

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

Sheena Watt

PARTICIPATING MEMBERS

John Berger

Ann-Marie Hermans

Joe McCracken

Evan Mulholland

Rachel Payne

WITNESS

Darren Lewis, General Manager, Finance, Rivervue Retirement Village.

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 provide 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 for us today, all evidence that is taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and the 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, and 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.

At this point I will take the opportunity to introduce myself to you, and the committee will then 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, Western Metro Region.

Melina BATH: Melina Bath, Eastern Victoria. Hello.

Samantha RATNAM: Good afternoon. Samantha Ratnam, Member for Northern Metropolitan.

Gaelle BROAD: Hi. 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 the Southern Metropolitan Region.

The CHAIR: And with that we will now hand over to you to make your opening remarks. You have 10 minutes to make those opening remarks, and then I will hand over to committee members to ask questions of you. Could you also please just state your name and the organisation you are appearing on behalf of for the Hansard record. Thank you.

Darren LEWIS: Thank you. My name is Darren Lewis, and I am here representing Rivervue Retirement Village. Thank you for the opportunity to speak today, and thank you to those panel members who came to Rivervue to tour our village. Rivervue Retirement Village is located on land adjacent to the Maribyrnong River. Since 2012 the village site has been developed and occupied as a retirement village in stages. The village comprises a four-level community centre, 16 apartments, 145 villas, a practice bowling green, community gardens and other community facilities. Forty-seven villas were damaged by the flood. Retirement villages provide independent living accommodation for older people. Retirement villages are not aged care homes.

We bought the Rivervue site in 2010. When we bought it, the site already had a VCAT-approved planning permit together with endorsed plans for the development of a retirement village and aged care facility. Rivervue

adjusted the development to replace the aged care component with a retirement village usage and obtained all the necessary approvals from Moonee Valley City Council and Melbourne Water. The adjustments to the proposed use did not entail any material changes relevant to the flood risk. We paid a substantial sum of money to buy the site and acted on the understanding that if we undertook bulk earthworks in accordance with the plans already approved, which we did, then no buildings would be on a flood plain.

The approvals in relation to Rivervue were based on Melbourne Water's flood modelling. We now know from Melbourne Water's independent review panel findings that the modelling understated the likely height of a flood in the mid-Maribyrnong section, which is where Rivervue is situated. The review panel's findings confirm that the investigation and implementation of structural mitigation measures in relation to Rivervue is crucial and that the management of future flood risk will require a holistic approach.

Rivervue welcomes the panel's recommended approach to flood risk management and considers prompt structural mitigation measures essential to protecting all residents of the middle Maribyrnong region, including Rivervue residents, from future flood risk. Possible mitigation measures could include dams upstream, culverts and flood walls.

Since the flood event Rivervue staff have spent countless hours arranging for the evacuation and temporary relocation of residents, engaging contractors and builders and managing the reinstatement of all the damaged properties. We and the residents are concerned about potential future floods and damage to village property and the ability to obtain appropriate insurance on reasonable commercial terms. These insurance concerns can be addressed by effective and prompt structural mitigation measures.

To give you a sense of what happened on the day of the flood, at no time did Rivervue staff or residents receive direct prior warnings of the flood risk. Rivervue management was first made aware of the approaching river water on the morning of the flood by village residents. Initially emergency services were not onsite to assist. However, management and residents banded together to help those affected. Village staff also assisted by supporting the evacuation of residents and providing food and water to displaced residents in the community centre. We arranged and paid for emergency accommodation for up to 2½ weeks for 37 residents who had no alternative accommodation available to them.

In the days following the flood village staff also organised and paid for onsite security to protect the empty villas, organised and paid for multiple group counselling sessions for residents and liaised with emergency services, Red Cross, local council and state and federal governments to ensure services were available for flood-displaced residents. We undertook regular welfare checks with displaced residents. We held regular forums and provided weekly written communications to keep residents informed.

As for the damage caused by the flood, 47 villas were damaged, causing just under 70 residents to be displaced. Many of these residents lost valuable personal items. The village community centre was damaged – that includes the multipurpose room, pool, gym, hairdresser, consulting rooms and both elevator wells. The village wetlands and bowling green were also damaged. The flood has had a significant impact on the wellbeing of many residents. Staff have also been affected, supporting residents and managing the building reinstatement works.

Rivervue acted quickly to reinstate the village. On the night following the flood commercial drying machines and dehumidifiers were brought onsite. Almost 700 of these were used during the make-good period. The restoration process involved an initial clean-up. Then skilled contractors methodically removed contaminated walls, insulation and damaged cabinetry, and then they undertook deep cleaning of the affected villas. After this process, which took many weeks, a builder commenced the reinstatement of the villas in December 2022. As a result of acting quickly, including commencing works before any insurance proceeds were received, all flood-displaced residents returned to their homes between April and July 2023. This contrasts to many other flood-affected areas around the river, where construction continues.

The flood has raised significant commercial concerns, including the ability to obtain affordable and appropriate insurance. Rivervue covered the cost of reinstating the affected villas. However, not all residents had contents insurance sufficient to cover the personal effects damaged by the flood, so some suffered financial loss. Rivervue also suffered significant financial loss. Our insurance was capped for flood events, and we have borne the uninsured cost of reinstating the building works. Other losses include the cost of emergency resident

accommodation, business interruption and administration costs. Looking ahead, both Rivervue and village residents require the certainty of being able to secure adequate and affordable insurance to cover flood risks. Improvements in flood mitigation works along the Maribyrnong catchment will assist in obtaining affordable and appropriate insurance. We request that this inquiry considers ongoing insurance issues, which should not be underestimated.

Finally, some of our residents are now concerned whenever it rains. Residents want to feel safe in their homes. The Melbourne Water review panel's findings have rightly confirmed that identification and implementation of structural mitigation measures must now be a primary focus. We understand the structural mitigation measures could include increasing water-retarding capacities upstream, introducing bridge culverts and introducing barriers in at-risk areas, including Rivervue. For example, should culverts be introduced at the Canning Street bridge?

In our view the potential impacts of the Canning Street bridge, which is immediately downstream to our site, are an important consideration. Melbourne Water's updated model should address the impacts of the Canning Street bridge and whether it has contributed to the Maribyrnong River not behaving according to its existing model in the mid-river region. As highlighted by the review panel, mitigation measures will need to be considered and implemented on a holistic basis once Melbourne Water's updated modelling is released in April 2024. For us and residents the investigation, development and implementation of a structural mitigation plan for the areas that were flooded is the critical output of this inquiry.

As I said earlier, we bought the Rivervue site with a permit and endorsed plans in place and obtained all necessary approvals to develop the village as it now stands. We did this in good faith and on the reasonable assumption that as long as we followed permit and approval conditions, which we did, no village dwellings would be on a flood plain. The villas should not have been affected by the floods, and we, like residents, feel severely let down. We are very hopeful that the outcome of this inquiry will result in the implementation of effective structural mitigation measures for the area.

The CHAIR: Thanks very much for that, Mr Lewis, and thanks for coming along and giving some evidence to us today and thank you for your opening remarks. I have read, and I am sure that many others have read as well, Justice Pagone's report into Melbourne Water. One of the things he talked about in regard to Rivervue was – and you have mentioned – mitigation type measures. I think there was some discussion around whether – I think he talks about one-way valves in the drainage. Because I think that was commented on: that waters rose up from the drains –

Darren LEWIS: Yes.

The CHAIR: So what is your view about perhaps Tigcorp doing those sorts of mitigation works on the site?

Darren LEWIS: There are a couple of things. So yes, I am familiar with that recommendation. We agree with the investigation of one-way valves, but we have had informal hydrological advice which confirms that on the day of the flood one-way valves would not have stopped the flood event and the 47 villas being flooded. I discussed with some committee members on the tour – yes, the water came up the drains, but the river water was coming overland in any event. So in terms of the flood event itself there was a timing difference. We absolutely agree that one-way valves should be investigated, and that is why we are supportive of that recommendation, but we firmly believe that a broader structural mitigation plan needs to be investigated.

The CHAIR: I am not a technical expert, so I am doing my best to kind of summarise some of the things that have been said, but I think what I have been hearing is even if there is an LSIO – so land subject to inundation overlay – it does not mean that it is never going to flood. It is kind of like saying that there will be some inundation, so it is not like you should have confidence that then if you are building on it or if it has been removed, that that land is never going to flood. I mean, you are in very close proximity to a river, for example, so there is always going to be some risk. And I understand your point is more about relying on the modelling – that you are saying you had some level of confidence that when the development was made perhaps the property would not be subject to flooding.

But just in regard to that question, one of my questions to you is – and I will just go right to this, and it is off the back of the earlier comment – the floor heights were lowered in a permit, right? Clearly that stands out as

something that is of concern. And I do not know who the applicant was – whether it was you, being Tigcorp, or the developer – but someone applied to lower the finished floor heights. What do you say in regard to that?

Darren LEWIS: Is this in reference to one of Mr Pagone's recommendations?

The CHAIR: Yes, the permits.

Darren LEWIS: Yes, okay, so I am familiar with that recommendation. Again, we endorse the investigation of that matter. As I said in my opening remarks and in our written submission, we bought the site in 2010. As I understand it, Mr Pagone's recommendation relates to adjustments in endorsed plans in 2009, prior to our ownership of the site. So the first we knew of that was when we read that in the report. We endorse the investigation of that matter, but I am not able to add to it in terms of knowledge of circumstances et cetera.

The CHAIR: Okay. We will just talk about insurance for a moment as well. I am jumping around a bit because I have only got, like, 2 minutes left, so my apologies. In terms of insurance for residents, what was disclosed to residents on the issue of insurance pre purchase? For them coming in, was there any disclosure around what it would cost to insure a unit?

Darren LEWIS: Are you talking about building insurance, contents insurance?

The CHAIR: Or someone who might be looking to purchase in –

Darren LEWIS: There are a number of documents. There is a fact sheet, a disclosure document and then ultimately a contract. We disclose that the village management is responsible, via the monthly fees that residents pay, for the building insurance and that residents are responsible for contents, if they choose to take it. Similar to the wider community and in keeping with the philosophy of independent living, we cannot force residents to take out contents insurance. We do formally recommend they do, but obviously they are free to make their own decision.

The CHAIR: One of the issues you were talking about is the cost of insurance, and now with what has happened you are thinking that you are underinsured – anyway, not able to get a product that properly insures the building.

Darren LEWIS: Well, that is an ongoing concern. Obviously for a future flood, if there were to be one, we could not say what the magnitude – in terms of October 2022, yes –

The CHAIR: Now, the clock is going to beat me. I have got a minute left, but I just want to ask this question: do individual residents have emergency evacuation plans for flood? We heard earlier that there are some for fire. There have been some, I think, drills around what happens if residents need to evacuate and where they go. But do you know if individuals have a plan, if there is going to be a flood event – whether it is a flood, a fire or whatever it is – about where they evacuate to? What is the status?

Darren LEWIS: Yes. We do have a general emergency response plan. We do fire drills, and I believe there is some material provided to residents around rally points et cetera.

The CHAIR: What about flooding?

Darren LEWIS: Yes. So there are a range of risks that that emergency response plan – we used it for the earthquake during the COVID period. So there are a range of risks, including flood, fire and earthquakes that that plan is designed for.

The CHAIR: Okay. All right, thank you. I am going to pass to Mr Ettershank now because the clock beat me, but thank you.

Darren LEWIS: Thank you.

David ETTERSANK: Thank you, Darren, and thank you for the tour – a week ago it seems like, but it was just Tuesday. When you purchased the site it was not on the basis of the current configuration, because it obviously was going to have an aged care facility on it.

Darren LEWIS: That is correct.

David ETTERS HANK: So in terms of the master plan that existed at that point in time, that would have also been premised on the 2006 flood plans. Is that correct?

Darren LEWIS: Are you talking about the 2006 VCAT approval?

David ETTERS HANK: Correct, yes, which would have had a large amount of that site under water.

Darren LEWIS: Yes. The 2006 VCAT permit and ultimately the 2009 endorsed plans envisaged earthworks to raise the land, and so those plans envisaged that and had designs for buildings substantially in the same location as we have built – obviously different dwellings but in substantially the same location.

David ETTERS HANK: So the aged care facility would originally have been where your stage 3 and stage 4 are. Is that correct?

Darren LEWIS: Yes, interfacing with Canning Street – somewhere in that north-eastern corner. Correct.

David ETTERS HANK: Okay. So you would not have been able to build there, though, based on 2006, because to be able to bring your project to fruition you would have required those changes that occurred arising from the 2015–16 process to free up that land and shift the LSIO back, yes?

Darren LEWIS: There were a number of steps that led up to the 2015 C151, which I think is what you are referring to with the LSIO. It has its origins in the 2006 permit, which envisaged, as I said, the bulk earthworks to raise the land and then to build in previous owners' designs a mixed aged care retirement village. We came along, and we are not aged care operators, so we redesigned, but using the same building envelope and using fundamentally the same permit and approvals. Obviously, we submitted those drawings to council after our purchase, and they considered those and referred them to Melbourne Water. We relied on the approvals that came back in terms of the final designs and the final drawings.

David ETTERS HANK: We have heard, though, from the panel chair that your requested changes were not part of the initial C151. That was actually made subsequently.

Darren LEWIS: Yes.

David ETTERS HANK: During the processes?

Darren LEWIS: Yes, that is right. That is what I was going to say, so the order: once we got the endorsed drawings, then we did the earthworks and we submitted that all to Melbourne Water. There was a process under the permit both to submit drawings of the proposed earthworks and then drawings confirming the earthworks were completed in accordance with the drawings. Then C151 occurred afterwards. It was only after all that was completed that we were able to do any actual construction work onsite.

David ETTERS HANK: I think this is going to go too long, and time is –

Darren LEWIS: Sorry.

David ETTERS HANK: Could I perhaps just ask if you could provide subsequently a document that provides us with a history going from your original master plan through to –

The CHAIR: Like a time line?

David ETTERS HANK: a time line, and what those changes were?

Darren LEWIS: Okay. I think there is a document appended to our written submission from our planning consultant, but I am happy to provide something additional if that would be helpful.

David ETTERS HANK: Yes, that would be great, if you could just give us some staging and suchlike. What is the current total value of resident ingoings that is held on that site?

Darren LEWIS: The dollar value?

David ETTERSHANK: Yes.

Darren LEWIS: I would need to take the specific number on notice, if that is what you are after, in terms of money paid. It is certainly tens of millions of dollars.

David ETTERSHANK: Do you have a current sworn valuation, or a valuation for the total value of the built form on the site?

Darren LEWIS: It is not current, no. It is a little bit out of date. Our bank obtains a valuation.

David ETTERSHANK: And what do you think the number is, roughly?

Darren LEWIS: For market value purposes, it is commercial in confidence, but if that is an important piece of information, I am certainly happy to provide that in a way that is sensitive to our commercial interests.

David ETTERSHANK: Okay, if you could provide that. I mean, let us assume that it is somewhere north of \$50 million – I think if we take 80 or 140 units times \$600,000, we are going to get to a number that is well over \$50 million to \$60 million. I am just trying to understand in that context how there could ever have been a prospect that \$5 million worth of building cover could in any way match up against the net value of the properties.

Darren LEWIS: We are governed by the insurance market, and we did undertake robust tendering processes. Had we on reasonable commercial terms been offered more than \$5 million, we would have absolutely looked at that. In the case of Rivervue, we were not able to receive any offers – \$5 million was the maximum that we obtained, so we were not even faced with the issue of considering a commercially borderline premium. Five million dollars was the maximum the insurance market was able to offer us in the year prior to the renewal year that related to the flood.

The CHAIR: I am sorry, but the clock has beaten you. Ms Lovell with a question, please.

Wendy LOVELL: Sure. Thank you. Nice to see you again. On page 4 of your report you refer to a report prepared by Neil Craigie that Melbourne Water relied upon to establish all new floor levels et cetera to assure that units were built in accordance with the flood levels. Are you able to provide us with a copy of that report by Mr Craigie?

Darren LEWIS: Yes. Sorry, can I just check which –

Wendy LOVELL: Page 4, right at the top.

Darren LEWIS: Of the appendix, I think you are on.

Wendy LOVELL: There are a few pages at the beginning. It might be the appendix, yes.

Darren LEWIS: Yes. I cannot see the reference.

Wendy LOVELL: It is in the italic bit: all earthworks and finished floor levels shown –

Darren LEWIS: Oh, there. I see. December 2010. We have a copy of that. Yes, that can be provided.

Wendy LOVELL: Oh, that would be great. If we could have that, it might help us to understand a little bit more about that. Also, is Tigcorp aware when Melbourne Water lowered the 100-year flood level at the Rivervue Retirement Village site from 6.6 metres to 6 metres?

Darren LEWIS: No. That is a matter for Melbourne Water. We were obviously not consulted.

Wendy LOVELL: I just thought that you may have been aware of that one.

Darren LEWIS: No. I think – I may be incorrect – that was something that occurred around this Mr Pagone recommendation prior to our ownership, I believe. So again, I refer to my earlier comments – it was prior to our ownership.

Wendy LOVELL: Okay. We have just explored with Mr Ettershank the fact that when you first purchased the site, the LSIO had the area where those units are under water. You may not have been able to build on that site, but if you had sought permission, we have been told that you may have been able to get permission but there would have been significantly increased costs in elevated heights et cetera. To build on that site would have cost you substantially more because you would have had to divulge that it was subject to an LSIO, and you probably would have sold those units for substantially less. So in a sense Tigcorp have financially benefited from the LSIO not being in place, because they have built units at a reasonable cost and they have sold them for a substantial amount of money. I am just wondering: given that the purchasers of those units were not informed that that land had been subject to an LSIO, were not aware that it could be subject to flooding and were not informed that there had been substantial fill put on the site which may also affect their units and movements et cetera, would Tigcorp be willing now to work with those residents and to offer them a swap to some of your new units that are not in that same area rather than keep them in those homes where they feel their futures may be in doubt?

Darren LEWIS: There is a lot in that question, so bear with me. We followed the approvals that were provided all the way back to 2006. Had the permit envisaged a different profile of construction or a slightly different building envelope, we would have naturally followed that recommendation. We did rely on Melbourne Water as the flood plain manager and on their guidance around where fill could be placed, where it could not, what levels could be done and what could not be done, and if they had set a different set of parameters then we naturally would have followed them. I think that is important when looking at the area of the old LSIO versus where the flood occurred. There are two things – that is obviously a flat, two-dimensional site map, and you also need to understand the earthworks done to lift the land. There were also villas in the previous LSIO that were not flooded on the day of the flood, and there were villas outside of that old LSIO you showed me that were subsequently flooded, so there was a mix of outcomes. It is not as simple as, ‘Oh, that’s where it was and that’s exactly where it was flooded.’

Wendy LOVELL: It is pretty close.

Darren LEWIS: It is close, but it is not exact, and it is because you need to understand the three-dimensional nature of it. I do understand the point you are making, but hopefully you have understood my comment there.

Insofar as notification to residents, as I said, we did rely on the advice of the relevant authorities in the context of approvals, and we do tell residents, both in our sales discussions and in our contract, that there is a flood plain and that is set by the relevant water authority. We do talk to our residents as part of the sales process. Clearly people are aware, but we tell them about the Maribyrnong River and that there is this flood plain that has been designed by Melbourne Water and that we have built in accordance with it.

In answer to the final part of your question in terms of swaps, as I said in my opening statements, we are equally aggrieved, because from our point of view we have done nothing wrong. We have followed all the steps required of us at every stage and had we been guided in a different direction, then we would have followed that guidance.

The CHAIR: I am sorry, the clock has beaten you. Apologies for that. Mr Batchelor with a question, please.

Ryan BATCHELOR: You mentioned you tell prospective residents that they are moving into a flood plain. Can you provide the committee with a copy of the material that you provided to residents prior to October 2022 that demonstrated there was a possibility of flooding in the area?

Darren LEWIS: I am happy to provide the material, but I am talking about in conversations as part of the sales process. We talk to them.

Ryan BATCHELOR: So in writing you never provided any information to residents in pre-contractual disclosures that there was a flooding risk?

Darren LEWIS: As I said, we relied on Melbourne Water in regard to what the risk was, and in our contracts, as I said just a moment ago, we do put a disclosure and acknowledgement in the contract that that flood plain is set by the relevant authority, in this case Melbourne Water.

Ryan BATCHELOR: Do you provide any maps or other material?

Darren LEWIS: Yes. There is a map attached to the contract.

Ryan BATCHELOR: Can you provide a copy of that to the committee?

Darren LEWIS: Yes. If it is okay, it will be a template, not an individual residence.

Ryan BATCHELOR: Sure. That is fine. One of the things I am also interested in is the extent to which your organisational and risk management policies that existed prior to 2022 considered flooding as a risk.

Darren LEWIS: We considered it amongst a range of risks, as I touched on earlier.

Ryan BATCHELOR: How do you rate it as a risk in your risk management profile?

Darren LEWIS: I would have to take that on notice, the actual rating.

Ryan BATCHELOR: That would be good because I am interested to understand. As a manager of the residential property, you obviously have a series of obligations to your residents. They pay you money to do a range of management tasks. It was clear in evidence that was given earlier today that there clearly was an admission of some risk due to the works and the mitigation works that were undertaken on the site. I forget the technical term –

The CHAIR: Ponds.

Ryan BATCHELOR: The ponds and the retarding basins – those were disclosed to residents as well. I am interested to understand how serious you thought the risk was in your internal risk management, which you would be doing as a corporation to fulfil your fiduciary obligations –

Darren LEWIS: Yes.

Ryan BATCHELOR: and the extent to which the level of that risk was then communicated to residents.

Darren LEWIS: Yes. I will come back to you on the risk register. We consider a range of risks. We do not focus on any one risk over any other in terms of fire and the like, as I have touched on, and it is for that reason that we do do annual drills. That is compulsory for residents in the apartment building and community centre. It is not compulsory for residents in the villas. It is a 7.5-hectare site – 75,000 square metres. It is not practical, and it is not in keeping with the philosophy of independent living. We do encourage residents to participate in those annual drills, and there is a mix of response to that voluntary participation. So I would say we are focused on risk and making residents aware of risks and being aware.

Ryan BATCHELOR: Would you have thought in the context of that work that flooding, a flood or a flood event would be the sort of emergency that would trigger your emergency management plans that were in place?

Darren LEWIS: Yes, and it did on that day. Our emergency response plan was triggered, and we did follow it on that day. I touched on it briefly in my opening statement. We have made further comments in our written submission as well about that, and that included things over and above the emergency response plan, including staff coming into work early, staff that were on rostered days off coming in as well, doorknocking, helping residents evacuate and those matters.

Ryan BATCHELOR: We heard some evidence earlier today that essentially the precontractual discussions that were occurring between representatives of Rivervue, Tigcorp and prospective residents told them not to worry about the flood risk. Does that accord with your understanding of how your salespeople engage with prospective residents?

Darren LEWIS: No. I do not think we are in a position to tell people what to worry about or not. We tell them what we know, which is –

Ryan BATCHELOR: You do not believe that it is important for you to disclose risk to prospective residents?

Darren LEWIS: No. That is just what I was going to say. That is why we do disclose risk. We talk to our residents about the reshaping of the land and how Melbourne Water has been instrumental in designing and approving where the villas can be built.

Ryan BATCHELOR: Would it concern you if some of your sales representatives told prospective residents not to worry about the risk of flooding?

Darren LEWIS: Well, with the benefit of hindsight that would be a worry, but having spoken to our sales consultants, both current and former sales staff, I am confident that is not part of the sales discussion.

Ryan BATCHELOR: So you are confident in telling this committee that that does not occur?

Darren LEWIS: No. I am not the salesperson.

Ryan BATCHELOR: But you are the General Manager, Finance, responsible for this.

Darren LEWIS: Yes, correct. Yes, I do believe and I am confident that that is not what is being said as part of our sales process. But I think I would like to point out that the sales process is often a very long and extensive process, sometimes years between the first contact with a prospective resident and a decision to make a purchase. Sometimes we have five, 10 or more visits to the village, so it is a long –

Ryan BATCHELOR: Quickly, before I finish up: what do you tell people now about the risk of flooding?

Darren LEWIS: We do tell people that there was a flood and which part of the village it was in and whether the villa that they are looking at was one of the flood-affected villas. If it is a villa outside of where the flood occurred, we tell them that as well, and we tell them that there are two inquiries and that we are working with Melbourne Water and the authorities in regard to any responses.

The CHAIR: All right, the clock has beaten you there.

Ryan BATCHELOR: Thank you, Chair.

The CHAIR: Thank you. Dr Ratnam with a question, please.

Samantha RATNAM: Thank you, Mr Lewis, for appearing before us today. Could I ask again how long you have been with Tigcorp, if you do not mind me asking, because some of my questions are historical.

Darren LEWIS: 2017.

Samantha RATNAM: 2017, okay. So some of these questions might predate, but you can take them on notice should you need to.

Darren LEWIS: Yes, okay.

Samantha RATNAM: Do you know if Tigcorp ever approached Melbourne Water or their representatives seeking changes to the land subject to inundation overlay that covered part of your site or to the C151 planning scheme amendment process?

Darren LEWIS: No, we did not approach anyone. The first we learned of it was when we received a notification from Moonee Valley City Council saying that they had been asked by Melbourne Water to initiate that process.

Samantha RATNAM: Are you able to find out if Tigcorp's owner David Thurin ever approached the then chair of Melbourne Water John Thwaites about the overlay or any changes it might be seeking? Would you be able to find that out?

Darren LEWIS: I can tell you now the answer is no, which is consistent with the previous answer. No approaches were undertaken. Our understanding is it took a very well trodden path as part of the approval process – the permit, the endorsed drawings, the earthworks, approval on both sides, design and as constructed and then the subject to inundation overlay, the C151. So no, no approaches.

Samantha RATNAM: And similarly no approaches to the Minister for Planning regarding any of these permit changes to your knowledge?

Darren LEWIS: No.

Samantha RATNAM: Were there any representations made to individual councillors at the City of Moonee Valley about your permit applications at any time since purchasing the site?

Darren LEWIS: No. We always deal with it through the usual channels – I assume there are planners and other staff at the council – only.

Samantha RATNAM: Great. Planners and council staff, okay. Thank you. Could you tell us what the relationship is between Tigcorp and the Gandel Group or the Gandel retail management group? What is the financial or business relationship?

Darren LEWIS: Right. There is no financial relationship.

Samantha RATNAM: So I understand that it is somehow connected to the owner of the Gandel Group and that this is the retirement village enterprise of it. Is it not connected to the owner of the Gandel Group or Gandel retail management?

Darren LEWIS: No. No, Tigcorp is a totally separate business from anything related to that family.

Samantha RATNAM: So there might be an individual relationship, not a financial relationship – because it is the father-in-law of the owner of Tigcorp, right, that owns the Gandel Group?

Darren LEWIS: Yes, correct, but that is the extent of the connection. There is no connection at a business or financial level.

Samantha RATNAM: Okay. I understand that the Gandel Group has donated over \$2.25 million to both the Labor and Liberal parties since 2000, and I am wondering whether Tigcorp has ever made any political donations to parties in Victoria or Australia.

Darren LEWIS: Tigcorp does not make political donations that I am aware of – in the time I have been with Tigcorp, no.

Samantha RATNAM: Do you believe that any of the donations made by the Gandel Group may have influenced subsequent planning decisions made by representatives of those political parties?

Darren LEWIS: That is speculation –

The CHAIR: Sorry, Dr Ratnam, can you make sure these questions are within the terms of reference for this inquiry?

Samantha RATNAM: It is about planning decisions.

The CHAIR: And if you want to make an accusation about this –

Samantha RATNAM: It is a line of inquiry about the integrity of decision-making –

The CHAIR: It has to relate –

Samantha RATNAM: in the planning process, which is absolutely within the public interest.

The CHAIR: And there is no evidence of anything that you are –

Samantha RATNAM: I am asking a question, Chair.

The CHAIR: Yes, and you need to make sure that you are within the terms of reference, thank you.

Samantha RATNAM: Chair, you are running down my time on the clock, which I do not think is appropriate.

The CHAIR: Yes, just make sure the question is in line with the terms of reference, thank you.

Samantha RATNAM: I believe it is in line with the terms of reference.

The CHAIR: It is not, and I am ruling that way.

Samantha RATNAM: It is.

The CHAIR: Thank you.

Samantha RATNAM: It is about the decision-making and the integrity of the decision-making, and we should all be interested in whether our planning decisions are being made with full integrity and without the interference of political donations.

The CHAIR: Take that as a statement.

Samantha RATNAM: Do you accept that since the purchase of the site Tigcorp has pursued planning permit changes to allow you to increase your yield and therefore your profits?

Darren LEWIS: No. As I said in my opening statements and in an earlier question, the building envelope that has its origins in the 2006 permit and in the 2009 endorsed plans is substantially the same building envelope as what we have built. The yield is unchanged in an overall building envelope context, so no.

Samantha RATNAM: Thank you. Do you believe Tigcorp has acted ethically and appropriately at all times throughout each planning permit application and planning overlay change that has been sought or provided?

Darren LEWIS: Yes. I think it is self-evident from all the questions in the context of obtaining approvals at every step following those approvals and building both the earthworks and the homes in conformity with the endorsed plans. So, yes, I think we have behaved ethically, and that is exactly why we are sitting here today so aggrieved that we followed and relied on the experts and self-evidently the homes got flooded. We feel aggrieved by that.

Samantha RATNAM: Do you accept, then, that some residents believe that Tigcorp has not been up-front with them in disclosing the risk associated with the properties that they have leased, or effectively purchased, from you?

Darren LEWIS: We respect that residents are no different in our village to the wider community: it is a broad community with different views and different levels of passion. I would refer, in addition to residents you may have heard from today, to some of the residents you met during the tour and some of their views, which I would ask the committee to reflect on in the context of resident views. We are unsure which of those residents will appear at the open mic as well.

Samantha RATNAM: Are the flooded homes being rebuilt as they were before? For example, if parts of Rivervue are again mapped as being subject to the 1 per cent AEP flood, how will this affect Rivervue's plans for these or future dwellings? Are they being rebuilt as before?

Darren LEWIS: Yes.

Samantha RATNAM: And if so, why, given the future predictions of the likelihood of flooding?

Darren LEWIS: Well, as Mr Pagone found in his report, the homes are already built. We have reinstated the homes because our primary concern was for residents to be able to move back into their homes as quickly as possible. Mr Pagone talks about that, and we endorse that. The focus needs to be on structural mitigation to protect these homes and protect the community. A broad number of our residents are very proud of the sense of community that is there, and that needs to be protected, we say.

The CHAIR: Thank you, Mr Lewis. The clock has beaten us. Ms Bath with a question, please.

Melina BATH: Thank you, Mr Lewis. This is very informative. I will slightly change tack. In relation to flood warnings, I think you have stated that there was a lack of flood warnings on that 14 October.

Darren LEWIS: Yes.

Melina BATH: Can you expand on the impact of the lack of flood warnings in the sense of a critical time for you warning your residents et cetera?

Darren LEWIS: Just on that very last part, we think in terms of warnings it needs to be given to residents and management. We do not believe it is correct for it to be our responsibility. This is independent living, and we think that any changes to emergency response and notification should be to both.

Melina BATH: Sure. So did you know how many of your residents had actually received warnings or were on the app or anything?

Darren LEWIS: No. As I said in my opening statement, we do not believe any direct warnings were given – certainly not to us and we do not believe any residents.

Melina BATH: You or the residents.

Darren LEWIS: Direct warnings – we obviously were aware of general warnings. In terms of the impact, there was no warning other than observing the river. There is a mix of experience that we have heard from our residents. Some only realised the flooding was occurring when the water arrived at their home, so there was virtually no time to move valuable items, sentimental items et cetera. Anecdotally we have heard one resident was still asleep and woke up with the floodwater in their room – incredible hardship.

Melina BATH: Traumatic.

Darren LEWIS: Incredibly so – I cannot imagine what that could be like. But we are aware of other residents that had a short amount of time – there is speculation of how long, but very short. We absolutely endorse that, and our written statement talks about that. If there are ways of improving notifications and warnings, we would support that.

Melina BATH: Thank you. Noting the susceptibility – this flood has occurred, and there is no reason to say that this year or next year it cannot happen again, or worse – you have got the opportunity to still develop additional homes on that site. Are you reflecting now about the safety of those homes – should they be built – or their construction? Could you talk us through that?

Darren LEWIS: Yes. Thank you for your question. Just as a matter of record, the application for approval of that undeveloped land was filed prior to the flood in October. It was some four days beforehand, but it was before the flood, not afterwards, as has been reported in some media posts. That has continued to go through the usual planning process, including Melbourne Water and including consideration around flood risk. We absolutely expect that the usual rigour will be applied, and we are participating in that process. Just for the benefit of the panel members that were not on the tour, because I did have an opportunity to talk about that, that part of the site sits some 6 vertical metres above the flood level. Whilst we absolutely respect the need for Melbourne Water and other authorities to review it, we are talking about a very high part of the site in the context of the flood. I just thought that might be important for context. That should not diminish our desire to –

Melina BATH: Futureproof this.

Darren LEWIS: Yes, futureproofs for the river – structural mitigation. But also, in the context of what may or may not be approved and built there, that needs to be to the satisfaction of the relevant authorities, including Melbourne Water. We wholeheartedly agree with that.

Melina BATH: Thank you. Great. I am rattling along so I can get through my questions. On your map here on page 2 of your submission you talk about constructed retarding basins. Now, I am not an expert by any stretch. Are they more ponds than basins?

Darren LEWIS: So this also came up on the tour. It may be that that term is not correct. That is a term that we have used internally for many years, so there is certainly no intended mischief there. But yes, they are certainly retarding in a stormwater context.

Melina BATH: Yes. Great. It provides that context. That is fabulous. We have heard a lot about flood mitigation in the future, but we have also gone back into the past – 1986 – when there was the Arundel basin as a true flood mitigation basin. Do you want to speak to that? Do you have an opinion from your company’s point of view?

Darren LEWIS: Yes. As we have said in our submission and in my opening statement, we absolutely think that it needs to be considered. We think all options should be considered. I have read in the media some comments on yesterday’s hearing around the cost of a dam and also potential impediments as part of that 1986 review and those still being in place. The only thing I would say about that is that community outcomes have dramatically changed since 1986 in terms of the number of homes affected in the Maribyrnong corridor and the potential –

Melina BATH: The number of homes has increased.

Darren LEWIS: Correct – and the risk of damage to additional homes in the future, and we obviously await Melbourne Water’s modelling which incorporates climate change. So we absolutely think that things like buybacks are far more expensive. If you did the maths on 500 homes, you would very quickly get to \$350 million plus –

The CHAIR: I am sorry, the clock has beaten you. Apologies for that. Ms Tyrrell with a question, please.

Rikkie-Lee TYRRELL: Thank you. In regard to the future development that you have planned, will it now change given the 2022 floods, regardless of approval?

Darren LEWIS: As I said, it is still going through the approval process with council. There are a number of authorities in addition to Melbourne Water, and we are still working with them and waiting for feedback. As I said, it is significantly higher in terms of the flood line, and we are obviously continuing to work with Melbourne Water in terms of what feedback they have.

Rikkie-Lee TYRRELL: Okay. Considering this was a one-in-50-year flood and not a one-in-100-year flood, so that area could likely face flooding in the future, does Rivervue feel it is ethical practice to construct and profit off dwellings that are at risk of flooding?

Darren LEWIS: That is exactly why we would not build on an area that was knowingly at risk of flooding, which is exactly what I have said a couple of times now. We would only do that after the relevant authorities had an opportunity to review, provide feedback and ultimately approve it. So in the context of appropriate review and approval, if they were to be approved in the current form or something else, I think that is the right way to go.

Rikkie-Lee TYRRELL: So if they approve them in the same way that they have approved the others in the past –

Darren LEWIS: Well, it would not be approved because of the physical difference in vertical height. I think to myself as we are having this conversation a significant part of Melbourne could be flooded before we got another 6 vertical metres up the site. But I am just thinking during this conversation – I am obviously not a hydrologist – I would probably be concerned about different parts of broader metropolitan Melbourne.

Rikkie-Lee TYRRELL: Okay. Thank you. May I cede the rest of my time to Ms Lovell?

The CHAIR: Yes, of course. Go.

Wendy LOVELL: Thanks very much. I was just wondering: in the BMDA attachment to your submission it talks about, three-quarters of the way down the first page, the permit requiring reshaping of the land to manage flood risk et cetera and that these works included the retarding basin – read wetlands – land swales and landscaping and that amended plans were approved in 2009. Are you able to supply us with the approval document for those amendments?

Darren LEWIS: The endorsed plans from 2009?

Wendy LOVELL: Well, the approval documents for that, yes.

Darren LEWIS: So if we are saying the same thing, yes, that can be provided.

Wendy LOVELL: That would be fantastic. Now, just going back to the bit that I raised before about some sort of compensation, whether it was a swap of units or whatever, the residents who purchased the existing units purchased them thinking that they had a one-in-100-year flood level sort of protection and now may find that they were not even protected from a one-in-50-year flood. So have Rivervue compensated those residents at all for the fact that they do not have a one-in-100-year flood level protection, or have you considered compensating them for that?

Darren LEWIS: We bought the site and developed the site on the understanding that these homes were on a one-in-100-year flood line, so that is why we are also aggrieved by this – obviously in a different way from residents in their homes, absolutely. And that is why we endorse Mr Pagone’s recommendations and comments around the need, which he specifically calls out in his report, for Rivervue to have a holistic approach to structural mitigation to the Rivervue village so that these homes and this vibrant community – and hopefully the panel members during the tour earlier this week got a sense of that community. We think that community needs to be protected, deserves to be protected, and we endorse Mr Pagone’s comments in that regard.

Wendy LOVELL: And what have your conversations been with Melbourne Water around the incorrect advice that has obviously been given that led to the removal of the LSIO and any plans that they have to provide any protection to the Rivervue?

Darren LEWIS: Mr Pagone’s report only came out less than a week ago, so in truth we are still digesting it. It is quite comprehensive. We are working with Melbourne Water on a flood risk management plan, which is quite a separate matter compared to structural mitigation. In terms of more substantive discussions with Melbourne Water, obviously once we have digested the independent review panel report we will consider the appropriateness and the timing of any discussions around LSIO movements, other approvals et cetera.

Wendy LOVELL: That is all I have got. Did you want to ask anything else?

Ryan BATCHELOR: You could not get insurance beyond \$5 million. What did the insurance company know that you did not?

Darren LEWIS: We asked the insurance companies for feedback. They just say they are declining it. What we do know more broadly is insurance companies are in the business of managing their risk exposure, and in some cases as with other natural perils in Australia –

Ryan BATCHELOR: Was it alarming? Did it cause you any alarm?

Darren LEWIS: Well, there are two things. No, it did not alarm us, but if we just change tack slightly, on the day of the flood, we covered the shortfall to residents. So it is not like residents were worse off –

The CHAIR: I am sorry, but the clock has beaten you there, so we will need to conclude that. Mrs Broad with a question, please.

Gaëlle BROAD: Thank you very much for coming this afternoon. You have had to answer a lot of questions, and I am sure we are at the last stretch now.

The CHAIR: Best till last.

Gaëlle BROAD: Look, given the interests of residents there have been some concerns raised about the lack of direction when it comes to emergency response in a flood. Will the village look to update your emergency plans and commit to providing that option for residents to participate in a flood emergency response?

Darren LEWIS: I just touched it on a moment ago. We are working with Melbourne Water on a flood risk management plan. I think in terms of the option of participating, perhaps you are referring to my earlier comments around our annual drills, and we continue to make it optional for residents to participate in those. I do not think it is practical on almost a 75,000 square metre site to make it compulsory for residents to participate.

Gaëlle BROAD: No, not compulsory, but optional. You mentioned bushfires. Floods are now part of that?

Darren LEWIS: Yes. As I said, that is pre-existing. That is not a response to the flood. That is pre-existing, residents having the option of participating in annual drills, so we continue to do that, yes.

Gaëlle BROAD: Okay. Now you have certainly made it clear that the advice you were given by Melbourne Water was clearly out of whack. I mean, you went along with it, but it was clearly wrong based on different levels. Who do you think is responsible for the situation that you are now facing?

Darren LEWIS: I am not a hydrologist, so it is not for me, not at this stage particularly with only a short period since Mr Pagone's report – and we are absolutely interested in the outcomes of this report. I think I made very clear where we think we have been let down in regard to various authorities and the approvals we obtained. And undoubtedly a flood occurred in the village, but I cannot be speculating on blame other than the comments I have already made.

Gaëlle BROAD: Okay. So Tigcorp – you are not considering any legal action against Melbourne Water, or would you consider it?

Darren LEWIS: We are keeping an open mind, as I said. We are digesting one report. There is another report here, and we are continuing to work with Melbourne Water and others in responding to this event.

Gaëlle BROAD: I guess also you mentioned the flood risk and there being sales conversations and some of that advice. Obviously you can always look back and know a lot more with the benefit of hindsight, but will you commit to updating the information to new residents to advise them of that flood risk in writing?

Darren LEWIS: As I said, we do advise – it is in the resident contract – that there is a river and the flood mapping is undertaken by Melbourne Water. If there is a change to the flood mapping, clearly there will need to be a response in that regard.

Gaëlle BROAD: Do you have any confidence, I guess, with the current plans that you have got put forward, that Melbourne Water will be accurate with their advice?

Darren LEWIS: That is something we are continuing to – it is difficult until we see the model and we can reflect on those things. But the first step is seeing any updated models and whatnot.

Gaëlle BROAD: Just with the accommodation, we understand for residents you mentioned you covered 2½ weeks of accommodation. I spoke to some residents. Some were covered through their own insurance for accommodation. Others ended up couch surfing for months and months and months. Some people were out of home for up to, I think, seven months, nine months – something like that. If this was to occur again, would you do the same, 2½ weeks of accommodation covered, or would you do anything differently?

Darren LEWIS: I could not speculate about a future event and what we would or would not do, but our resident contracts do identify that in the event of the homes being uninhabitable and insurance being insufficient to cover temporary accommodation the owner is not going to be covering that. So there was a notification in advance around the risk of residents being responsible for their cover. As I said and as you have said as well, some residents did have cover for temporary accommodation, but I could not speculate on what we would or would not do in a hypothetical future event.

Gaëlle BROAD: Just with the insurance cover, the \$5 million, you mentioned being \$1.5 million over.

Darren LEWIS: Uninsured, which was borne by the owner, so residents were not worse off. Their villas were fully reinstated notwithstanding the uninsured loss. The community centre was reinstated. The community centre was roughly \$400,000. We did have and do have the ability to seek funding from the resident sinking fund for the community centre, and with great empathy, noting the position of residents, we elected not to seek funding from that resident sinking fund. You touched on the 2½ weeks. There were a range of initiatives that we provided to residents, including the monthly service fees being waived during the period that they were displaced. There were a range of initiatives. I refer to our submission in that regard.

Gaëlle BROAD: I was interested in David's questioning earlier on I guess the whole value of the site and what it is insured for. But, say, there was a landslide or something that affected a lot more buildings, what would you do in that situation?

The CHAIR: I will just let you know the clock has beaten us, but if you want you can finish your answer.

Darren LEWIS: Again, I could not speculate about a hypothetical situation, like if it was of a different magnitude. I do not feel it is appropriate.

The CHAIR: Thank you very much, Mr Lewis, for coming in and presenting your evidence to us today. We really appreciate you coming in.

Committee adjourned.