order of 300 square metres per gram of coal for
24 Victorian brown coals. My mental arithmetic indicates
25 that, if we were to take a 3 kilogram sample of brown
26 coal, which might be about the size of a football, the
27 total surface area equates to around 1 million
28 square metres. That area is available for combustion.

03.11PM

03.11PM

29 My understanding further is that the porosity of
30 black coal is typically 5 per cent or less; it may be
31 one quarter to one-tenth of the porosity of brown coal

03.11PM

1 with a corresponding decrease in the amount of surface
2 area available to penetration by oxygen and therefore
3 combustion. My feeling is that this is one of the key
4 reasons why brown coal is difficult to extinguish.
5 External water supplied to burning brown coal will 03.12PM
6 certainly douse combustion on the outside of the coal;
7 it will not necessarily have the same effect in the
8 micro pores of the coal which could also be combusting.
9 That's why I believe, in order to successfully attack
10 brown coal fires with water, requires consistent 03.12PM
11 supplies of water so that, if you like, the whole area
12 is drowned rather than just cooled.

13 It also, as far as I understand, acts to be a
14 generator of carbon monoxide. If we apply water to
15 burning brown coal the propensity is there to generate 03.13PM
16 larger quantities of carbon monoxide than one might
17 expect with a black coal fire or coals of higher rank
18 than brown coal.

19 In addition to that, and I've been talking about
20 the micro structure of brown coal here, if you like the 03.13PM
21 macro structure because of the shrinkage means that
22 brown coal at the surface when it's dried has shrunk
23 and that facilitates the propagation of extensive
24 shrinkage cracking, which in collaboration with the
25 jointed nature of brown coal, if we like, cracks that 03.13PM
26 run through the coal which have been induced by
27 geological forces in the past, makes available extra
28 passages for oxygen ingress. So we have the micro pore
29 structure and combustion occurring at that level and we
30 also have a desiccated coal surface which is widely 03.14PM
31 permeable to the ingress of oxygen which will support

1 combustion.

2 Thanks very much, Mr Gaulton. The difficulties you've
3 described for suppressing brown coal fires and the
4 geological explanation for that are why we see in the
5 literature and the evidence the Inquiry's heard
6 references the importance of preventing brown coal
7 fires in the first place rather than trying to put them
8 out once they start. I assume you'd endorse that
9 general approach?--Most emphatically.

03.14PM

10 It's something you deal with later in your statement and
11 I'll come to that presently. Sticking with the order
12 in which you deal with matters in your statement -
13 sorry, there's one matter that I meant to ask you
14 about. You referred to brown coal and lignite. I
15 think up until now in this Inquiry the terms have been
16 used synonymously. I take it from what you've just
17 said there there's a difference between the
18 two?---There is, depending on which classification that
19 we choose to adhere to. I think under the American
20 system of coal classification this would rate as a
21 lignite. Under the German system, it is a lower rank
22 brown coal.

03.14PM

03.15PM

03.15PM

23 You make reference in your statement to the 1977 fire at the
24 Hazelwood Mine which we've heard a good deal about.
25 Were you working at the Hazelwood Mine at the time?---I
26 was.

03.15PM

27 You say that you weren't directly involved in suppressing
28 that fire, but you certainly had experience both of the
29 fire and of the Inquiry that was held in its aftermath.
30 Is that right?---I was involved in suppressing the
31 fire. I manned hoses at one stage, but the bulk of my

03.16PM

1 duties were as a guide within the mine to take
2 firefighting personnel who had come from outside the
3 environment to particular locations in order to combat
4 the fire.

5 You note at paragraph 23 of your statement that your 03.16PM
6 personal learning from the fire was that the steep
7 slope of the batters made it difficult to fight the
8 fires from levels above or below the burning coal
9 batters. What was the height of the batters that were
10 involved in the 1977 fire that you refer to 03.16PM
11 there?---Two heights; either 20 metres or 12 metres.

12 Are you able to indicate how that compares to the height of,
13 say, the northern batters that were so extensively
14 involved in the fire of this year?---It's the same.
15 The northern batters are either 20 metres high or 03.16PM
16 12 metres in terms of the individual batters. The
17 whole batter system is in excess of 100 metres high,
18 but the individual batters are either about 20 metres
19 or about 12 metres.

20 We know in relation to the northern batters that there are 03.17PM
21 several levels. I think the evidence is several levels
22 of batters that altogether make up the northern
23 batters. Does that sound right or you're not
24 sure?---Well, there are eight operating levels and a
25 number of intermediary levels. 03.17PM

26 That overall height of the batters presumably is dictated by
27 the amount of coal that was won from that particular
28 area when it was operational; is that right?---Well,
29 basically by the thickness of the seam because the seam
30 has been mined from top to bottom. 03.17PM

31 You make observations in your statement about the incredible

1 depth of the coal seams in the valley compared, say, to
2 brown coal mines in Germany?---Yes, equivalent brown
3 coal mines in Germany have almost the reverse
4 overburden to coal ratio. We're moving something like
5 15-20 metres of overburden to access 100 to 200 metres 03.18PM
6 of coal; theirs tends to be the reverse.

7 That has implications, as you note, for rehabilitation of
8 the mines here too, does it not?---Basically we are
9 stuck with large voids here, whereas in Germany they
10 can be largely backfilled. 03.18PM

11 From the overburden that is removed?---Correct.

12 You talk at paragraph 24 of your statement about the
13 dedicated Fire Service and the Inquiry's already heard
14 evidence from Mr Freshwater and Mr Brown about those
15 matters. I want to ask you particularly about what you 03.18PM
16 say in paragraph 27 about the loss of numbers - that
17 is, the reduction from 11,000 people employed by the
18 SECV down to a little more than 2,000 following
19 privatisation, but more importantly the expertise that
20 was taken out of the mines. Can you expand on 03.19PM
21 that?---Yes. There's no doubt that there was a
22 dissipation of local expertise at the time of
23 privatisation. Large numbers of professional people -
24 I'm not sure if it was as proportionate as the
25 downsizing - left the industry and left the area, so 03.19PM
26 there was a significant reduction in the amount of
27 experience, expertise and know how in the mining arena
28 post privatisation.

29 That's a topic that you return to in the context of
30 this year's fire, I think, which I'll ask you about 03.19PM
31 now. You were in the valley at home in Yallourn on

1 I would not have wanted to have been a resident of
2 Morwell at that stage with a respiratory disorder that
3 I endure.

4 At paragraph 30 you refer the Inquiry to a meeting at the
5 Kernot Hall on 18 February which we've already heard a 03.22PM
6 deal of evidence about. Your wife went to the meeting,
7 not accompanied by you, it would seem?---No, I think I
8 must have relented and let her out on her own. I had
9 another engagement that night, but she came home and
10 reported what had transpired there in terms of some of 03.22PM
11 the reactions by the concerned community members and
12 some of the responses by those in authority.

13 So she was free to go but on the condition that a detailed
14 report was provided back; is that right?---No, that
15 wasn't a condition but it was nevertheless fulfilled. 03.22PM

16 What she told you was that the Incident Controller, Mr Foss,
17 the then Incident Controller, told the meeting that he
18 and the other members of the Emergency Services were
19 seeking some expert input from people in New South
20 Wales about how to put out the fire?---I'm not sure if 03.23PM
21 that was Mr Foss or not, but it was announced that
22 Interstate expertise was being sourced to advise on the
23 fire, and that's something that caused my wife to
24 think, well, why are they looking Interstate for
25 experts in materials that are significantly different 03.23PM
26 to our brown coal when there are a number of people
27 here who hadn't yet escaped the Latrobe Valley but were
28 available with a lot of background knowledge and I
29 suppose experience in the nature of brown coal, the
30 mining of it and more particularly the remediation of 03.24PM
31 fires.

1 Not surprisingly a name that came to your wife's mind was
2 you when she gave your details to Mr Foss; is that
3 right?---That's correct. She thought that I might not
4 so much be able to advise the Incident Controllers or
5 the team on technical matters, but to alert them to the 03.24PM
6 reality that there were a number of other former State
7 Electricity Commission and in fact electricity mining
8 industry personnel still available.

9 The day after the fire, after being contacted by Mr Foss,
10 you went into the Traralgon Incident Control Centre and 03.24PM
11 spoke to his Operations Performance Manager, Mr Pettit;
12 is that right?---That's correct.

13 You set out from paragraph 31 onwards in your statement that
14 Mr Pettit was quite candid about the difficulties that
15 were being faced by the Emergency Services trying to 03.25PM
16 put out the fire?---That was my understanding.

17 In summary, what were the difficulties that were conveyed to
18 you that they were having?---They couldn't put the fire
19 out. They were attacking it with helicopters and
20 tankers, and Kevin, I recall, made mention of the fact 03.25PM
21 that it was a frustrating exercise because a tanker or
22 a helicopter would attack a particular area and they'd
23 have to go away and get more water and, by the time
24 they got back, combustion had re-established itself.
25 That didn't overly surprise me because I, just going 03.25PM
26 back to my original statement, my experience - not my
27 expertise - but my experience suggested that
28 application of water, if that was the only material
29 available to combat the fire, needed to be very
30 consistent and in significant volumes. 03.25PM

31 So two things there: Vast quantities of water and constant

1 application of the water over a lengthy period of
2 time?---Correct, to almost flood an area of combustion
3 was required, otherwise it turned out to be a
4 relatively fruitless exercise, and the evidence of that
5 is that it took over six weeks to remediate the fire on 03.26PM
6 this occasion despite considerable manpower and
7 machinery being available.

8 MEMBER PETERING: Excuse me, Mr Rozen, if I may.

9 Mr Gaulton, we've heard evidence to the Inquiry that
10 mine stability is an issue because this particular mine 03.26PM
11 at Hazelwood sits on aquifer. So, is it your
12 experience that the application of volumes of water as
13 you've just spoken around - must we also take into
14 account the stability issues in relation to the
15 aquifer? Can you just describe to me how those two 03.26PM
16 things are balanced?---Yes, mine stability is not in
17 the first instance related to the presence of the
18 aquifer. The individual batter stability is very
19 sensitive to the height of ground water within the
20 coal; that is easily and quickly recharged by the 03.27PM
21 application of large quantities of surface water. That
22 was one of the drivers that caused the movement in the
23 northern batters when the main drain created some sink
24 holes and recharged the groundwater system.

25 The underlying aquifers have been largely 03.27PM
26 depressurised, and if they weren't controlled
27 eventually, the whole stability of the mine would be in
28 my opinion under threat. The individual stability of
29 batters is very sensitive to water; we saw that also
30 recently with the collapse of the northern batters in 03.27PM
31 Yallourn Mine. So I have concerns about the

1 application of very large quantities of water within
2 the batter system of the mine.

3 Having said that, I acknowledge that in order to
4 remediate the fire very large quantities of water have
5 traditionally been required. I would prefer to see the 03.28PM
6 application of the water in the form of foam or polymer
7 which would not penetrate and recharge the groundwater
8 system. But, as has been suggested, my overriding
9 preference would be to prevent the spread of fire in
10 the first instance because there certainly are risks 03.28PM
11 with applying large quantities of water in terms of
12 geotechnical stability of batters. The inherent
13 density or specific gravity of brown coal is 1.12, it's
14 not much heavier than water itself; it almost floats.

15 CHAIRMAN: Could I ask a question relating to rain. I take 03.29PM
16 it, if you have good, strong heavy rain that's an
17 advantage, but if you have intermittent rain that would
18 be a disadvantage?---In terms of controlling fire?

19 MR ROZEN: Yes?---Not necessarily a disadvantage. I think
20 the application of any water does tend to be remedial. 03.29PM
21 At one place in my statement I've indicated that the
22 application of water in heavy jets - well, let's say
23 dumping from helicopters, may be deleterious because it
24 can help spread burning coal particles. But the
25 liberal but relatively gentle application of water with 03.29PM
26 sprays or rain would generally be remedial, but
27 periodic rain would help but nowhere near as much as a
28 consistent downpour.

29 CHAIRMAN: The other context to that that Commissioner
30 Lapsley referred to was that just a smallish amount of 03.30PM
31 rain had the effect of impeding the progress of

1 vehicles to and from in the area because it created mud
2 and a variety of things of that kind?---In that he is
3 correct. A lot of the roads particularly - as I
4 understand it a lot of the roads or access levels in
5 the abandoned areas of the mine are not necessarily 03.30PM
6 still easily traversable in the sense that they may
7 have been when there was liberal crushed rock applied.
8 If it's now only a clay seal, that clay does get very
9 slippery and vehicles that aren't 6-wheel drive for
10 example will find that difficult to traverse so, yes, 03.30PM
11 in that sense in terms of access rain can be a
12 problematic issue.

13 Again on a different tack, in relation to wind: I take it
14 that the wind that blows into the batters is likely, as
15 appears to have happened on the 9th, if it comes from 03.31PM
16 the southwest or from the west it's likely to extend
17 quite quickly the fire along batters generally?---I
18 believe so and that's been my experience in the past.
19 If there's no wind the coal smoulders aggressively, if
20 that's quite the right word, but visible flames will 03.31PM
21 soon be generated if there is significant air movement.
22 It doesn't necessarily require wind from outside
23 either. The simple burning of the batters tends to
24 cause updrafts or catabatic updrafts, or pseudo
25 catabatic updrafts within the mine, so that hot air 03.31PM
26 rising of course will create its own vortices and they
27 will be deleterious to fighting the fire, so that's
28 another aspect, that it can go from one thing to
29 another in a causative way which is problematic.

30 MR ROZEN: I think, Mr Gaulton, you've been in the hearing 03.32PM
31 room today while Ms White from the Mine Regulator, as

1 it was referred to, has been giving evidence about
2 rehabilitation. You refer to that at paragraph 38 of
3 your statement, making the point that you don't think
4 there was much done by way of rehabilitation during the
5 SEC days; you make a reference to some limited 03.32PM
6 rehabilitation at paragraph 38. You note at
7 paragraph 40 that the land area occupied by the
8 Hazelwood Mine can't be rehabilitated back to what it
9 was due to the large disparity between volumes of coal
10 and overburden removed. That's what you were referring 03.33PM
11 to earlier in terms of the proportion of overburden as
12 against coal that's been removed from the void that's
13 there for all of us to see. Is that right?---That is
14 correct.

15 At paragraph 41 you say that there are parts that haven't 03.33PM
16 been operational for decades and you see no operational
17 reason why old parts of the mine can't be progressively
18 rehabilitated in as far as this is practicable. Would
19 you include the northern batters in that
20 description?---I would, but I would also doubt that 03.33PM
21 it's practicable to rehabilitate the northern batters.
22 The definition of rehabilitation I forget, but if I
23 could share with you my definition?

24 Yes?---I believe rehabilitation is, if you like, the
25 replication as close to as possible to the original 03.34PM
26 habitat, both flora and fauna. My comments there with
27 regard to the voids that will remain inevitably is that
28 that land can't be brought back to what it was before,
29 nor would anyone suggest that it could be.

30 Rehabilitation, though, could occur within a mine but 03.34PM
31 I'm not sure that that would be a priority even at this

1 stage. Rehabilitation is being used across the board
2 to suggest that the batter should be covered with clay
3 and then topsoiled and then replanted with vegetation.
4 I personally am not sure that that would be such a good
5 idea to have the mine full of resown vegetation.

03.34PM

6 I certainly agree that at the end of mining an
7 attempt to bring the environment back to as natural as
8 possible is justifiable and desirable, but while the
9 mine is operating I don't see that as very practicable,
10 but I do see that fire prevention in terms of covering
11 the batters may well be a very desirable activity to
12 undertake.

03.35PM

13 As has I suspect been noted, in order for the
14 batters to be properly rehabilitated they would need to
15 be brought back to an angle perhaps 30 degrees or less
16 rather than the 45 degrees that the average batter now
17 adopts, otherwise any attempt to apply clay and topsoil
18 will end in failure because it will either sump off or
19 wash off. So there is a huge cost impost in reducing
20 the batters to that angle, and that would also, I
21 suspect, inhibit access and have a whole lot of
22 operational ramifications.

03.35PM

03.36PM

23 So, rather than contemplate rehabilitation per se
24 within an operating mine, I would think it would be
25 more desirable, given our recent circumstances, to
26 contemplate fire protection which may not require the
27 further excavation of the batter systems, simply to
28 cover them with a suitable substance that would inhibit
29 the commencement of fire or the spreading of it.

03.36PM

30 All of which brings us to paragraph 46 of your statement,

03.36PM

31 Mr Gaulton, where you raise that very issue. What

1 you're contemplating, as I understand it there, is
2 coating the old and vulnerable exposed batters,
3 including the northern batters, with a fire protectant
4 such as stabilised clay and cement mixture. You note
5 that wouldn't classify as rehabilitation but it may 03.37PM
6 provide some short-to-medium term protection in terms
7 of preventing fire or at least reducing the impact of a
8 fire that did start. Is that right?---That's correct,
9 and again, I have no particular expertise in that area
10 and I have no idea what would be a suitable material to 03.37PM
11 coat the batter systems with. But I've had some
12 experience in securing the stability of cuttings and
13 underground openings and I'm aware of the use of, say,
14 shotcrete. Now, shotcrete, which is a specially
15 formulated cement mixture fired at vertical or even 03.38PM
16 overhead faces by a cannon or a jet, may well be able
17 to be adapted to open pit use. Rather than shotcrete
18 per se, perhaps a mixture of bentonite clay and cement
19 might be worth trying, or any spectrum of other
20 materials that could adhere to a 45 degree brown 03.38PM
21 coalface and prove to adhere and create a barrier
22 between that coalface and the atmosphere which would
23 not only prevent combustion through embers dropping
24 into the mine and help to control the spread of fire,
25 but it would also act as an oxygen retarding barrier 03.38PM
26 which would help to preclude the unique combustion of
27 brown coal which is so difficult to remediate.

28 Can you draw the Inquiry's attention to any research either
29 in Australia or overseas that might have examined these
30 issues?---Sadly, no, because largely - well, partly 03.39PM
31 through my ignorance - but also largely because we have

1 such a unique situation here. This is the only place
2 in the world where huge massively thick seams of brown
3 coal are mined and exposed to the atmosphere with the
4 intrinsic consequences of that.

5 Might be a need for a home grown solution to the problem, 03.39PM

6 Mr Gaulton?---I would agree with that.

7 They're the questions that I have of Mr Gaulton. Do Members
8 of the Board have any other questions? I understand
9 Ms Doyle has one question.

10 <CROSS-EXAMINED BY MS DOYLE: 03.39PM

11 Mr Gaulton, I just wanted to ask you something arising from
12 paragraph 46 of your statement, the last paragraph you
13 were just taken to where you propose a solution using
14 clay and cement mixture. That proposal there doesn't
15 take account of the horizontal bores which are through 03.40PM
16 the batters to provide drainage to those areas, does
17 it? In other words, you haven't considered that
18 issue?---Well, I have but the outlet for the horizontal
19 bores is generally a metre or so of PVC casing which
20 extends from the face, so those horizontal bores would 03.40PM
21 not be obscured by - - -

22 Then that answers my question; you assume that the opening
23 is left unobscured somehow under this process?---Yes,
24 it's left unobscured because, with horizontal drains
25 there's normally around about a metre of bore hole 03.40PM
26 casing left projecting from the face, and that takes
27 the water out and discharges it into the toe drain.

28 Have you given consideration to how this solution would
29 interact with any hot spots that are located below the
30 area to be covered in the clay and cement 03.41PM

31 mixture?---No. I would hope that hot spots would be

1 excavated prior to the application of any material. I
2 need to make it clear that it's not a suggestion of
3 clay and cement; this was really put in to indicate
4 that that is a possibility but we need to research
5 suitable materials for that. 03.41PM

6 You're not aware of this proposal having been used in any
7 open cut brown coal mines or other open cut
8 mines?---Shotcreting has been used in other open cut
9 mines to enhance the stability of unstable batters. I
10 don't believe it's been used as a fire protection 03.41PM
11 measure in any coal mine, whether brown or black, in
12 the past.

13 I have no more questions, Mr Gaulton.

14 DR WILSON: We have no questions of Dr Gaulton, thank you.

15 MR ROZEN: I have got no re-examination. 03.41PM

16 CHAIRMAN: Thank you, Mr Gaulton, you're excused.

17 <(THE WITNESS WITHDREW)

18 MR ROZEN: Ms Richards will take the final witness today.

19 MS RICHARDS: The next witness is Jason Pullman from Latrobe
20 City Council. 03.42PM

21 <JASON JOHN PULLMAN, sworn and examined:

22 MS RICHARDS: Good afternoon, Mr Pullman. I'll ask you
23 again to please state your full name and your work
24 address?---Jason John Pullman, Latrobe City Council,
25 Commercial Road, Morwell. 03.43PM

26 You're employed by the Latrobe City Council as the

27 Coordinator of Strategic Planning?---Yes.

28 That's a position that you have held since 2007?---2007.

29 You've made a statement to the Inquiry which is a statement
30 of 49 paragraphs and seven attachments. Do you have a 03.43PM
31 copy of that there with you?---Yes, I do.

1 Are there any corrections that you would like to make to
2 this statement or additions?---No, thank you.

3 Is the statement true and correct?---Yes, it is.

4 I tender that.

5

03.43PM

6 #EXHIBIT 61 - Statement of Jason Pullman.

7

8 MS RICHARDS: Just a little about your own background first,

9 Mr Pullman. You've been employed in your current role

10 since 2007. Before that you were working in a

03.43PM

11 statutory planning role and a strategic planning role

12 for the Wellington Shire Council?---That's correct.

13 You did that for eight years from 1999-2007?---Yes, that's

14 correct.

15 That might be an appropriate point to ask you about the

03.44PM

16 difference between statutory planning and strategic

17 planning?---Without self-incrimination, the statutory

18 planning basically involves the assessment of planning

19 permits and enforcement of the planning scheme.

20 Strategic planning usually doesn't involve planning

03.44PM

21 permits but looks after matters of strategic land use

22 policy and/or planning scheme amendments that are

23 required to be made to the planning scheme.

24 So strategic planning involves looking at the big picture,

25 at the planning scheme that applies at a particular

03.44PM

26 municipality in this case; what it provides, what it

27 should provide and how it can be altered to meet the

28 council's strategic objectives?---Yes.

29 And strategy planning involves making decisions within that

30 framework?---That's correct.

03.45PM

31 You have some formal qualifications as well that bear on

1 your work. You have a Bachelor of Arts in Urban
2 Planning?---Yes.

3 You have also completed a Masters Degree in Social Science
4 which involved you looking at regional economics,
5 housing and town planning in regional Australia after 03.45PM
6 the Second World War?---Yes.

7 Did that have any particular focus on the Latrobe Valley
8 region?---Indirectly, yes. It looked at Australia as a
9 whole, Victoria, the Gippsland region, and then looked
10 at a number of municipalities within the region, those 03.45PM
11 being Latrobe Valley and the Sale area as well in
12 Wellington Shire.

13 Just to be clear, Wellington Shire adjoins Latrobe City; is
14 that correct?---Yes, that's correct.

15 In which direction?---To the east. 03.46PM

16 I'd just like to, without going into a great level of
17 detail, and land use planning lends itself to a lot of
18 detail, I'll put some general propositions to you about
19 the way in which land use planning is regulated in
20 Victoria. The principal Act is the Planning and 03.46PM
21 Environment Act; is that correct?---Yes, it is.

22 It is administered by the Minister for Planning?---Yes.

23 Who was advised by what is now known as the Department of
24 Transport, Planning and Local Infrastructure?---Yes.

25 And it was until fairly recently known as the Department of 03.46PM
26 Planning and Community Development?---That's correct.

27 Or DPCD. The Minister is a planning authority for the
28 purposes of a local planning scheme and so is the local
29 council for that municipality?---Yes.

30 But a local planning scheme can only be amended with the 03.46PM
31 approval of the Minister?---Yes, that's correct.

1 In the usual course, an amendment would be proposed, put
2 forward by a council which would manage the local
3 consultation processes, and ultimately it would not
4 take effect unless approved by the Minister?---That
5 would be a normal process. Another process is whereby 03.47PM
6 the Minister steps in and runs that particular part of
7 the process, him or herself.

8 There's also an ability for a planning panel to be involved
9 in hearing submissions about a proposed amendment and
10 making recommendations - - -?---That's correct. 03.47PM

11 - - - to either or both of the council and the
12 Minister?---Usually what happens, if the council run a
13 planning scheme amendment an independent planning panel
14 is appointed at the request of the council. If the
15 Minister runs a planning scheme amendment, he/she may 03.47PM
16 appoint an Advisory Committee to undertake a similar
17 function.

18 Once you have a planning scheme in place the council is
19 generally the responsible authority for deciding
20 applications for permits or subdivisions within that 03.48PM
21 scheme?---That's the normal process; again, the
22 Minister has the opportunity to step in with planning
23 permit applications and become the planning authority
24 as well on rare occasions.

25 The planning scheme, and we'll take the one here in Latrobe 03.48PM
26 as the specific, is a combination of State and local
27 planning provisions?---Yes, that's correct.

28 We see in the Victoria planning provisions a suite of
29 different provisions that can be assembled by a council
30 to make up its local planning scheme?---Yes, the 03.48PM
31 council chooses from the State Government provisions

1 that are provided, or the VPPs as they have been known
2 since the mid-1990s. Council has the ability to insert
3 local sections into the planning scheme under a strict
4 State Government framework.

5 That framework involves a state planning policy framework 03.49PM
6 and a local planning policy framework?---Yes.

7 The local framework has to be consistent with the State
8 framework?---Yes.

9 But the council does get an opportunity within the State
10 framework to set its own strategy and articulate the 03.49PM

11 direction it desires to take?---At the moment under the
12 current structure, although it is under review by the
13 State Government, under the current structure the
14 council doesn't have an ability to change the State
15 planning policy; it does have an ability to tell its 03.49PM
16 own story through the local planning policy and/or
17 schedules, change some of the schedules or fill in,
18 populate tables essentially in some of the zones and
19 overlays, so the schedules to those zones and overlays.

20 To come to zones and overlays, every piece of land within 03.49PM
21 the municipality is zoned and it can only have one
22 zone?---Yes, it can only have one zone, that's correct.

23 But it can have a range of different overlays?---Yes.

24 And one that at least Justice Teague is familiar with is
25 what's now called the Bushfire Management Overlay or 03.50PM
26 Bushfire Protection Overlay?---As one of the overlays,
27 yes.

28 There's a whole range of different overlays, and then
29 there's a series of particular provisions that appear
30 in every planning scheme?---That's correct, yes. 03.50PM

31 I've made an attempt to extract from the Latrobe City

1 planning scheme provisions that are relevant to the
2 management of bushfire risk. I'll ask that you be
3 shown a folder, and we do have copies of this for the
4 parties as well. Perhaps you could start by looking at
5 the index, ignoring what appears at 21 because I'll 03.51PM
6 take you to that later on. The first two relate to the
7 State planning policy framework and in particular
8 Clause 13 which includes environmental risks, and that
9 includes bushfire. There's a particular section in
10 Clause 13 that has a fairly high level Policy Statement 03.51PM
11 about bushfire?---Yes.

12 Then 4-11 are essentially the Latrobe City Municipal
13 Strategic Statement?---Yes.

14 Then 36.01 deals with the public use zone, and when we come
15 to look at the timber plantations we'll see why that's 03.51PM
16 relevant. Then 13, Clause 37 deals with the special
17 use zone which is the zone which is used in Latrobe
18 City for brown coal resources?---Yes.

19 So, the Hazelwood Mine and the other open cut mines are
20 zoned special use zone?---Yes. 03.52PM

21 There is a Schedule 1 to that zone that deals specifically
22 with that kind of use ?---That's correct, yes.

23 Then we move into the overlays. I've extracted at 14,
24 clause 42.01, the environmental significance overlay
25 and that matters in this case because there is a 03.52PM
26 designated urban buffer of 1 kilometre between new
27 developments and coal mining areas?---Yes, that's
28 correct.

29 Then there is the Bushfire Management Overlay at 15?---Yes.

30 Then we have a number of other specific or particular 03.53PM
31 provisions; the earth and energy resources industry

1 generally, timber production generally, bushfire
2 protection. Clause 62, uses, et cetera, not requiring
3 a permit, and then just before lunch you identified
4 that we should also refer to Clause 63, existing
5 uses?---Yes, that's correct.

03.53PM

6 If you are able to say so now that would be good, but if you
7 need some time to think about it that's fine as well,
8 are there any other provisions of the Latrobe City
9 planning scheme that are relevant to the way in which
10 Latrobe City uses its land use planning powers to
11 mitigate fire risk?---I would suggest that's an
12 exhaustive list of the provisions of the scheme.
13 There's probably one or two other areas, but I suspect
14 I would need to check, however I would say that's
15 probably 100 per cent correct.

03.53PM

03.54PM

16 If after you've completed giving your evidence there are
17 others that occur to you, please feel free to let us
18 know?---Yes.

19 We asked you specifically to deal in your statement with the
20 existence of some timber plantations in close proximity
21 to the Hazelwood Mine to the north and west of the
22 mine. You do this starting at paragraph 9 of your
23 statement. You've provided us with a map at Annexure 2
24 and you have since provided us with another map that we
25 may also look at. Could we look at the old one. This
26 is a map that you prepared and provided together with
27 your statement late last week, which is a satellite
28 photograph of the Hazelwood Mine and the township of
29 Morwell. There is a red dotted line around the mine
30 which I am assuming is not the mine licence boundary
31 because it cuts across the current operational area of

03.54PM

03.55PM

03.55PM

1 the mine. Can you tell us what that red dotted line
2 is?---The red dotted line is the council's data on the
3 property boundary extent or the title. It does not
4 reflect any mining licence boundary that currently
5 exists or has in the past.

03.56PM

6 There's other material available to the Inquiry that
7 indicates that there are a series of different titles
8 that make up the mining licence area which may explain
9 why that dotted line cuts through the current operating
10 area of the mine. You have since produced a second
11 map, perhaps we could have a look at that. This is a
12 map headed, "Location of mining licence and selected
13 timber plantations near the Hazelwood Mine." We have a
14 number of thick lines. The thick grey line, I take it,
15 is the mining licence boundary around the Hazelwood
16 mining area? Or it's green?---Grey or green, yes.

03.56PM

03.56PM

17 Then the yellow lines, the area to the north is presumably
18 around the Yallourn Mine?---Yes.

19 And the area to the west of the Hazelwood Mine, what's
20 that?---That's a separate - there's actually two mining
21 licences there to the west; a small one that extends
22 from Driffield, the annotation of Driffield to the
23 west. It might be easier if I can point to it.

03.57PM

24 Yes, there should be a ruler just on your right there?---The
25 two mining licences, there's a small one in here, you
26 see it follows it as at the alignment of a creek or a
27 depression, and the other mining licence is this one
28 that wraps in around here immediately to the west.

03.57PM

29 What's the source of the boundaries that you have depicted
30 on this map?---Those mining licence boundaries were
31 sourced from DSDBI's website on 2 June 2014.

03.57PM

1 There is some areas shaded in grey or grey-blue?---Yes.
2 Those designate areas where there are existing timber
3 plantations, do they not?---Yes, that's correct.
4 It might be easiest to return to the previous map just to
5 identify those. These are all timber plantations that 03.58PM
6 you have identified that are within 1,000 metres or
7 1 kilometre of, well, initially the property boundary
8 for the main Hazelwood Mine title?---That's correct.
9 The two maps do differ somewhat with regards to the
10 location of the plantations. The second map shows an 03.58PM
11 additional plantation which I've included on the second
12 map; identification of the plantation up here which is
13 not shown in yellow; it is further than 1 kilometre.
14 There's a reason why I've shown it on the second map
15 and I'd be happy to expand on that if required. 03.59PM
16 Why don't we have the second map back and you can expand
17 away?---Okay. I've highlighted and I should point out
18 that the greeny-blue areas here, here, here, here and
19 here are not to scale and I have drawn those on for
20 indicative illustration purposes. They don't come from 03.59PM
21 the DSDBI website, I've put them on in addition to the
22 sketched outline of the Morwell township. So, the
23 plantations that appear on the previous map is this one
24 down here to the south, this one here, this one here
25 and this one here. So that's the only one I 04.00PM
26 additionally shaded in and the reason for that is
27 because they fall within the existing mining licence
28 areas as depicted on the map. The previous plan, it's
29 obviously the mining licences aren't shown and those
30 plantations are only within, say 1,000 or 1 kilometre, 04.00PM
31 so I've got a little bit further than requested in

1 answering the question.

2 The question was to identify the location and ownership of

3 timber plantations to the north and west of the mine,

4 and those are the ones you've identified. Let's deal

5 with them one-by-one. You have dealt with three of the 04.00PM

6 four in paragraph 10 of your statement?---Yes.

7 Let's start with the property that you identify as PN 21510

8 and that is the plantation to the immediate northwest

9 of the mine, quite close to the town as well?---Yes.

10 And that is owned by Gippsland Water?---That's correct, yes. 04.01PM

11 My researches suggest that that land is zoned public

12 use?---Yes.

13 It's Schedule 1 to the Public Use Zone?---Yes.

14 Within the Public Use Zone we see from Annexure 3 to your

15 statement a permit is usually required for a timber 04.01PM

16 plantation unless certain conditions are met. Have I

17 understood that correctly?---That's correct.

18 Your evidence in your statement is that you've searched or

19 caused to be searched the council's permit records back

20 to 1969 and have not identified any permit for that 04.02PM

21 timber plantation on land that's owned by Gippsland

22 Water?---Yes, that's right.

23 Do you know when that land was first planted with

24 timber?---I'm not aware of any of the plantations when

25 they were first established, no. 04.02PM

26 Let's just assume for the moment, just for the sake of

27 discussion, that it was some time within the last

28 15 years. On the surface there should be a permit for

29 a timber plantation in that location, should there

30 not?---Not necessarily. 04.02PM

31 Explain why not necessarily, and if you would like to do so

1 by reference to the Public Use Zone and the other
2 documents in that folder I handed, please do?---Sure.
3 The first thing we would need to establish is during
4 that 15-year period what was the zone, has it changed,
5 have the provisions changed, been tweaked, so you would 04.03PM
6 need to undertake some investigation, a bit of a
7 timeline about what the provisions were and when they
8 applied and what they related to. In relation to
9 plantations, we would need to check to see whether or
10 not a plantation use and/or development was a planning 04.03PM
11 permit trigger say over the last 15 years to use that
12 horizon.

13 The other thing that we would need to have a look
14 at is, in the Public Use Zone we would also need to be
15 careful of the interpretation of whether or not the 04.03PM
16 activity, ie the plantation, was carried out by or on
17 behalf of the Public Land Manager and whether or not
18 that plantation was a utility use as defined under that
19 particular zone. That would be a matter of
20 interpretation. At the moment my interpretation is 04.04PM
21 not, that would not be a use usual to a utility service
22 provider and, therefore, that would probably trigger
23 the need for planning permit under the current
24 provisions. I don't know what the provisions were over
25 the last 15 years however. 04.04PM

26 The significance of 15 years is that, if the land has been
27 used as a timber plantation for 15 years, then that
28 effectively becomes an existing use and there's no
29 ability for the responsible authority to dispute the
30 right of the landowner to use the land for a timber 04.04PM
31 plantation. Is that a correct interpretation of the

1 way Clause 62 operates?---Clause 63?
2 Clause 63, I beg your pardon?---Generally that's correct.
3 However, if a use was lawfully carried out prior to any
4 changes occurred, ie for instance a zone change from
5 day one to day two and that use was an existing use 04.05PM
6 prior to the zoning changing on the following day, that
7 use is considered able to be able to be continued. So
8 you've got a number of things, you've got proof of
9 continuous use for 15 years, needs to be established
10 and proven however, and then you've also got whether or 04.05PM
11 not the use was lawful prior to any things changing in
12 the planning scheme before and after the change.
13 As things stand now, if Gippsland Water wanted to plant a
14 timber plantation on that land for the first time, a
15 permit would be required on your interpretation?---If 04.05PM
16 the land was for the first time used as a plantation?
17 Yes?---Yes, that would be my initial interpretation, yes.
18 There is no permit for that use, but as you sit there today
19 you can't explain why that's the case?---That would
20 require further extensive research and potentially we 04.06PM
21 would not find anything.
22 Have you made any enquiries directly of Gippsland Water to
23 ascertain the basis on which it maintains a timber
24 plantation to the northwest of an open cut coal
25 mine?---No, I have not. 04.06PM
26 Adjacent to the mining licence area?---No.
27 The second of the plantations that you identify is a
28 plantation to the west of the mine owned by Grand Ridge
29 Plantations also known as Hancock Victorian Plantations
30 and that's property No.19969. That's actually two 04.06PM
31 parcels of land that are identified on that map.

1 There's a smaller quadrilateral area, it's not a
2 square, and then immediately to the southwest of that a
3 larger irregular area, and they're both the same
4 property number?---Yes.

5 That is land in the Special Use Zone?---Both are covered by 04.07PM
6 a Special Use Zone, that's correct.

7 By both of those areas, and a permit is required for a
8 timber plantation within the Special Use Zone if any
9 part of the plantation is within 1,000 metres of a
10 mining licence area?---Yes, that's correct. 04.07PM

11 So again on the face of it there should be a permit for this
12 timber plantation, on the face of it?---Well, not
13 necessarily; subject to any existing use rights that
14 may apply or any provisions that applied at the time
15 that the plantation was first established. 04.08PM

16 Again, you've not identified in the searches that you've had
17 done back to 1969 any permit for - - -?---That's
18 correct, the council has no records of any permit being
19 issued for a plantation.

20 Of this plantation, which again it's adjacent to a mining 04.08PM
21 licence area, is it not?---It's actually adjacent to
22 and within.

23 Assuming that it's a lawfully operated timber plantation,
24 how might it be that there is a timber plantation to
25 the northwest of an open cut coal mine?---There are a 04.08PM
26 number of possibilities, without speculating too much.
27 One of them might be that the plantation existed prior
28 to the mining licence being extended in the
29 plantation's direction and therefore that 1 kilometre
30 may not have existed at the time when the plantation 04.09PM
31 was first established.

1 So, like Morwell, the plantation may have been there
2 first?---It may or may not have been; I can't confirm
3 that.

4 That's one possibility, all right. Are there other
5 possibilities that might explain the - - -?---The other 04.09PM
6 possibility was obviously the existing use provisions
7 might apply and/or the provisions of the scheme at the
8 time may not have required a planning permit. For
9 instance, the requirement for 1,000 square metres from
10 a mining licence, from a plantation to a mining 04.09PM
11 licence, isn't a prohibition. At the moment it's
12 subject to a planning permit trigger. Previously, and
13 we haven't checked this, I haven't checked this in the
14 schemes dating back, it may not have been, it might
15 have been as of right; I don't know, but that's the 04.10PM
16 other possibility.

17 The third area that you've identified in paragraph 10.3 of
18 your statement is the small triangle to the southwest
19 of the mine?---Yes.

20 Which is also owned by Hancock Victorian Plantations, and 04.10PM
21 the same considerations apply?---Yes, that's correct.

22 As that area we were just discussing, it's in the Special
23 Use Zone. As things stand at present a permit is
24 required for a timber plantation that is less than
25 1,000 metres from a mining licence area?---Yes, that's 04.10PM
26 correct.

27 There is no permit for this timber plantation and, as you
28 sit there today, you can't explain why that
29 is?---That's correct, yes.

30 There's a fourth timber plantation that you haven't 04.10PM
31 identified in this paragraph 10 but that sits just to

1 the north of the second area that we looked at. Is, as
2 I interpret it, the second map you produced within the
3 boundaries of the Yallourn mining licence?---Yes,
4 that's right.

5 Do you know who owns that land?---Yes, I do. It's owned by 04.11PM
6 Energy Australia, Yallourn Pty Ltd.

7 There's other evidence before the Inquiry that suggests that
8 that plantation caught fire on 9 February and may have
9 been the source of embers that blew into both the
10 Yallourn Mine - or that were thrown into both the 04.11PM
11 Yallourn Mine and the Hazelwood Mine. Again, do you
12 know whether there is a permit for that particular
13 timber plantation?---No, I haven't done a planning
14 permit search on the Energy Australia Yallourn land,
15 no, so I'm uncertain of that. 04.12PM

16 This leads into the next area that I wanted to ask you
17 about, Mr Pullman, which was whether the council had
18 any input into the 2009 work plan variation that we
19 heard a good deal of evidence about this morning from
20 Ms White. Let's assume for the moment that all of 04.12PM
21 these plantations were already there 10 years ago.
22 Council wasn't directly involved in the work plan
23 variation, but the work plan variation was the
24 culmination of a very extensive planning process, was
25 it not?---Yes, that's correct, Amendment C32. 04.13PM

26 And the council was in fact the proponent of that planning
27 amendment, was it not?---That's correct, yes.

28 Am I right in assuming that council supported that amendment
29 being made to the planning scheme?---The council made
30 two submissions and were in support of the proposal. 04.13PM

31 The main reasons for the support was based on the

1 economic opportunities that the extension and the
2 proposal would provide to the region.

3 Just to be clear, the process that was undertaken, there
4 were several aspects to the process; there was an
5 environmental effects statement prepared, there was an 04.14PM
6 application to vary the work plan prepared and those
7 things were both done by Hazelwood, and there was also
8 a need to vary the planning scheme to relocate roads,
9 several roads, and to divert the Morwell River, among
10 other things?---Yes, that's correct. 04.14PM

11 Again, should I say?---Yes.

12 There's been a fifth such diversion I think. Council was
13 actively involved in that latter part of the
14 process?---The latter part, the planning scheme
15 amendment? 04.14PM

16 The planning scheme amendment?---That's correct, yes.

17 And council prepared the amendment?---The amendment was made
18 at the request of the mine operator at the time.

19 Council would - I mean, I didn't prepare the
20 documentation myself. I imagine that council officers, 04.14PM
21 as we do now, would have worked with the mine operator
22 or the proponent of the planning scheme amendment and
23 prepared the documentation jointly; or at least being,
24 the council would have had a role of probably
25 considering the documentation and seeing whether or not 04.15PM
26 it was fit to be exhibited.

27 But it's implicit in that, is it not, that council supported
28 the amendment being made to the planning scheme?---I
29 would say, yes.

30 There was then a planning panel appointed that considered a 04.15PM
31 whole range of approvals that were necessary, including

1 the variation to the planning scheme or the amendment
2 to the planning scheme?---Yes, that's correct. It's
3 common when there's a number of approvals, whether they
4 be Federal, State or local, that one process be run and
5 it's just to reduce red tape.

04.15PM

6 Ms White provided us this morning with the quite voluminous
7 report of that planning panel that you'll be relieved
8 to know I won't take you to. But council's stance in
9 that position was generally supportive of the
10 amendments and supportive of the approvals that were
11 being required?---Yes, it was a sort of facilitatory
12 role council played. It was mostly interested in the
13 planning scheme amendment technical matters because
14 that's where council's expertise lays. But that being
15 said, council were supportive of the proposal, of the
16 planning scheme amendment due to the recognised
17 economic benefits for the region at the time.

04.15PM

04.16PM

18 At any stage in that process did council raise the proximity
19 of these timber plantations, which we're assuming were
20 there 10 years ago, to the proposed extension of the
21 Hazelwood Coal Mine?---My reading and research hasn't
22 found any evidence of that issue being discussed at
23 council or a consideration of council at the time.

04.16PM

24 Just so we can be clear, how extensive has your reading and
25 research into that question been?---I have read the
26 Panel Report, I have read council's submissions at the
27 time to the panel, I've also read the relevant council
28 meeting reports that the officers put up by way of
29 council meetings, and obviously my own local knowledge
30 as well, being in the region.

04.17PM

04.17PM

31 Can this Board of Inquiry proceed on the basis that the

1 proximity of timber plantations to the mining licence
2 area was just not raised as a consideration in the
3 process that led up to Amendment C32 being approved and
4 the 2009 work plan variation going through?---I could
5 probably only comment on the planning scheme Amendment 04.17PM
6 C32 element, which is the area of my expertise. I am
7 not aware that the plantations and the proximity of the
8 plantations to the Hazelwood Mine were raised in a land
9 use planning sense, in the land use planning documents
10 I have read. I cannot confirm or otherwise whether or 04.18PM
11 not they were specifically raised in the EES
12 documentation and the plethora of other documents that
13 supported the EES process.

14 An environmental effects statement tends to look at the
15 effect of the mining operation on the surrounding 04.18PM
16 environment rather than the reverse, does it not? It
17 doesn't look on the effect of the surrounding
18 environment on the mining operation, generally
19 speaking?---Generally speaking you are correct, but
20 it's not uncommon for that matter to be discussed 04.18PM
21 during an EES process, in my experience.

22 I'll move to a different area of your statement, starting
23 with the heading, "Item 25" where we'd asked that your
24 statement identify specific strategies that council
25 proposes to improve the liveability of the town of 04.19PM
26 Morwell in light of the very close proximity of the
27 town to the mine. You've identified a number of
28 strategic policy documents which I've looked at, and
29 it's fair to say they're very general strategic
30 documents, are they not?---Yes, that's correct. 04.19PM

31 There's no specific proposals in there for dealing with the

1 legacy issue that you have, the fact that you have an
2 open cut coal mine several hundred metres from a
3 residential area?---In relation to Hazelwood
4 specifically?

5 Yes?---That is correct, no, there's no specific reference in 04.20PM
6 those policy documents.

7 And nor do I find anything in the Latrobe planning scheme
8 that is a specific strategy for dealing with that
9 legacy issue. There is, of course, a desire to have a
10 1 kilometre coal buffer, but obviously we don't have it 04.20PM
11 in this case. Does council have any particular
12 strategies or desires as to what it would like to see
13 happen given the fact that the coal mine and the people
14 and those who work and spend other parts of their lives
15 in South Morwell are neighbours, what would it like to 04.20PM
16 see?---Are you referring to in a land use planning
17 sense?

18 Yes?---Ideally the buffer we would like to see extended,
19 however we do acknowledge the historical pattern of
20 development and mining activity in the area. In a 04.21PM
21 perfect world, if a mining licence was to be
22 established we would be seeking the 1 kilometre urban
23 buffer from a settlement boundary to the mining licence
24 crest of the open cut operations, and that's in a
25 perfect. 04.21PM

26 For the situation we have here, often planning
27 finds itself trying to retrofit historical events, it
28 happens quite frequently, it's probably the biggest
29 part of the job, my job at least, is trying to apply
30 policy and retrofit things to give effect to conflicts 04.21PM
31 as opposed to trying to plan ahead for them, it's much

1 harder to do that. It would be fair to say a larger or
2 the full 1 kilometre buffer would be appropriate but we
3 do acknowledge the existing pattern of development
4 doesn't allow for that.

5 Practically speaking the only way that that could be 04.22PM
6 achieved is by rehabilitation of that part of the mine
7 closest to the southern parts of Morwell?---I don't
8 know about the economics of that, it's not my area of
9 expertise, however - - -

10 I'm asking you about the land use planning side of 04.22PM
11 things - - -?---Based on land use planning, I think one
12 can conclude it would be fairly difficult to relocate
13 the southern part of Morwell. I don't know what the
14 benefits and pros are with regards to the remediation
15 works to achieve that 1 kilometre buffer in towards the 04.22PM
16 mine with the existing operations; I don't know what
17 the - I wouldn't be able to comment technically on
18 that, but one would presume from a land use planning
19 point of view we would see the protection of the
20 southern part of Morwell as the pre-eminent concern. 04.22PM

21 What about the existence of several timber plantations in
22 such close proximity to the mine? Is there any land
23 use planning solution to what appears to be
24 inconsistent adjoining uses?---At the moment as we've
25 discussed under particular zones there is a preference 04.23PM
26 by way of a condition - a planning permit trigger
27 condition for a preferred distance of 1 kilometre from
28 a new plantation from a mining licence boundary. From
29 a land use planning point of view you could argue for a
30 preference potentially for the current zones or 04.23PM
31 overlays or another planning trigger to be strengthened

1 to make sure that new plantations or existing
2 plantations try and achieve that buffer distance of
3 1 kilometre from a mining licence boundary.

4 So new plantations I'm following, that there would be -
5 well, there already are requirements for council
6 approval within 1 kilometre of the mining licence
7 boundary?---Yes.

04.24PM

8 Those could be strengthened, but what about the existing
9 plantations; is there any land use planning solution to
10 that?---That would require a fundamental change to the
11 way the planning schemes are structured and those
12 changes would be to do with the State planning policy
13 section which council does not have an ability to
14 change. What I mean by that is, you would need to - if
15 you were to pick up the existing plantations I suspect
16 but can't confirm that they would have existing use
17 rights. If they do, Clause 63 I think it was from
18 memory, existing use rights, would need to be changed
19 to specifically make mention of existing uses and/or
20 developments in relation to timber plantations. Again,
21 however, that is a matter for the State Government, but
22 that would be one way that you could pick up existing
23 plantations within and within close proximity to mining
24 licences.

04.24PM

04.24PM

04.25PM

25 In land use planning terms, it's a fairly drastic step to
26 take to it tell a landowner with an existing use right
27 that that use cannot continue?---I suspect that would
28 be a matter for much discussion, compensation may
29 arise, that word, and other matters; so, yes, it would
30 be very difficult.

04.25PM

04.25PM

31 And no doubt the landowner would have some views?---Mm-hmm.

1 I'd like now to ask you, and I see the time but I only have
2 two more brief areas to ask Mr Pullman. I'd like now
3 to ask you, Mr Pullman, to have a look at another
4 document. This is the Latrobe Municipal Fire
5 Management Plan that was annexed to Latrobe City's 04.26PM
6 submission to the Inquiry. Is this a document that
7 you're familiar with, Mr Pullman?---I'm aware of it in
8 title, however I am not aware of its content and
9 haven't been involved with its preparation.

10 It's prepared by the Latrobe City Municipal Fire Management, 04.26PM
11 Municipal Fire Prevention Committee, or Fire Management
12 Planning Committee, excuse me, and there are various
13 agencies represented on that Committee.

14 For present purposes I'd like to take you to
15 Attachment A1, Register of Assets At Risk, which 04.27PM
16 appears starting at page 31 of the document. Then if
17 we can turn to page 50 of the document which has the
18 entry in the Register that's relevant to the Hazelwood
19 Power Precinct?---Yes.

20 You have that there?---Yes, I do. 04.27PM

21 You see the second from the bottom on that page identifies
22 the Hazelwood Power Precinct as the asset that's at
23 risk. There's a potential for fire in the mines as a
24 result of either an internal or external fire event,
25 disruption and long-term loss of power to the National 04.28PM
26 Grid, restoration times could be significant and
27 potentially uneconomic. There's a number of existing
28 treatments that are identified in the next column.
29 There's an identification or a classification of the
30 risk, the likelihood is likely, the consequence is 04.28PM
31 catastrophic, and the risk is identified to be extreme.

1 Then there's identified another risk treatment
2 that's recommended, land use planning considerations
3 for surrounding land use?---Yes, I can see that there.
4 Have you, before being taken to this document, been made
5 aware of that proposed treatment for managing fire risk 04.28PM
6 for the Hazelwood Power Precinct?---No, this is the
7 first time today that I've seen this information.
8 It follows from that, does it not, that you as the
9 Coordinator of Strategic Planning have not been working
10 on land use planning considerations for surrounding 04.29PM
11 land use that may mitigate the fire risk at the
12 Hazelwood Power Precinct?---I have not worked on any
13 specific projects dealing with fire as it relates to
14 mining operations, no.
15 There's a similar proposed or recommended treatment that 04.29PM
16 appears in the Gippsland Regional Strategic Fire
17 Management Plan. Can I assume from the answers that
18 you've just given that you are not aware of that
19 proposed treatment or recommended treatment in the
20 Regional Fire Management Plan either?---That's correct. 04.29PM
21 And have not been approached about implementing that
22 recommended treatment?---That's correct.
23 Thank you. I have no further questions for Mr Pullman. I
24 understand from Ms Doyle that she has about 15 minutes,
25 10 possibly, and no-one else has expressed a desire to 04.30PM
26 ask him any questions at all.
27 <CROSS-EXAMINED BY MS DOYLE:
28 Mr Pullman, I take it from the questions that you were just
29 asked, you're really dealing with a negative, you're
30 dealing with an absence of material in relation to 04.30PM
31 these plantations. You've done a search and you can't

1 find any permits for them. I want to ask you what you
2 think might be the more likely explanation. Is it more
3 likely that all three commenced their lives outside of
4 the lawful uses permitted under a planning scheme, or
5 is it more likely that the three of them were 04.30PM
6 instituted at a time when they did not require a
7 planning permit?---I can't answer that without the
8 research or information in front of me. It could be
9 either/or of those, either of those options. We would
10 need to search photos et cetera to establish existing 04.31PM
11 use rights et cetera, and because that work hasn't been
12 done, I am unable to answer that question with any
13 certainty, but it could be either of those options.
14 Or you could ask Gippsland Water or Hancock when they
15 planted their plantations and pursuant to what 04.31PM
16 permission?---That's an option, yes.
17 It seems easier, yes?---Yes.
18 Have you seen in your searches - I know you were looking for
19 planning permits - but have you seen any correspondence
20 passing between either the owners of those plantations, 04.31PM
21 Gippsland Water or Hancock, passing between them and
22 the CFA or between them and the owners of the open cut
23 mine?---No. No, I was focusing on land use planning
24 documents and I haven't seen any other documents, no,
25 that relate to that activity. 04.31PM
26 I wanted to ask you a question arising from the discussion
27 you've just had about what could now be done, and you
28 talked about retrofitting solutions. I took it from
29 the answers you gave that it's your evidence that only
30 the Minister for Planning could now change the zones 04.32PM
31 surrounding the Hazelwood Mine?---Yes.

1 Similarly, that even if the Minister for Planning did so,
2 you've posited one great problem there which is that
3 the recognition of existing uses in Victoria means that
4 the owners of those plantations would certainly want to
5 be heard about the impact on their resource?---Yes, I 04.32PM
6 would have thought so.

7 In the map which was JP-2 to your statement, the satellite
8 one, could I just ask you to clarify, when you drew the
9 1 kilometre buffer, what is that a reference to? In
10 various documents attached to your statement there are 04.32PM
11 references to coal buffers and 1 kilometre, but what is
12 the origin of your orange line? What planning document
13 do you take that from?---JP-2, the annexure referred
14 to, the buffer is a computer-generated buffer from the
15 red-hatched area, which is the mine property boundary; 04.33PM
16 it is not the, what I would say the planning scheme
17 environmental significance overlay urban buffer, it is
18 a buffer just around the current council recorded title
19 of the Hazelwood Mine.

20 So it doesn't emanate from any planning scheme, it is just 04.33PM
21 the result of you drawing a 1 kilometre line around the
22 mine?---That's correct, yes.

23 Paragraph 20 of your statement, I want to ask you a couple
24 of questions about that. You refer there to the
25 Latrobe planning scheme, in particular at clause 21.07. 04.33PM
26 You say there that, "It seeks to ensure that timber
27 production takes into account the need for the
28 effective fire protection of a coal resource." Could I
29 take you to attachment JP-5 which is the one you're
30 referring to there. Behind tab 5 in your statement 04.34PM
31 you've attached that Clause 21.7. We can see in it a

1 couple of mentions of coal resources and strategies in
2 relation to coal buffers. I just want to ask you to
3 clarify, where in that document is there any
4 consideration given to the dangers that plantations or
5 timber production activities might pose to a mine or to 04.34PM
6 a coal resource?---I would need to read that
7 clause again in some detail to find the exact location.
8 There is some discussion in there from memory about the
9 risk of fire. Whether or not it says plantations
10 specifically, I would need to read the document again. 04.34PM

11 I just wanted to suggest to you, if you look at page 4 of
12 Clause 21.07 under the heading, "Strategies", do you
13 see that sub-heading there? And then objective 6,
14 "Coal resources", and it talks there about the use and
15 development in the coal resource mutually protecting 04.35PM
16 urban amenity and coal resource development. The very
17 last dot point under, "Strategies" is, "Timber
18 production has a lesser priority than the extraction of
19 coal and agricultural land use activity unless a proper
20 economic assessment shows it to be viable." Pausing 04.35PM
21 there, all I can see so far is a suggestion that coal
22 resource and urban amenity, each should take account of
23 the other, and that in terms of economic activity that
24 timber production is rated lower than coal winning
25 activities. Would you agree with that up to 04.35PM
26 there?---Yes.

27 Then at page 5 there's a reference to, "Coal buffers
28 overview." Again, that seems to be focused on a buffer
29 between a coal resource and an urban settlement. Apart
30 from - see the second dot point - a suggestion that the 04.35PM
31 Australian Paper Mill site in Maryvale will be

1 protected from coal operations in the Yallourn Mine.
2 Do you see that dot point there?---Yes.
3 What that seems to be suggesting is that it's confined to
4 that mine but also the other way round; in other words,
5 that the paper mill will be protected from the coal 04.36PM
6 mine and not vice versa. Do you see that?---Yes.
7 I think perhaps at page 6 there might be the clause that you
8 were perhaps thinking of under, "Objective 3 - Coal
9 Buffers, Strategies." Do you see the second dot point
10 there, "Ensure that any use or development in a buffer 04.36PM
11 area is undertaken in a manner which minimises the
12 potential impacts from sources, including earth
13 subsidence, noise, dust, fire hazard and visual
14 intrusion associated with open cut mining." Then the
15 next dot point, "Ensure that the [same things] 04.36PM
16 management, use or development of land in a buffer area
17 minimises potential fire risks to open cut mining."
18 Was it perhaps that last dot point that you had in
19 mind when you were referring to that in your
20 statement?---My statement should be almost an extract 04.37PM
21 from the relevant provisions, so where that matter is
22 extracted from is the point I was trying to make.
23 Okay?---But if I haven't referred to a strategy or an
24 objective, I didn't mean to refer to it in my
25 statement. 04.37PM
26 I have to say, I can't see anything in clause 21.07 which
27 specifically suggests that timber production should
28 take into account the need for it to be wary of posing
29 a fire risk to mines, other than that dot point I just
30 took you to which might encompass that. You're not 04.37PM
31 able at this stage to point to any other specific

1 strategy vis-a-vis plantations posing a risk to
2 mines?---Not without reading it, it's quite a lengthy
3 clause, that particular 21.07, and obviously
4 highlighting those if they exist, that's correct.

5 I also just want to ask you about paragraph 22 of your
6 statement. There you say that, "While not all timber
7 plantations are required to have a permit, all timber
8 production activities..." The point you're making
9 there is, while not all plantations need to have a
10 permit, the process or the activity of timber
11 production, except for some exceptions you outline,
12 must comply with the Code of Practice 2007?---Yes,
13 that's correct.

14 That code is, if you like, incorporated by the planning
15 scheme, isn't it, because it's specifically referred to
16 in the scheme, it's a document that is able to be
17 enforced by council by those means?---It's important to
18 understand what the purpose of the Code of Practice for
19 Timber Production actually sets out to achieve and what
20 Local Government's powers are. It doesn't trigger the
21 need for planning permits, it's more a control over the
22 harvesting or coupling or coupe harvesting of timber
23 production when it's ready to be felled and whatnot,
24 the timber. So council's powers with regards to
25 enforcing or seeking endorsement is that a coupe plan
26 is submitted to council and the counsel is required to
27 endorse that coupe plan and it's principally looking
28 for matters of traffic or environmental issues that
29 impact on streams et cetera.

30 If you look at Attachment 6 to your statement that's where
31 you set out this relevant part at 52.18, this is at

1 attachment JP-6. You see it says there, "All timber
2 production activities [except for some exclusions] must
3 comply with the Code of Practice for Timber
4 Production." The first question I wanted to ask you
5 is, is that not a means by which the content of the 04.39PM
6 code is given life; namely, you have to comply with the
7 scheme and the scheme says you must comply with the
8 code, so by that means it has force?---Well, not in a
9 land use planning sense, because remember, the only
10 time a matter has force is if there's a planning permit 04.40PM
11 trigger for instance where council has a discretion to
12 have any control over the matter. In some instances as
13 I've discussed a planning permit is not required for a
14 timber plantation, so therefore the planning scheme,
15 although it's referenced and the planners per se at 04.40PM
16 council would not have any control from a land use
17 planning point of view. Where they would have control
18 is in a separate matter, as I said before, where the
19 land or the timber coupe is harvested.

20 That's my question. You've got some control by these means 04.40PM
21 over the use of the land even though you can't be the
22 gatekeeper in relation to the permit question?---I
23 would say limited control, yes.

24 I provided earlier today some hard copies of the code that
25 you referred to in your statement, a Code of Practice 04.40PM
26 from 2007, I think a copy's going to be given to you
27 and there's a couple of copies, I'm sorry not quite
28 enough at this stage but a couple of copies to share
29 around. I just wanted to ask you this, Mr Pullman.

30 This code was developed by the Department of 04.41PM
31 Sustainability and the Environment?---Yes.

1 Do you know whether the council was given the opportunity to
2 have an input into its content?---I can't comment on
3 that, I'm unaware if they were. However, what I can
4 say is that it would be normal for a Local Government
5 probably to be involved in some way. I understand the 04.41PM
6 Code of Practice is currently under review at the
7 moment; 2013 line out for exhibition for comment, but I
8 suspect council may have been involved in some way by
9 way of discussions/workshops with DSE or the relevant
10 agency, but I can't confirm that. 04.41PM

11 I don't know whether you've had a chance to look at it or
12 look at it recently, but would it be fair to say that
13 this Code of Practice is focused on issues of
14 biodiversity, indigenous heritage, amenity for people
15 working and living near the plantation, but does not 04.42PM
16 have a focus on the fire risk that plantations pose to
17 other infrastructure near them?---I would need to read
18 the document again, I wouldn't be able to confirm that,
19 and the reason for that is that the Code of Practice
20 for Timber Production is in an area that planners 04.42PM
21 usually get involved with, land use planners. It's
22 more the environmental planners or the former DSE
23 Department. This is not a document that I'm
24 100 per cent familiar with and know its content in and
25 out because I'm actually not required to as part of my 04.42PM
26 expertise at council.

27 Do you know of any limitation on, if as you say this code is
28 under review, any limitation on the code addressing
29 questions of fire risk mitigation?---I'm unaware of
30 that. Sorry, no, I don't know. 04.42PM

31 I have no further questions for Mr Pullman.

1 MR SLATTERY: If the Board pleases, I have two minutes worth
2 of cross-examination.

3 <CROSS-EXAMINED BY MR SLATTERY:

4 Mr Pullman, you were asked about paragraph 20 of your
5 statement, and your comment that the current Latrobe 04.43PM
6 planning scheme at Clause 21.07 seeks so ensure that
7 timber production takes into account the need for
8 effective fire protection for a coal resource?---Yes.
9 You were taken to exhibit JP-5 and it was suggested that
10 that didn't seem to be reflected in JP-5. Can I ask 04.43PM
11 you now to have a look on page 3, the fourth-last dot
12 point on that page?---Can you read that dot point out
13 to me please to make sure I've got the right - - -
14 It begins, "Ensure that timber production takes into account
15 the need for effective fire protection for the coal 04.44PM
16 resource"?---Yes, I can see that.
17 Is that what you were referring to in paragraph 20 of your
18 statement?---Yes, that's correct.
19 You were also asked questions about, and it came up in the
20 answers that you gave, existing use and the concept of 04.44PM
21 existing use. Can I hand to the Board and to the
22 parties - this is just a copy of s.63 of the Latrobe
23 City Fire Management Plan - I don't think it made it
24 into the folder. Do you have a copy there,
25 Mr Pullman?---Yes, I do. 04.44PM

26 Can I just direct you momentarily to Clause 63(1) which
27 states, "An existing use right is established in
28 relation to the use of land under this scheme if any of
29 the following apply: the use was lawfully carried out
30 immediately before the approval date." Are you able to 04.45PM
31 explain to the Board the meaning of "the approval date"

1 in that context?---Yes. In this, as it's referred to,
2 the approval date would refer to the approval date of a
3 change in the planning scheme, usually by way of a
4 planning scheme amendment. So for instance, I
5 mentioned this previously, but for instance let's paint 04.45PM
6 a hypothetical, say the land was zoned farming zone on
7 Thursday and then Thursday evening when it was gazetted
8 it was zoned a more restrictive zone that required a
9 planning permit for a plantation, where the former zone
10 on the Thursday did not require a planning permit under 04.45PM
11 the scenario. The use was then on the Thursday carried
12 out lawfully before the approval date of the change in
13 rules, planning rules effectively.

14 In those circumstances is it your evidence that the
15 pre-existing use would be able to continue without 04.46PM
16 having to obtain a permit from the council?---Can you
17 repeat the question please?

18 In the example that you just gave, where there was a
19 particular use on one day, call it the Thursday, the
20 change was made and gazetted on the Friday, the change 04.46PM
21 that was made required a permit to be obtained for the
22 use that was happening on the day before on the
23 Thursday, is it your evidence that the use that was
24 happening on the Thursday could continue as an existing
25 use without the need to apply for and obtain a 04.46PM
26 permit?---Yes, that is correct. We would not seek a
27 retrofit permit and we would not have the power to do
28 so in any case.

29 They were my questions.

30 MS RICHARDS: I have no re-examination for Mr Pullman, 04.46PM
31 although I do need to tender a number of documents

1 arising out of his evidence. The first document that I
2 would like to tender and include as part of
3 Attachment 2 to his statement is the additional map
4 headed, "Location of mining licences and selected
5 timber plantations near the Hazelwood Mine." 04.47PM

6
7 #ATTACHMENT 2 - (Addition) Additional map headed, "Location
8 of mining licences and selected timber plantations near
9 the Hazelwood Mine."

10 MS RICHARDS: Then I would like to tender as a separate 04.47PM
11 exhibit the Latrobe City planning scheme folder.

12
13 #EXHIBIT 62 - Latrobe City planning scheme folder.

14
15 MS RICHARDS: Thank you, and include within that Clause 63 04.47PM
16 that Mr Slattery just took Mr Pullman to.

17 CHAIRMAN: Yes.

18
19 #EXHIBIT 63 - Latrobe City Fire Management Plan. 04.47PM
20

21 MS RICHARDS: Then, for completeness, can I also tender the
22 Code of Practice for Timber Production 2007 that
23 Mr Pullman referred to.

24
25 #EXHIBIT 64 - Code of Practice for Timber Production 2007. 04.47PM
26

27 MS RICHARDS: With that, may Mr Pullman be excused.

28 CHAIRMAN: Yes. Thank you Mr Pullman, you are excused.

29 <(THE WITNESS WITHDREW)

30 MS RICHARDS: Our agenda for tomorrow: We're moving to the 04.48PM
31 other Mine Regulator, the Victorian WorkCover Authority

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

tomorrow.

We will have evidence in the morning from Inspector Kevin Hayes who is a local inspector and has had a number of interactions with the Hazelwood Mine, and Mr Len Niest who is the Executive Director of Health and Safety at the Victorian WorkCover Authority.

04.48PM

Robert Jackman will be giving evidence as a community witness, and then we'll return to THE Latrobe City Council and hear from Lance King who is the Coordinator of Emergency Management there.

04.48PM

CHAIRMAN: Yes. Adjourn now until 10 o'clock tomorrow morning.

ADJOURNED UNTIL TUESDAY, 11 JUNE 2014