

TRANSCRIPT

LEGISLATIVE COUNCIL ENVIRONMENT AND PLANNING COMMITTEE

Inquiry into the 2022 Flood Event in Victoria

Melbourne – Thursday 12 October 2023

MEMBERS

Sonja Terpstra – Chair

David Ettershank – Deputy Chair

Ryan Batchelor

Melina Bath

Gaelle Broad

Wendy Lovell

Samantha Ratnam

Rikkie-Lee Tyrrell

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John Berger

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Evan Mulholland

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WITNESS

Nick Wimbush.

The CHAIR: I declare open the committee's public hearing for the Inquiry into the 2022 Flood Event in Victoria. This public hearing is for the Environment and Planning Committee, an all-party committee of the Parliament looking into the October flood event. We will be providing a report to Parliament which will include recommendations to the government. Please ensure that mobile phones have been switched to silent and that background noise is minimised.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands we are gathered on today, and paying my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee. I welcome any members of the public in the gallery and remind those in the room to please be respectful of proceedings and to remain silent at all times.

As you are giving evidence before us today, all evidence that is taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and provisions of the Legislative Council standing orders. Therefore the information you provide during the hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website.

I will just take the opportunity to introduce myself, and committee members will also introduce themselves to you. My name is Sonja Terpstra. I am the Chair of the Environment and Planning Committee, and I am also a Member for the North-Eastern Metropolitan Region.

David ETTERS HANK: David Ettershank, Deputy Chair, Western Metro Region.

Melina BATH: Good afternoon. Melina Bath, Eastern Victoria Region.

Samantha RATNAM: Afternoon. Samantha Ratnam, Northern Metropolitan Region.

Gaelle BROAD: Hi, I am Gaelle Broad, Member for Northern Victoria.

Rikkie-Lee TYRRELL: Rikkie-Lee Tyrrell, Member for Northern Victoria.

Wendy LOVELL: Wendy Lovell, Member for Northern Victoria.

Ryan BATCHELOR: Ryan Batchelor, Member for Southern Metropolitan Region.

The CHAIR: With that, we will now hand over to you to make your opening remarks. I believe you have 10 minutes, and then we will have about 5½ minutes per member for us to ask you questions. Thank you, Nick. Over to you.

Nick WIMBUSH: Thank you, Madam Chair and committee, for the invite to come and speak today. I am speaking from written notes. I have already undertaken with the secretariat to provide those to the committee after today. I note the inquiry chaired by the Honourable Tony Pagone has released its report – this is the Melbourne Water flood inquiry, which I am sure you are very familiar with. As you may know, I recused myself from that inquiry in early 2023 in agreement with Melbourne Water. At that time I had not commenced work investigating the matters in the terms of reference and additional members had not been identified that would be involved in that inquiry. I only mention this because I cannot provide any information on the Flemington flood wall, because I had not actually started the investigation.

For the record, when I agreed to chair the inquiry in late 2022 I declared my involvement in amendment C151. The declaration was reviewed by Melbourne Water's probity adviser. I did not and do not consider that it

would have constituted a material conflict of interest that would have prevented me from undertaking the inquiry in an independent and unbiased manner. Just excuse me – it is a very broad committee – if I am not making eye contact with everyone. However, from the start, I flagged with Melbourne Water that my role in amendment C151 may give rise to a perceived conflict of interest and if that became a threat to the inquiry itself, then I may need to withdraw. That point was reached in a telephone call on 7 February 2023, when Melbourne Water and I agreed that to maintain the focus on the issues and not the inquiry chair I would not continue in the role, and the public announcement was made, which everyone is probably familiar with. There has been some reportage that I was variously forced out or quit. Neither is true. It was the result of a considered, continuous review of a developing situation that led to my recusal.

I would like to move on to amendment C151, the Rivervue site, because that is probably of most interest to people. I would like to provide a brief overview of my role in the amendment – number C151 – and particularly how it relates to 9 Canning Street, Avondale Heights, commonly known as Rivervue. Amendment C151 to the Moonee Valley planning scheme was prepared to update the land subject to inundation overlay, LSIO, and the special building overlay, SBO, maps in the planning scheme. No changes to the text of the planning scheme were proposed in the amendment. I have read that I was involved in rezoning the site. Rezoning was not part of amendment C151, and to the best of my knowledge I have never been involved in any capacity in rezoning 9 Canning Street, Avondale Heights.

Moonee Valley City Council was the planning authority for the amendment, being the responsible council for the planning scheme. The amendment was undertaken at the request of Melbourne Water to implement updated flood modelling into the planning scheme. The LSIO part of the amendment affected 428 properties, and the SBO affected 1538 properties. When I say ‘affected’, I mean it included new additional overlays, removal of some properties from the overlays, addition to existing overlays, partial removal of properties from the overlays or minor boundary changes. The planning scheme amendment was exhibited for public comment by the planning authority in July and August 2015, and eight objections were received. Apologies if you have heard some of this from Moonee Valley City Council; I will move on to my particular bits in a minute.

Under the *Planning and Environment Act 1987* the planning authority must consider the submissions that request a change to the amendment and then decide whether to change the amendment in response to those submissions, refer the submissions to a panel or abandon the amendment. Under the Act, the planning authority must refer unresolved submissions to a panel and may refer other submissions as well. My understanding is that prior to exhibition council had already resolved to refer any submissions received to a panel.

In 2015 I was a full-time senior panel member at Planning Panels Victoria and had been for about 10 years. I was appointed under section 153 of the *Planning and Environment Act* on 28 September 2015 to consider the eight submissions referred by the planning authority. Under the Act, the panel is required to consider the submissions and give a reasonable request to be heard to nominated parties, including the submitters themselves. The panel is then required to report its findings to the planning authority with any recommendations. A directions hearing to consider preliminary matters was held on 23 October 2015. No requests to be heard were made by submitters – that is, no-one wanted to come and present to the panel in support of those eight submissions. At the directions hearing I determined in consultation with Melbourne Water and council, who were at the directions hearing, that the submissions would be considered on the papers. This means considering the written material, including the exhibited amendment and the eight submissions, but not holding a public hearing. In addition, I directed that Melbourne Water and Moonee Valley City Council provide me a written response on the eight submissions and their views on how they should be treated in the amendment. Written submissions from Melbourne Water and Moonee Valley City Council were received dated 6 November 2015. Based on the written material before me, I drafted a report to the planning authority, which was submitted on 30 November 2015. As required under the Act, this report was released publicly, and it is still available on the AustLII website.

Turning to 9 Canning Street, Avondale Heights, Rivervue, as proponent for the amendment Melbourne Water reviewed the submission from Rivervue and advised the submitter by letter of 22 October 2015 that – this is a letter from Melbourne Water to Rivervue:

[QUOTES AWAITING VERIFICATION]

Thank you for your submission and your further information for the property development at 9 Canning Street, Avondale Heights. Melbourne Water has reviewed the information and will amend the exhibited land subject to inundation overlay in accordance with the attached plans. This will ensure that all the unit development sites are not affected by the LSIO.

The attached plans that are referenced were those that have continued through and I understand still form the basis of the LSIO at that property in the planning scheme. I note the pre- and post-amendment LSIO maps are reproduced in the Pagone inquiry report, if you have not seen those – I am sure you have. That was correspondence from Melbourne Water to the submitter. In their submission to me as the panel dated 6 November 2015, Melbourne Water noted in relation to 9 Canning Street:

Issues raised: the exhibited flood shape needs to be updated to reflect works that were carried out for development to Melbourne Water's requirements.

Melbourne Water's response:

Melbourne Water has reviewed the flood shape in the vicinity of the property and has amended the exhibited flood overlay.

In their submission to me as the panel dated 6 November 2015 also Moonee Valley City Council as planning authority relied on the Melbourne Water advice and supported the changes to the LSIO at 9 Canning Street.

The changes were put to me as a resolved submission, and there was no material before me to suggest that the Melbourne Water advice would result in an LSIO that would not reflect the one-in-100-year flood level. I relied on Melbourne Water's knowledge of the site and its development history and Melbourne Water's flood modelling in putting forward the recommended change. As the changed LSIO was a change to the exhibited amendment, a recommendation to the planning authority was made and the amendment was modified accordingly. Ultimately the amendment was approved, as you know, and the planning scheme changed.

I am happy to take questions, and as I said, I will provide those notes to the committee.

The CHAIR: Great. Thank you so much for those opening remarks. I guess I will start with a question. It is clear you have got extensive experience as someone who has sat on planning panels, looking at reviewing planning schemes and the like, and we have also heard from Melbourne Water, councils and residents. You may or may not be able to answer this, but it seems like Melbourne Water were saying when they were giving evidence to us earlier in regard to the flooding that affected Rivervue that as far as they were concerned in the modelling that they had for flooding pretty much things performed as expected except for in about one area which they talked about, somewhere near Keilor, as something that did not work. I am assuming, and I think this is what their evidence was, that that flood modelling then informs their decisions around changes to LSIOs and those sorts of things. Not necessarily talking about just Rivervue but in your experience as someone who has sat on planning panels, these things can and do go wrong. We have heard about sometimes how these things can be quite dynamic in changes, like updating models. It seems to be like a never-ending wheel. Something changes, and then something has got to be updated. But then there can be changes again, and how does that feed into the planning system? Obviously, we are doing recommendations to government as well. What can go wrong, and what sorts of things should we be looking at in terms of recommending changes that could perhaps mitigate these sorts of things when they do go wrong?

Nick WIMBUSH: I will just answer by saying firstly I am not an expert modeller. I know my way around models of air quality, water, dust and so on, and there is a large degree of science in them. There is also a fair degree of art. Modellers will disagree on the same model about what the inputs should be. The planning tools in terms of the LSIO I think generally make sense. It is the input – where do you apply it across the landscape, whether it is the LSIO, which is for riverine flooding, or the SBO, which is for stormwater flooding. The way that you put the model together, the way you run it, how many times it is run, the inputs to it, whether you are considering climate change – all those things are critical. Probably one of the things that need to happen is that there is a degree of transparency in how the model is put together. It should be open for people to question the inputs to modelling, and I am not just talking about Melbourne Water; I am talking broadly, and there should be a high degree of peer review in a model. If it is a flood authority that does its own modelling internally, that is fine, but there should be external people – consultants, experts – who go through what has been done to see if it makes sense. It is not going to still probably cover every circumstance or stop every bit of flooding, but it will give you a much stronger sense of how to make sure that it is as good as it can be.

The CHAIR: So if we had to recommend how we could perhaps take risk out of these processes, that would be one example. Is there anything else that you think we could look at to reduce risk or de-risk some of these processes?

Nick WIMBUSH: I think the big element of all this is we as a community are chasing our tails to some extent because things are changing, so if we are talking models again, the frequency with which that is done is also important. This was not available to me at the time that I was doing C151, but I have read that some of the modelling was actually quite old even at that time, perhaps five or six years old by the time it came through to the planning scheme amendment. So making sure it is done on a timely basis is also critical.

The CHAIR: The clock is probably going to beat me, but on that point I was just reading some other information. It looks like in some places like London along the Thames River, obviously an area that may flood, they are looking at changing that 1 per cent AEP to update it so it can I guess more take into account the effects of climate change and those sorts of things. It goes to your point about more frequent updating and calibrating of those things to take in changing circumstances.

Nick WIMBUSH: It does, and you do not necessarily need to change the description that you are going to use, the one-in-100-year flood. But what might happen over time is that the one-in-100-year flood becomes bigger and bigger. You might still talk about a one-in-100-year flood, but a one-in-100-year flood in 1850 might be very different to one in 2050.

The CHAIR: I think that is another point. I know Mr Batchelor has been talking about what it means to people and what it actually looks like. It can be quite different from 1974 to even now.

Nick WIMBUSH: The other thing – and if I am taking your time, stop me – applying things like the LSIO and the SBO is not necessarily popular. The objections to the amendment were from people who did not want that. Apart from the two that were resolved – one of which was Rivervue, and there was another one – the outstanding six submissions were from people who did not want the overlays on their property. So if as a community we say we need to add greater heights to the flood level that we are planning for in a flat area, particularly in the north of the state, that is going to shift the LSIO out hundreds of metres, perhaps kilometres in some cases, so –

The CHAIR: I am sorry, but the clock has beaten me. My apologies. Mr Ettershank, over to you.

Nick WIMBUSH: I am used to chairing inquiries. I run a fairly tight clock as well.

The CHAIR: Well, welcome to our world here in parliamentary committees.

Nick WIMBUSH: I am perfectly happy with that.

The CHAIR: Thank you. Mr Ettershank.

David ETTERS HANK: Thank you, Mr Wimbush, for attending today. It is much appreciated. I would like to go back to C151. From what you just said then, because we are hearing all these quite contradictory views coming from different parties, am I understanding you correctly that in October 2015 Melbourne Water agreed to changes that were requested by Tigcorp and that those were after the actual C151 draft had been circulated and subject to comment?

Nick WIMBUSH: That is correct. In the exhibited LSIO, which is the one which I think is in the Pagone report, the first one pre 2015, there were a few minor changes that were exhibited to that kind of area that pokes into Rivervue, if we are talking about that particular property. But Rivervue – Tigcorp I think is the company you mentioned – wrote to Melbourne Water as a submission and said, ‘That’s not right. You’ve already agreed to all these other things through development. We think the LSIO should be brought back to the boundary that’s now in the planning scheme,’ and that is the position Melbourne Water brought forward to the panel.

David ETTERS HANK: So had that not gone forward, those changes as requested by Tigcorp, presumably all of those units that were inundated in sections 4 and 5 of the development on the site would not have been permitted previously?

Nick WIMBUSH: Not necessarily, as in they may still have been permitted. The LSIO is not a prohibition on development. It is an acknowledgement of flood risk. As it was put to me, the flood risk that had been determined on the site had already been determined because of a number of permits that had been issued, and therefore the LSIO did not reflect what they thought was going to happen on the ground. If the planning scheme amendment – and excuse me, but I am speculating here – had not gone through, if the LSIO was in the planning scheme as it was pre 2015, it might have triggered additional permits, but if Melbourne Water in that case as the referral authority had thought that flooding was still fine from their point of view, they may have gone to the council and said, ‘Yes, it’s in the LSIO, but we’re satisfied with the floor levels.’ So leaving the LSIO in the planning scheme does not necessarily mean that a permit will not be issued. Sorry, did I get that right – that development one.

David ETTERS HANK: I think we get where you are going there. Okay. That is fine. I guess the one thing that strikes me that sort of sticks out like the proverbial is that we have ended up at the end of C151 with an acceptable understanding of floods and of the actual flood level that should be good at one in 100, however that is defined. We will leave that for a moment. Yet it is actually lower than the flood level that happened in 1974, which was a one-in-50-year flood. I mean, in terms of just a reality test, did that not jar?

Nick WIMBUSH: I can say it jars now. In 2015, eight years ago, it did not jar at all. I did not have all that information about previous floods, about previous permits that had been issued, before me.

David ETTERS HANK: But Melbourne Water undoubtedly would have, surely.

Nick WIMBUSH: I cannot answer for them, but you would assume so. I relied on their advice, as did Moonee Valley City Council. At that time I considered I was entitled to rely on it, given they were the flood plain manager with a lot of experience in flood modelling and so on, and there was no-one else doing flood modelling that I was aware of at that time.

David ETTERS HANK: All right. You referred to old flood modelling. We have heard about modelling that was done by GHD specifically for C151. Was that correct?

Nick WIMBUSH: I saw a reference. I think the flood modelling that was in C151 was actually done in 2010 or 2011. I read that somewhere, so I could find a source for that.

David ETTERS HANK: One last quick question – when we were talking to Melbourne Water about this site and raising these very similar questions, we kept on hearing very similar words coming back from Melbourne Water, which were that the site was ‘unexpected’ or ‘unusual’ or ‘had not performed as anticipated’. When you were undertaking your panel review, was there anything that was put to you by Melbourne Water or any other party or would there be any reason why you would form a view that there was something about the site that was unusual or unexpected?

Nick WIMBUSH: There was nothing that I was aware of that raised red flags in the work that I did in the amendment. If Melbourne Water, for example, or indeed someone else, another submitter, had come in and said, you know, ‘We just think this is fundamentally wrong here,’ or if Melbourne Water had said, ‘We’re not sure about this; we need to do some more work,’ then that would have been taken into account, but their advice in that correspondence, if you have not seen it, is unequivocal.

David ETTERS HANK: Yes. It was very clear that they were supportive of it. Thank you.

The CHAIR: Perfect timing, Mr Ettershank. The clock has beaten you. Ms Lovell with a question, please.

Wendy LOVELL: Thank you, Mr Wimbush. You said that regardless of whether 151 had gone through and removed that LSIO, the land still would have been subject to being able to be developed, so Rivervue still could have built those units.

Nick WIMBUSH: Sorry, can I just interrupt you? I said I was speculating. I said it is possible.

Wendy LOVELL: It is possible. Okay.

Nick WIMBUSH: I did not say it would have happened. I said if the LSIO was still there and the developer or the owner of the land had still applied for permits, they would have had to refer them to Melbourne Water.

Melbourne Water advice presumably – speculating – would be, ‘We are satisfied with the flood levels across that site because we have looked at it over a long period of time.’

Wendy LOVELL: Okay. Would there have been a requirement then at the point of sale to the purchasers that they would have had to divulge that that land was subject to an LSIO?

Nick WIMBUSH: Yes. That would have been on the section –

A member: Thirty-two?

Nick WIMBUSH: 32 statement under the *Sale of Land Act*, yes.

Wendy LOVELL: Okay. So if that had been on the section 32 – I mean, we have heard just from previous presenters that they paid up to \$875,000, I think it was, for their unit. Do you think that those units would have been sold for far less value?

Nick WIMBUSH: I am not sure I can answer with any certainty, but that would seem to make sense, yes.

Wendy LOVELL: Yes, that they were less valued. Okay. I might just –

The CHAIR: Do you want me to come back to you?

Wendy LOVELL: Yes, come back to me.

The CHAIR: Sure. So, Ms Lovell, 3 minutes and 50 seconds for you. Mr Batchelor with a question, please.

Ryan BATCHELOR: I might reserve my time for the end.

The CHAIR: Okay. Awesome. Dr Ratnam with a question, please.

Samantha RATNAM: Thank you, Mr Wimbush, for being with us here today. A quick question about some of the history of these applications – do you have any knowledge about who instigated the planning scheme change, C151? Do you know whether Tigcorp made representations to Moonee Valley City Council or Melbourne Water to begin that process, or do you have no knowledge of that?

Nick WIMBUSH: No. My understanding was that the amendment as a whole, which as I said covered some thousands of properties, was initiated by Melbourne Water.

Samantha RATNAM: Initiated by Melbourne Water – they spoke to us yesterday and said that what triggered it for them was the 2014 overland flow and drainage model updating they had done. It is interesting that you have said that you also understand that the modelling that they then relied on and used for C151 was actually a few years old – it was 2010, 2011-ish. So do you have any more information about that interaction between the 2014 overland flow and drainage model updating?

Nick WIMBUSH: Not off the top of my head. I just thought I remembered reading that somewhere. Just for the record, I would need to confirm if I did read that somewhere. I would not like that to go down as a fact that I put to you.

Samantha RATNAM: No problem. Were there any representations to you or anyone else related to the planning panel on the changes that Rivervue – that is, Tigcorp – wanted to the flood overlay? Do you recall at that time if there were any direct representations made by those organisations?

Nick WIMBUSH: To the panel –

Samantha RATNAM: Yes, and to you as the panel chair.

Nick WIMBUSH: No. The opportunity, as I said, was offered – when an amendment is exhibited, there are submitters. We write to them all and say, ‘Would you like to come in and speak to your submission?’ That opportunity was not taken up.

Samantha RATNAM: And that was the extent of any interaction you had with the proponents or the applicants or the objectors to –

Nick WIMBUSH: That is correct. So in terms of the panel correspondence, the only bit of correspondence was the letter inviting them to attend.

Samantha RATNAM: Great. Thank you. So you talk about this analysis that you are relying on, the Melbourne Water analysis. And as you say, you know, it is a catchment authority, it has got years of reputation, so it would have been expected that it would be reasonable to rely on that. Were you able to draw on any other independent expertise or any other analysis in assessing Melbourne Water's assessment of the flood overlay changes? Was that a usual process or not a done thing that you would verify the veracity of analysis before you?

Nick WIMBUSH: The short answer is it depends. In many panels you do have experts on a range of issues, including flood modelling, that attend, and you will have duelling experts on flooding issues. That was not the case here, and as I said, from my view of the material that was before me, there was nothing that stood out as 'This needs further work' or 'We need to dig deeper here'.

Samantha RATNAM: Was it a decision that as a panel chair you had the discretion to decide on whether you would call in expert analysis to verify the analysis in front of you?

Nick WIMBUSH: Experts are normally called by the parties rather than by the panel. Having said that, if there was anything before me that, as I said before, triggered red flags, I could have gone back and asked more, yes.

Samantha RATNAM: Do you think there need to be any changes made to the planning processes, particularly around the panels, to take into account now what we understand was potentially flawed or incorrect modelling that led to a consequence and series of events post that decision? Do you think there are any improvements we could make to the planning process to ensure that kind of analysis is verified and checked?

Nick WIMBUSH: I think anything that strengthens the fundamental data that is underlying overlays – in this case in the planning scheme – would be good. I have not thought through a specific recommendation, but it would seem to me that some additional work in that area could be considered, yes.

Samantha RATNAM: Thank you. You also mentioned that you did not have access to that previous information about the planning permit changes. We have got a proponent that changed ownership in 2009 or so. There were a series of planning scheme changes after the original 2006 decision that incrementally permitted more and more development on the site and presumably increased the value of potential properties that were going to be leased or sold by the developer. You did not have access to that. Do you think you should have had access to that? Did you seek that out, or was it not an ordinary process that you were trying to understand the context in which this decision was being made?

Nick WIMBUSH: It would not be an ordinary process to do that in a situation where there is no disagreement, if I can put it that way.

Samantha RATNAM: Right, so if you had an objector or something.

Nick WIMBUSH: The Act says that councils only have to refer effectively unresolved submissions to the planning panel. It is not normal to go back and dig into every one, again acknowledging that this amendment affected some thousands of properties. If you do it for that one, should you do it for all the other changes in the planning scheme? It is a balance between what is achievable and the value you can get out of it. I will say it again: if there was anything that I had in the material before me, then I would have asked further questions.

Samantha RATNAM: Thank you. And it strikes me now in hindsight, which is a beautiful thing, but looking back now at the history, and like you said, talking about the amendment as well, if you look at that kind of decision-making and the incremental urging of the proponent, who stood to benefit substantially privately from the changes to the planning system, you have got sequentially every couple of years the developer going back to the relevant authority or council and asking for changes, pursuing it and I think even with C151 saying, 'Oh, we've done those works,' you need to now account for it in the maps –

The CHAIR: I am sorry, Dr Ratnam, but the clock has beaten us. I apologise for that. Ms Bath with a question, please.

Melina BATH: Dr Ratnam, would you like to finish your question? If you continue, then I will jump in.

Samantha RATNAM: Certainly. Thank you, Ms Bath. Just to finish off the question – so you have got this kind of pattern of behaviour. It is a similar question about do you think the planning process more broadly needs to take into account those sorts of public versus private interests in that process?

Nick WIMBUSH: The planning system certainly needs to be based on the public interest. In terms of how that specifically relates to that kind of permit creep, if I can call it that –

Samantha RATNAM: Permit creep, yes.

Nick WIMBUSH: I think you used that word ‘creep’ – then I do not have any advice. The planning system is set up so that applicants can do certain things under the Act. I do not really have a view on that. At the moment, for example – not talking about Rivervue – you can have a parcel of land which has five planning permits issued for it, one for an old aged home, one for a residential development, one for something else, one for something else, and it is not uncommon also on large sites that you have an overall development plan and then permits are issued within that development plan. I am not sure if there was a development plan at Rivervue, but that is a common situation as well. But certainly the Act says, and from my point of view, public interest should be at the heart of it.

Samantha RATNAM: Thank you very much. Thank you, Melina.

Melina BATH: No worries, thank you.

The CHAIR: Four minutes 13.

Melina BATH: Thank you. Marvellous, Chair. I may not be that long. Could you just clarify something. When someone is purchasing a house, you need a section 32, but in the case of Rivervue they are actually 99-year leases, so would they need that level of disclosure?

Nick WIMBUSH: Stepping way outside my area of knowledge – I just do not know, sorry.

Melina BATH: All right. I just thought you referenced that section 32.

Nick WIMBUSH: I referenced section 32. I should say I am not an expert on section 32.

Melina BATH: Sure.

Nick WIMBUSH: I have bought and sold property over the years, so I am aware of it. It does have a planning property report in it, which has all the zones and overlays, but in terms of beyond that, I would not like to comment.

Melina BATH: That is fine. Absolutely. Now, you would be well aware that we had two gentlemen – one of them was Colin Waters – here today, and I am sure you are most sympathetic to their situation and the trauma that they have gone through at Rivervue. I am reading off Colin’s sheet of paper that he read to us. I just want to provide something that you might like to comment on in relation to the modelling and the data you just spoke about previously. So it is question 7, and you might like to respond to this.

Did the C-151 report panel test the Tuflow software modelling and MWs modelling results against the extensive historical flood frequency analysis data?

Is that something that you can speak to?

Nick WIMBUSH: No. As I said before, I do not know specifically what Melbourne Water had done to get to the point where they were relying on that model across the catchment. So I can say I would assume, but that is not particularly helpful to you. I would expect in putting a model together it would be cognisant of past flooding events, the data that goes in, calibration against those past flooding events, so I would expect that that would have been done. Again, how it is done, is it done to the right extent, is it done in the right place – that is a

very, very broad and wide area of investigation, which I would hope is picked up in the additional work I understand Melbourne Water is going to do.

Melina BATH: Is the homework pre-done before it comes in to your panel?

Nick WIMBUSH: Exactly.

Melina BATH: Just out of interest – help me understand – as the panel chair, how do you get that job? What does that look like? What steps do you have to go through to be qualified sufficiently in order to validate and take on the role?

Nick WIMBUSH: So Planning Panels Victoria is currently an independent office within – sorry, departments change, as you know – the Department of Transport and Planning, but they operate independently from that department. At that time there were seven full-time members, of which I was one, and there is a range of backgrounds of those full-time members. There are also another 50 or 60 part-time members, of which I am now a part-time member; I was a full-time member. In that pool of people, if you like, there is everything – traffic engineers, civil engineers, town planners, environmental scientists, lawyers, almost anything you can think of. In terms of allocation of particular members to particular jobs –

Melina BATH: How is that done?

Nick WIMBUSH: Yes, there is no great science to it. It is a question of availability, the skills that are likely to be needed on the panel and just some of those sorts of basic things.

Melina BATH: All right, Chair, I think that will cover me.

The CHAIR: Awesome, thank you. All right, Mrs Tyrrell with a question, please.

Rikkie-Lee TYRRELL: Unfortunately, everybody has been asking the questions that I have been wanting to do.

The CHAIR: And that will help us catch up on time as well, which is awesome.

Rikkie-Lee TYRRELL: Yes, exactly.

The CHAIR: Ms Broad with a question, please.

Gaelle BROAD: Thank you very much for coming in today. I guess I was interested just in your experience. You have got a background that has been a bit environment and law and public policy and as a private citizen. I just think it is good to get your thoughts on things. With this incorrect application of the LSIO on Rivervue, who do you think should be held responsible for that decision?

Nick WIMBUSH: It is a very good question. I do not think I am in a position to sit here and accord blame. There is nothing I can say that would ease the pain of those people at Rivervue and indeed other areas that were flooded across the Maribyrnong catchment and the state. I am sorry, I am going to divert; I will come back to it. Every time I have felt bad about if there are things being said about me in the media, I have reminded myself that I am not the person that was subject to flooding – so I have brought it back to that. I do not think I can point to individuals, because I do not know who did it, but I think the weakness in this whole process – and I think that has come out quite clearly – is that input into how you apply the overlays, the zones, whatever it might be, yes.

Gaelle BROAD: You are right to point it out: we do not want to be a blame show. The purpose of this inquiry is to look at what can be done better. Without knowing where errors occurred or who should be held accountable, it is hard to make recommendations moving forward.

Nick WIMBUSH: I accept that.

Gaelle BROAD: From what you have indicated, it has certainly been the advice of Melbourne Water that has contributed to this final decision, and it has certainly left a whole lot of residents that we have met with personally now – we visited the site the other day – with their property values and insurance issues and

everything that has come from that. Can you advise, and you may not be able to advise, who carried out the review of Melbourne Water's 100-year flood levels prior to 2015?

Nick WIMBUSH: No, I cannot.

Gaelle BROAD: That is fine. Maybe that is a question we can ask on notice of them.

Nick WIMBUSH: One thing I would just like to say – I am not sure if it would be useful to the committee – in about 2010 I chaired a two-year inquiry into how the planning system might respond to climate change impacts on the coast, which made a whole lot of recommendations about resilience in the planning system. Again, I am not trying to divert the committee from its work – it is a different context – but a lot of the issues around insurance and those sorts of things were also tackled in that, which I think 13 years later unfortunately are still relevant and still probably have not been –

Gaelle BROAD: Or perhaps we could get it.

Samantha RATNAM: Another inquiry for that is coming.

Gaelle BROAD: Yes, that is right. We do have an inquiry that is quite relevant to that. What is your view of Melbourne Water adding indemnity clauses, I guess, on some of these permits that will stay with properties from one owner to another? What is your view on that?

Nick WIMBUSH: I was sitting in the room next door when I heard Ms Serle, I think it was, raise that. That is the first I have heard of that. I could not comment on it.

Gaelle BROAD: It is in the submission, right at the bottom clause.

Nick WIMBUSH: I would not like to comment on it just because it is the first I have heard of it.

Gaelle BROAD: Is that unusual?

Nick WIMBUSH: What actually is it?

Gaelle BROAD: With the permit, just at the bottom, kind of saying they are not liable for any flood inundation.

Samantha RATNAM: A requirement for a section 173 with an indemnification to Melbourne Water. Within a section 173 – you have to negotiate as part of it.

Gaelle BROAD: So it is Melbourne Water giving that but then taking it off.

Wendy LOVELL: It is basically a buyer beware.

Gaelle BROAD: Yes.

Nick WIMBUSH: Again, it is probably stepping outside of what I know. Section 173 agreements are used for a lot of things, and if it is found out in future by the courts to be not an acceptable approach, then that is as may be.

Gaelle BROAD: Okay. So it could be that it is just a precedent that will rub it off anyway.

Nick WIMBUSH: The other thing is, as you probably know, section 173 agreements are just that – they are agreements. So they cannot be imposed on someone if someone does not agree to what is in them, if that makes sense.

Gaelle BROAD: Yes, okay.

Nick WIMBUSH: And it goes onto the title, and it stays there. There are mechanisms to remove it, but it is hard to remove.

Gaelle BROAD: With your experience and knowledge, that at Rivervue there are plans to do further development, what is your view on that? Should that be prohibited?

Nick WIMBUSH: I was not aware that there were further plans there.

Gaelle BROAD: If there are, what would be your response to that?

Nick WIMBUSH: The first thing would be to get the development levels right in relation to a one-in-100-year flood, and that clearly has not occurred. That is why we are all here.

Gaelle BROAD: Have I got –

The CHAIR: You have got, like, 30 seconds.

Gaelle BROAD: Okay. You were appointed to chair the review at the end of last year and you withdrew in early February. I guess you touched on it, but what was the reason for the delay in disclosing your conflict?

Nick WIMBUSH: When I first raised the issue, which was in probably the first week or so of talking to Melbourne Water about – for a start, I was asked to do the inquiry. I was approached. It is something I have a lot of experience of, running those sorts of inquiries, and I thought it was a very important public interest matter. I declared the matters in relation to C151 pretty much straightaway, and that has all been released under FOI, as I understand it. I said, and I think the probity advice at the same time was, that should be declared straightaway. However, I agreed with Melbourne Water, I think at their request, that that be delayed until I had actually started the inquiry and then it would go up on the website. I think early declaration is always a good thing, in my experience. However, in the context of that inquiry – well, I will not adopt it – it was not an inquiry, like an advisory committee under the *Planning and Environment Act*. It was not an inquiry under the *Inquiries Act*. It was effectively an internal inquiry with some independent advice. So yes, I fully accept it should have gone public earlier.

Gaelle BROAD: Okay. So in retrospect you wanted that to go public earlier, but Melbourne Water –

The CHAIR: By the way, Ms Broad, you can continue because Ms Lovell has ceded her time to you, so continue.

Nick WIMBUSH: I am not putting it all on Melbourne Water. I agreed to ‘Okay, let’s wait and put it off until I have actually started the inquiry.’ But my first response was, ‘Let’s get it out there and deal with it.’ It was later than it should have been. I fully acknowledge that. The upshot of all that is that I think it was the right decision. It was certainly the right decision that I stood down but also the right decision that a different chair without that background experience did that inquiry. Whatever the merits or downsides of that inquiry might be, I do think it is good that at the end of the day I stepped down from that.

Gaelle BROAD: Just briefly – I am not sure much how much time I have left.

The CHAIR: Keep going. You have got 2 minutes.

Gaelle BROAD: Thank you very much. Just from your experience of planning, people have talked about bushfire overlays applying, since the royal commission, to make it easier. I guess at this point there is a lot of onus on local councils to do that development planning but a shortage of planners on the ground. What is your view on how we fast-track the planning process? It seems in this state we are held up with a whole lot of red tape, and when it comes to floods it is even worse. Just your thoughts on that.

Nick WIMBUSH: I agree. I think there is a huge amount of pressure on local government in terms of planning scheme amendments. There is assistance needed obviously with the technical work and, if we bring it back to this inquiry, the modelling that we have talked about quite a bit. But the importance of local government having assistance to actually put that quickly into planning schemes I think will be critical. I do not have any insights into how the government, as it is today, should fund that, but if new work is done on modelling, for example, and the LSIO in this example, then it would seem to make sense to get that into the planning scheme as soon as possible.

Gaelle BROAD: Yes. Excellent. And just your thoughts – with VCAT, I guess there are a lot of cases that are going towards that. I have heard that there are lawyers, different people and social workers involved. Is there expertise at that level or are there people from different backgrounds coming in that perhaps should not be? What are your thoughts on that?

Nick WIMBUSH: Sorry, can you perhaps just make the question a little bit clearer?

Gaelle BROAD: Sorry. With VCAT, I guess some of the people being appointed to those roles –

Samantha RATNAM: As panel members.

Gaelle BROAD: Yes, as panel members – may not have a background.

Nick WIMBUSH: I am a part-time member of Planning Panels Victoria and of the tribunal – of VCAT. I cannot really speak more broadly about those appointment processes. I do not –

Gaelle BROAD: I was hoping as a private citizen you might.

Nick WIMBUSH: I am a private citizen in terms of my approach from Melbourne Water to do the inquiry, and that is why I have come along today, but I cannot speak for planning panels or the tribunal.

The CHAIR: And it is probably perfect timing that we end it there. Mr Batchelor.

Ryan BATCHELOR: Thanks. Mr Wimbush, just quickly a couple of question. First of all, I am very interested in that report you mentioned about coastal climate change issues. Largely selfishly of course because I represent a big part of the bay and particularly the community in Elwood where flooding is related to flows from the Elster Creek but also the impact of tides and the timing of tides, so I would be really interested in that work. You mentioned that you think it would be useful – and particularly in the context of this inquiry it has become, I would say, screamingly so – that sometimes we should be questioning the inputs of modelling. People like yourself are planning experts, but whether it is hydrology or other forms of modelling that you get presented with, it is the basis on which many decisions rely, so sometimes we need to critique those inputs. From the process as a planner and a planning panel member, do you think that there would be merit, and capacity in the system, in having some form of peer review of inputs to modelling?

Nick WIMBUSH: I think I touched on this before in answer to a question from the Chair, and I think the critical point here is in getting the modelling itself right. So yes, at that point I think how the modelling is done should be transparent. If there are people who have got different ideas on how the modelling should be done, they should be listened to, and that should be considered in pulling the model together. I would like to be in a position where eight years ago I thought I was. As it turns out, that was not perhaps a reliance I should have relied on, but eight years ago I was satisfied with what I had before me. Now I think that we need to lift this up to a different standard so that there is that peer review by independent people. So if a flood plain management authority has got a flood model, they should be getting external people to look at it, to touch base with it. It may not make it 100 per cent right, but it might improve it.

Ryan BATCHELOR: Obviously, I agree with you; we cannot get everything 100 per cent right. It is a model, it is not a predictor, and it is not going to be 100 per cent accurate all the time, but I think it is a question about confidence of decision-makers.

Nick WIMBUSH: Absolutely.

Ryan BATCHELOR: Do you think your confidence as a future decision-maker would be enhanced by having the inputs to those models made publicly available? Say, if they were open source or put out as public data to be openly scrutinised?

Nick WIMBUSH: I think that is a good aim. I am couching it as a good aim because some of that material is possibly proprietary and some of it may not be.

Ryan BATCHELOR: How do you deal with that? If there are public decisions that are being made on the basis of proprietary information, how do we overcome that hurdle and still be confident in the decision-making that follows from it, if we cannot see the detail and you are not the expert in its veracity?

Nick WIMBUSH: I think it comes down to things like the peer reviewing of reports, which would normally be a report being made available. So it might not be handing the model over to a third party or a citizen to take it apart and see how it works, but it might be handing over the modelling reports, the inputs and the peer reviews that were done of it.

Ryan BATCHELOR: What sort of information would be proprietary and commercial in confidence?

Nick WIMBUSH: I am not even saying there is that sort of thing –

Ryan BATCHELOR: I am trying to think –

Nick WIMBUSH: The models themselves obviously have to be purchased or sometimes they are built internally – it just depends on who is doing it. But in terms of the inputs, if we are talking flooding, then the terrain, the rainfall, whatever – all those inputs should be able to be public, I would have thought.

Ryan BATCHELOR: I would hope that most land information and hydrology information is public information that should be made available publicly. That might be something that we need to reflect on as a committee. I might leave my questions there. Thanks, Chair.

The CHAIR: All right, awesome. Thank you so much, Mr Wimbush, for coming in and speaking with us today. It has been a really interesting presentation, and I appreciate you coming in and offering your time to us to help inform us in our work.

Witness withdrew.