



Royal Commission on the Pike River Coal Mine Tragedy
Te Komihana a te Karauna mōte Parekura Ana Waro o te Awa o Pike

UNDER THE COMMISSIONS OF INQUIRY ACT 1908

IN THE MATTER OF THE ROYAL COMMISSION ON THE PIKE RIVER COAL MINE TRAGEDY

Before: The Honourable Justice G K Panckhurst
Judge of the High Court of New Zealand
Commissioner D R Henry
Commissioner S L Bell
Commissioner for Mine Safety and Health, Queensland

Appearances: K Beaton, S Mount and J Wilding as Counsel Assisting
J Haigh QC, B Boyd and B Smith for Douglas White
J Rapley for Neville Rockhouse
S Moore SC, K Anderson and K Lummis for the New Zealand Police
N Davidson QC, R Raymond and J Mills for the Families of the Deceased

S Shortall, A Rawlings, A Glenie, D MacKenzie, A Gordon for certain managers, directors and officers of Pike River Coal Limited (in receivership)
C Stevens and A Holloway for Solid Energy New Zealand
R Buchanan for Fire Service Commission and West Coast Rural Fire Authority
K McDonald QC, C Mander, and A Boadita-Cormican for the Department of Labour, Department of Conservation, Ministry of Economic Development and Ministry for the Environment
G Nicholson and S Steed for McConnell Dowell Constructors
G Gallaway, J Forsey and E Whiteside for NZ Mines Rescue Service
B Latimour for Coal Services Pty Ltd
N Hampton QC and R Anderson for Amalgamated Engineering, Printing and Manufacturing Union Inc

**TRANSCRIPT OF PHASE TWO HEARING
HELD ON 21 SEPTEMBER 2011 AT GREYMOUTH**

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**COMMISSION RESUMES ON WEDNESDAY 21 SEPTEMBER 2011
AT 9.01 AM**

SUZANNE LESLEY HAINES (ON FORMER OATH)

5 CROSS-EXAMINATION CONTINUES: MR STEVENS

Q. Ms Hines, yesterday you said in your supplementary brief that a lead agency must have independence and no conflict of interest, and that was your position wasn't it?

A. Yes sir.

10 Q. And that in terms of organisational structure it's important that decisions are made in an environment lends itself to objective considerations?

A. That's what I said in my brief sir.

Q. And that's your view isn't it?

A. Correct.

15 Q. Could you look please at a matter in the document that I've taken you to yesterday when we concluded, and it was page 2 of that?

A. Sorry, what document are we looking at sir?

Q. It's Ms McBreen-Kerr's note that she emailed to you. Can I take you please to the second paragraph of that? In that Ms McBreen-Kerr is talking there about the approach the department should take and it is clear, isn't it, that her thinking is influenced by potential risk to the department?

20 A. Sir, Sheila McBreen-Kerr is expressing her view in the document. I'm not sure why you draw the conclusion that she's worried about what you describe as risk to the department?

Q. Well because those words are used by her in her report to you?

A. Sir I'll just clarify your question, did you say, "Reputation or risk to the department?"

Q. No I didn't.

30 A. Okay.

Q. Well you tell me what is the risk to the department that she's referring to and what should be taken into account?

A. Sir I'm not able to answer that question, I didn't write this document. I don't recall ever having read this document prior to having seen it yesterday when you produced it here. And as far as I'm aware I didn't respond to it. I read it as Sheila McBreen-Kerr expressing her views at the time. They were departmental views as I made clear yesterday.

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0905

Q. Presumably, during the phase of the Pike emergency you read all the emails that she would have sent to you?

A. Yes sir, as much as was possible. I can't categorically say that I read 100% of them. Clearly, I didn't read this one.

10

Q. Well I'll move to another topic. Do you accept that frequently the department added no value but simply occupied critical time?

A. No I don't agree with that view.

Q. Okay. Could I take you please to DOL2000030005/1? If you could highlight please just the changes that are referred to there.

15

WITNESS REFERRED TO DOL2000030005/1

Q. Now that is an email from the police to Sheila McBreen-Kerr. Do you accept that it is the addition of changes to a risk assessment that had been discussed and requested by the department?

20

A. Certainly looks like that sir.

Q. Can I then take you please to those two additions? Could I go to /4 please, and if we could highlight the executive summary approximately in the middle of the page. And this is for the use of a RPD down the river tunnel, and that's expressly what it's about. It's about use in the tunnel. The executive summary, "A risk assessment to deploy a remote controlled robotic device was conducted on 21 November 2010 in response to an unplanned explosion underground and consequent trapping of 29 crew members and contractors on the 22nd of November 2010." Now could you please explain to the Commission what that adds to the risk assessment in terms of quality?

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0908

A. Sir, as I have already explained to the Commission, I'm not an expert in risk assessment, but I agree with you that on the face of it, a sentence of that kind does not add a lot of value. What I can say is that the

evidence of Dr Geraint Emrys makes this clear that risk assessments which were being forwarded us to from the police at the mine were of variable quality. Jim Stuart-Black also noted that in his evidence to the Commission a couple of days ago. There were a number of risk assessments where key hazards were not identified, where it was not clear who had been involved in the process, who had signed off on the assessments, et cetera. The quality of the risk work which was done at the frontline on the hill was variable.

5

Q. Is that all?

10

A. Yes, sir.

Q. Now, can we go please to 1.2(c)? Perhaps you had a chance to read that and over the page? And this is a change expressly as discussed with you, being Sheila McBreen-Kerr who also had no technical expertise. Again, I put it to you, it was simply time wasting with no value added whatsoever?

15

A. Sir, I'm not sure which change you're actually referring to here. I can't see the change, but my general comment would be that Sheila McBreen-Kerr was, during the rescue phase, responsible for providing departments input into risk assessment in Greymouth. She did not do that alone. As you pointed out yesterday, she always had inspectors there to support her in doing that technical work.

20

0911

Q. Okay, well thank you for that. Then given that answer could we go to DOL.20000.10014/15.

25

WITNESS REFERRED TO DOL2000010014/15

Q. And just while it's coming up can I just note that I'm focusing on an email from her to yourself and Geraint Emrys, Maarten Quivooy, Mike McNelly, Keith Stewart and Antoinette Baker, are they all Department of Labour people?

30

A. Yes sir they were at the time.

Q. And they were all involved in some way in the Pike disaster for her to be copying them all in?

A. Geraint was directly involved, his role has been described in earlier parts of Commission evidence. Maarten was Sheila's direct manager,

so he was being copied in for that reason. I don't know why she would've copied in Antoinette Baker, you'd have to ask her that question.

5 MR STEVENS ADDRESSES THE COMISSION - DOCUMENT

CROSS-EXAMINATION CONTINUES: MR STEVENS

Q. The email is called, "End of day marked 2," and it's on Saturday 20th November at 10.34 pm, and included in her email to you she says, "I have been speaking to police investigation team tonight as well. The
10 three police teams seem to be unconnected except through us. I will be meeting this team to set up the operational agreement as opposed to the higher level one with OPs headquarters. I will take Dave with me as I will be good with structure and process and a real liability with detail of what's needed. Dave will be great." Okay. Now that was her view of her contribution. Who please is, "Dave," referred to in that email?
15

A. I don't have the email in front of me sir but I'm assuming she's meaning Mr Dave Bellett.

Q. And so he is the person that will be great, in terms of technical matters?

A. Correct sir.

20 Q. I put it again that there was frequently only time occupied by the department without any contribution to safety or value. Do you accept that?

A. Sir I don't agree with you. Can I just make a comment around this?

Q. Yes you can.

25 A. I think to make an objective assessment of this somebody would have to have a comprehensive look and review of every proposal that was prepared at the mine and sent down the hill for peer review. And on that basis make a judgment about the adequacy of those risk assessments and the contribution that the department or anyone else involved in the
30 review process made. I don't think that looking at isolated incidents is the way to draw a conclusion of that nature. I note the evidence of my colleague Geraint Emrys, who was our chief adviser, health and safety, who comments in his own evidence that the proposals were variable in

quality. Some needed a lot of work and some didn't. The evidence from Mr Jim Stuart-Black was very similar in tenor.

0915

5 Q. Do you accept that the answer you've just given is another indication of the department's focus on process rather than on substance?

A. No sir. What I'm talking about is how you can draw an informed conclusion on the basis of evidence.

10 Q. Could I take you then please to the typed notes from Mike Firmin, document DOL7770020003-02? Sorry before we leave that page, these are his notes for Saturday, you see that, 2011. Do you see that Ms Haines?

A. Yes, I notes from the 19th and the 20th.

15 Q. Well I'd like to focus on the 24th, but before I do, do you see in the penultimate paragraph his note was, "Kevin said sealing was not option." That's Kevin Poynter and that's a note of what was relayed to the incident management team wasn't it?

A. Sir, I'm not sure whether that was relayed at that point by Kevin to the incident management team, but it's consistent with the position the department took at that time.

20 Q. Okay. Could we go please to /11, and the last two paragraphs please. And if you just take it from me, Ms Haines, that this is the 24th. It's therefore pre-explosion. They got an urgent message to phone you. They had a 13 point document about procedures for some underground, like towing vehicles out of the way, asked if they'd participated, and then
25 the next paragraph, "Asked what we were doing. We said we were at a meeting to discuss re-entering, but only as observers," so that's both of them. "They asked if we had much input." That's presumably yourself and Mr Emrys, correct?

A. (no audible answer 09:18:17)

30 Q. So you asked the question. "We both said tried but not much help." Now do you accept that's another instance of two people at a critical meeting that had no contribution?

A. Sir, as I explained in my supplementary brief, the department made its mines inspectors and some other senior personnel available at the mine

in order to support the preparation of plans and proposals. Once those mines inspectors were at the mine they were not being managed by us, sir. The management of the incident was being managed by police and so the police were making use of them in the way they saw fit, so I can't comment further on that. I guess the context of this conversation is that my recollection is that we had been alerted to the fact that we were going to get a proposal from the mine to have Mines Rescue enter the mine that afternoon and so we were interested to know quite what involvement our staff have had in that process.

5

10 Q. So just to clarify. Your answer is that once they were at the mine they were totally under the control of the police. Is that what you're trying to tell the Commission?

A. Well, the incident was being controlled by the police, sir.

15 Q. I'm happy that you qualify the answer, but could you try and give a yes or a no and then a qualification. Is your evidence that once they were at the mine they were totally under the control of the police?

A. Yes sir.

0920

20 Q. Just lastly, without totally taking you to the documents, do you accept that the way the department's view was expressed on sealing the mine, that you stifled debate on that?

A. That may have been the outcome, sir.

CROSS-EXAMINATION: MR HAMPTON

25 Q. Ms Haines, in your initial brief, original brief of evidence, in paragraph 14(iv), you spoke of the department giving support by providing mining 101 briefings to incoming police personnel. Do you recall that?

A. It wasn't me personally, but yes, it was part of what the department did at the request of the police.

Q. And they were provided to the police by Mr Poynter?

30 A. Certainly by Mr Poynter. I think two of the inspectors were involved, I can't recall who the other one was.

Q. Was that Mr Bellett, please?

A. I'm not sure to be honest, if that's what his evidence says, then that is correct.

Q. I'll come back to that in a moment. Mr Bellett is a senior occupational and health inspector?

5 A. He's a senior health and safety inspector, sir.

Q. Health and safety inspector – it's correct he was appointed in August of 1995 as an inspector, but he didn't have regulatory ability over places of work associated with coal mines, mines, quarries and tunnels, construction work and forestry, did he?

10 A. Sir, as is clear from my evidence, I was not working in the Department of Labour in 1995, but my understanding is that that is correct.

Q. Yes. Do you need to see a copy of the warrant itself, Ms Haines?

A. I don't think so, sir, because what I can tell you is that warrants were
15 re-framed later in the period and I'm not sure that I can give you the exact date, if you want me to come back to you with that sir, I can, but warrants were re-framed to make sure that our health and safety inspectors could use their powers in any workplace situation and that was something I explicitly checked very early on in the rescue and
20 recovery operation. If you want the documentary evidence to that sir, I can provide it for you.

Q. I'll just show you a copy, if I may, madam registrar. Does that seem to be Mr Bellett's original appointment?

A. It appears to be the case, sir.

25 0925

Q. Yes. Do you know, was Mr Bellett by previous occupation in training a carpenter, have I got that right?

A. I don't have that knowledge sir.

Q. Certainly he didn't have a background in mining did he?

30 A. Sir, I've not seen a record of his background but I understand that he did not have a background in mining before he joined the department.

Q. My friend Mr Stevens referred you a short time ago to an email, and I wonder if Ms Basher we could have it up again, DOL200001.0014/15,

that's the one we couldn't find, but Mr Nicholls read a passage from it where, I'll leave it sorry.

5 A. Sir what I can tell you about Mr Bellett if it helps is, that Mr Bellett was involved in the investigation into two mining fatalities in the mid-2000s, I think it was Raroa and Black Reef Mine He had investigated other serious harm accidents in the mining industry and is one of our lead investigators in our current health and safety investigation into what happened at Pike River Mine.

10 Q. As at the time of the 19th of November, explosion at Pike River, the department had a senior advisor in high hazards, that's Mr Booyse, is that right?

A. Yes, Johan Booyse.

Q. A senior advisor in high, Mr Booyse had mineral experience but not coal experience?

15 A. He had mining experience. I understand it wasn't in coal, I'm not 100% sure of that, he had South African mining experience, he'd managed mines there.

Q. There was a senior advisor for high hazards in terms of Mr Madgwick who had petroleum and geothermal experience, is that correct?

20 A. Correct sir.

Q. But there was no senior advisor with high hazards experience in coal, is that correct?

A. Correct. Yes, Mr Booyse was a senior advisor extractives.

25 Q. When Messrs Poynter and Firmin and Mr Bellett went down to Pike River post the explosion, was there a hierarchy in terms of authority between the three of them?

A. No sir.

Q. They were all on an equal footing were they?

30 A. The two inspectors were on an equal footing, well the three inspectors in fact, and Mr Booyse was a senior advisor, he wasn't an inspector so he had no management or leadership role in relation to the other three. I don't know sir whether you've had the opportunity to read the review conducted for us by Gunningham and Neal subsequent to the disaster at Pike River around the department's resourcing and organisation of its

mining work. But some of the deficiencies were pointed out there by Gunningham and Neal and are in the process of being addressed with the establishment of the High Hazards Unit.

5 Q. Messrs Poynter and Bellett were the two that went to the mine and were there on the Saturday the 20th weren't they?

A. That's certainly my recollection sir.

Q. Yes.

A. They were the closest geographically.

0930

10 Q. And I just want to take you to two passages, one from Mr Bellett's evidence, and I'll ask Ms Basher if you could to put both pages up alongside each other, DOL00070020004/5, and then Mr Poynter at DOL7770020005-09/4 please. On the left we have, as we look at them, we have Mr Bellett's, and could you enlarge in Mr Bellett's please
15 Ms Basher, paragraph 24?

A. Sir, could you give me a moment to read the documents before you, so that I get the context. Could you also clarify for me who the second document was written by on what date?

Q. This is a statement of Mr Poynter?

20 A. Okay, on?

Q. Compiled July 2011 it says, and both those pages relate to events of Saturday 20th November.

A. Okay, thank you sir.

25 Q. I'll give you a moment to read, but what I am particularly interested in is paragraph 24 of Mr Bellett's, and paragraph 32 of Mr Poynter's. And Mr Bellett's at 24 says, "I had heard of discussions regarding full sealing options, for example, bulldozing soil against the mine portal to choke the oxygen which caused me and others concern. I indicated that DOL had the ability to issue a formal directive via a prohibition notice to stop any
30 activity which had the potential to cause serious harm to the possible survivors underground." Now the comparative paragraph 32 from Mr Poynter, "At one stage Dave Bellett indicated we might have to invoke our statutory powers to prevent harm by using a prohibition notice if we felt there was a sufficient risk to either survivors or Mines

Rescue. I don't think this option was ever close to being needed to be acted upon but we felt we should state our position." Does it surprise you, Ms Haines, that it's the inspector without mines experience and qualification that is the one issuing, as it were, the threat about the prohibition notice?

5

A. No sir.

Q. Why doesn't it surprise you?

A. Well, I think that either of the inspectors would have had the same view. Both had the powers. I don't see the difference is material in this situation.

10

Q. You don't think that it's the inspector with the mining experience and qualifications who should be the person calling the shots and making that declaration if one was to be made?

A. Sir, could you put the question to me again please.

15

Q. You don't think that – do you not agree with me that it should be, if anybody's going to be making the declaration, the inspector, the coal mines inspector, the man with the experience and the qualifications and the warrant making such a call?

A. Perhaps sir it would have depended on, if the department had felt the need to use this power then it would have been an inspector, a fully warranted health and safety inspector, who would have been the person with authority to do so. Exactly how that would have been done would have depended, in fact, on who was at the mine at the time. I think what I read in both of these extracts is two people working at the mine helping to formulate a plan going forward, who are both articulating the department's position, each in a slightly different way.

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25

0935

Q. If in fact, and I would ask if you could at some stage check your records and see whether Mr Bellett in fact did do so, if in fact Mr Bellett was playing a part in the mining 101 lessons for incoming police, do you think that was appropriate?

30

A. I don't know whether he did. In fact, we can check the records around that.

Q. If he did, do you think it appropriate that he, with his lack of experience and understanding of coalmining, should be giving lectures to incoming police officers?

5 A. Sir, it was a situation where we had – I don't know whether he did, so let me say that first.

Q. Yes, I understand that.

10 A. I also think that ideally it would be better to have someone with more experience. Of course, we didn't have many people. We had two mines inspectors, they were largely occupied at the mine helping prepare proposals, and as my recollection is that the police wanted a bit of assistance around mining terminology, et cetera, and largely in Greymouth, it would've been a matter of who was available on the spot who might be able to help. I think it's fair to say that any of those inspectors would've known probably more about mining and been able to have been of some use to the police in charge of the operation, at that time and those points.

15 Q. Look just briefly then at your supplementary evidence statement that you read yesterday, particularly paragraphs 22 to 25 please, it's on page 6.

20 **WITNESS REFERRED TO SUPPLEMENTARY EVIDENCE STATEMENT**

Q. Are you aware, Ms Haines, that historically in New Zealand pre-Pike anyhow, effectively the person in control of a mine emergency situation would have been and would've remained the statutory mine manager working in conjunction with agencies such as Mines Rescue and the coal mine inspectorate? Were you aware of that?

25 A. Sir, I haven't looked at the precise detail of the arrangements, but that's as I understand it, yes.

Q. Were you aware of that prior to the explosion on the 19th of November?

A. No, sir.

30 Q. So, when Pike River exploded, this was completely new territory from your point of view in the department?

A. It was, and one of the first things I did was take steps to check with my legal colleagues around who was responsible and what our responsibilities were.

Q. Were you advised then through your legal colleagues that it was the statutory mine manager who held the responsibility?

A. No, sir.

Q. What advice did you get?

5 A. Sir, the mining regulations which set out the role of the statutory mining manager, make it clear that the statutory mine manager, and I don't quote, I can't necessarily quote the regulations word for word, but they envisaged that the statutory mine manager is responsible for mining operations, sir. They do not make any explicit statements around the
10 role of the statutory mining manager in an emergency rescue and recovery situation such as this, and I think that's a deficiency in the regulations, I think that should be much clearer. But my advisors advised me that the police were the appropriate agency to be responsible for this situation.

15 0940

Q. Might it not be implicit in mining operations to include within that wide phase, operations that fall out or are part of an incident such as the Pike River explosion?

A. Sir, that was not the legal advice that I got at the time.

20 Q. Did it address that position, the legal advice you got?

A. It did contemplate what was envisaged by the term, "Mining operations."

Q. Were you in this room last week when you heard something of the New South Wales and Queensland models?

A. I wasn't sir.

25 Q. You weren't?

A. No sir.

Q. Well I don't mean to do you any disservice to the models but they in effect, after an explosion, retain authority in the mine management and that mine management works in conjunction with agencies such as
30 Mines Rescue and the Coal Mines Inspectorate and if needs be with other agencies such as police and so-on. Have you and your department looked at those sorts of models at all?

A. We certainly are sir.

Q. I'm sorry?

A. We certainly are sir.

Q. You are now?

A. Yes sir.

5 Q. Well reading through your forward looking observations about lead agency I can't see a role in there for the mines inspectorate or have I missed something please?

10 A. Well I think we're leaving as little open in paragraph 25, but just to restate what I say there, "The department would be willing to actively support future operations where it has specialist expertise and is requested to do so by the lead agency and in fulfilling any such role would anticipate remaining entitled to exercise its normal statutory powers and duties." And I guess I left it open like that because it depends a little bit on the sort of emergency management model which is finally adopted out of the recommendations of the Royal Commission.
15 But in a model such as the CIMS model sir my personal view is that the chief mining inspector would be an advisor to the incident controller.

Q. Are we going to have a chief mining inspector?

A. Yes sir, that's been announced a few months ago.

20 Q. Your paragraph 25, the passage you quoted, indicates reactive rather than being active. You're indicating support if requested. Doesn't it have to be something more than that?

A. Sir, perhaps I could try and restate my previous comment. It leaves things open because it's unclear quite how arrangements will be made in future and quite what explicit roles might be given to different parties.
25 A comment I made earlier, in my personal view, the roles were not as explicit and are not as explicit in current regulation as they should be and so it's leaving open the possibility. And in Phase Four of the Commission we will be in a position to provide our views on exactly how we think it should work and exactly what our role shall be.

30 Q. Are you factoring into your thinking at all the possibility of the mines inspectorate being taken out of the Department of Labour and removing one of the conflicts of interest, which I'll come to in a moment?

A. No sir, although I don't think it would make any difference to our thinking around the role of the chief mines inspector or the mines inspectors.

Decisions about the configuration of Government are clearly the responsibility of Government and we public servants work in the arrangements that are created for us.

0945

5 Q. Well you mentioned no conflict of interest in paragraph 23. Given the Department of Labour investigative role and given the mines inspectorate's role in terms of ensuring compliance with the coal mines regulations and if something then goes wrong, isn't it removing one of the conflicts the department has if the coal mines inspectorate is taken
10 out of the department so the department is able to focus if needs be, without any conflict, on the role that the coal mines inspectors play in say allowing, and I'm not necessarily referring to Pike here, say allowing a mine to come into operation that it was non-compliant with the regulations. Doesn't it leave the department much freer in its
15 investigation and indeed prosecution if needs be if the coal mines inspectorate is out of the department?

A. Possibly, sir.

Q. Because at the moment you're in the invidious situation aren't you at looking at your own and responsibility of your inspectors in allowing
20 what I suggest in Pike was a non-compliant mine?

A. Sorry sir, could you restate the question? It seems to be a statement.

Q. Aren't you in the position, invidious at the moment, of looking in your investigative role at the role that your coal mines inspectors played in allowed in operation a non-compliant mine?

25 A. Sir, we have a role in investigating what happened at Pike River and we also take our own responsibilities very seriously. It's for that reason that we have already commissioned a number of external reviews of our work, our work as in the health and safety space and the work of our inspectors with Pike River and elsewhere and also in our role as
30 advising the Government on appropriate regulations and policy, and it's for that reason that we've undertaken external reviews of those matters and made those available to the Commission and to all the parties.

Q. I am sure you take it seriously, but doesn't it leave the department somewhat conflicted when it hears, as it has in Phase One and again in

Phase Two, considerable criticism of its own coal mine inspectors and the part that they may have played in allowing a non-compliant mine to be operating at Pike. Isn't that a considerable conflict in your role as investigators? You're looking at your own.

5 A. Yes sir, I agree that there is some conflict in those roles. There's often conflicts in roles and in fact in the old regime there would have been conflicts as well because in the old regime the Department of Labour would have had a role investigating it. The investigation would have been conducted by the agency that had the inspectorate, and I do think
10 that conflicts of interest are difficult things to manage especially in small countries, and conflicts of interest do need to be balanced against having enough of a call of expertise in order to be able to undertake tasks effectively, and that is a very big trade-off for a small country.

Q. Do you understand the magnitude of the possible conflict of interest
15 here where you have an explosion where 29 died?

A. Sir, I'm noting your point. I'm agreeing with you about conflict.

Q. Is that something that the department will take into consideration in doing the reviews that are now taking place?

A. One of the factors, sir.

20 0950

CROSS-EXAMINATION: MR HAIGH

Q. Good morning Ms Haines.

A. Good morning, sir.

Q. You can leave out the "sir", if you prefer, as I would. Anyhow, I just want
25 to ask you a few questions about the powers of the inspectorate of mines, and I know you've been asked a number of questions about that, but in terms of their ability to intervene to protect persons from, who may be in danger, safety issues, they have very wide powers, don't they, the inspectors of mines?

30 A. Yes, sir, all health and safety inspectors have a number of powers, some of which we've talked about already in this hearing.

Q. And when we're talking about, when they're looking at, for example, powers to prevent harm to any person, that is, if they intervene or not,

that is the pre-eminent issue, whether persons are likely to be harmed so they'll take steps – for example, to preclude individuals from entering the mine after the explosion?

5 A. Yes, sir, I would note that yes, the department inspectors have a wide range of powers, which we exercise on occasion. I would also note however that primary responsibility is in the, for the management of safe and healthy workplaces do rest with employers.

Q. Is what sorry?

10 A. Do rest with employers, and parties, and other parties in the workplace and the department with its 140 inspectors cannot be in 500,000 workplaces at any one point in time. The primary responsibility and the duties under the Health and Safety Act lie with employers.

15 Q. Of course, but that doesn't prevent the department from intervening where it perceives that there is a danger to persons, in fact that's their job?

A. Yes, sir, bearing in mind that we obviously can't be in every possible dangerous situation at any point of any day.

20 Q. No. Well, for example, talking about the recovery position where the department could have issued a prohibition notice preventing people entering the mine that would've been a prohibition notice under section 41 of the Act?

A. Sir, I'm not sure of the exact section, but it would've been a prohibition notice under the Act.

25 Q. Yes, and indeed the department was ready to intervene if necessary to prevent a recovery attempt if it deemed it inappropriate or a danger to people within, who were part of the rescue process?

A. If it was likely to create serious harm to any people, yes.

Q. Yes and it could prevent any person from entering the mine, a prohibition notice?

30 A. On those grounds, yes.

Q. And it would remain in force until such time as a health and safety inspector was satisfied that sufficient measures had been put in place to eliminate or minimise the hazards associated, in this case, with entry to the mine?

A. Yes, sir. I would note that we did not issue any prohibition notices in the Pike River case.

Q. No, but you were poised if necessary to issue?

A. We felt that was our duty, sir.

5 Q. Yes, I understand that. So, above all else, the issue is endangering people's lives or harm, and that supersedes any concerns about the monetary impact of issuing a prohibition notice?

A. Yes, sir.

10 Q. Right. Now, I want to move to your role, wearing another hat, which you identified in paragraph 10 of your supplementary brief, if I can refer you to that please?

WITNESS REFERRED TO SUPPLEMENTARY BRIEF

0955

15 Q. That refers, and I'm paraphrasing, that the department's carrying out an investigation into the tragedy, a decision to prosecute must be made and informations laid by the 19th of November 2011, you're responsible for making final decisions as to any prosecution and the investigation report will come to you for final decision-making by the end of October," correct? So you're faced with the difficult task of finally determining whether or not any particular body or individual should be prosecuted?

20 A. Yes.

25 Q. Now without going into detail presumably, and you will have had numerous reports I imagine by now in respect of this decision you have to make, presumably the concern about the Alimak raise as being a secondary egress is an issue that you're going to have to grapple with?

30 A. That is likely to be the case sir. I don't know, I have not seen any reports of the investigation, I'm aware of the progress of the investigation and the processes that we've set up, the people we have advising us et cetera, but I am not aware of any of the contents sir. It would not be appropriate for me to be aware of that content at this point in time to have views on it.

Q. No, I'm not asking for your views at all, all I'm saying is, and you've sat here through part of this, and we've certainly heard evidence as to the

alleged inadequacies of the ventilation shaft, or the Alimak raise in terms of a second egress?

A. Mhm.

Q. And you would've heard that?

5 A. Here at the Commission no sir, but yes I have heard that.

Q. Yes. So it would be absurd to suggest it's not an issue that you're going to have to grapple with at some stage?

A. In the investigation?

Q. Yes.

10 A. I'm not sure sir, maybe.

Q. Maybe, all right. Well now if I could just call up on the computer please DOL2000010004/5, which is a report of Mr Kevin Poynter dated the 12th of August 2010. You seen that before?

A. Not this particular document sir.

15 Q. We've heard evidence about it today, particularly from Mr Rockhouse senior, and you'll see there this is Mr Poynter's workplace assessment visit on the 12th of August 2010 and it's a proactive inspection, it's called "*Pike River Underground*," and he's giving his assessment of safety issues. And at paragraph 4 you'll see as follows, "The existing second
20 egress is through the shaft. This allows the evacuation of employees one at a time up the ladderway and whilst this meets the minimum requirement it is agreed that a new egress should be established as soon as possible." You see that?

A. Yes sir.

25 Q. And that information was passed on to Doug White, the statutory manager and then onto Mr Rockhouse, who made concerns to this Commission about that finding. Now we've heard evidence here, we'll no doubt hear more evidence about the alleged inadequacies of the second egress. What I'm putting to you is this, that in terms of your
30 requirement to determine the prosecution and who, if anyone should be prosecuted, given the wording of the Act you would agree with me that Mr Poynter is right in the firing line of any potential prosecution as a person who at worst has aided and abetted –

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THE COMMISSION ADDRESSES MR HAIGH – RELEVANCE**THE COMMISSION ADDRESSES MR MOORE – CROSS-EXAMINATION****CROSS-EXAMINATION: MR DAVIDSON**

5 Q. Good morning Ms Haines.

A. Good morning Mr Davidson.

Q. I just want to try and encapsulate the last remnants of the question of who actually was involved for the Department of Labour in this entire undertaking, and I just want to start by picking up the point that
10 Mr Hampton raised with you. Your five years in the Department of Labour have ranged through immigration, employment, and health and safety, but nothing, as I understand it, in this area. Nothing to do with underground mining as such so as to give you any personal knowledge. Am I right?

15 A. Correct sir.

1005

Q. Now we see Mr Firmin who's been trained to the extent he has a BG174 breathing apparatus ticket for underground, you would have picked that up in his brief, and I take it from his brief, so tell me if you think I'm
20 wrong and I'll go to it if I have to. He's been trained in that regard. He's not a Mines Rescue member, however, according to his brief. Mr Bellett has been the Department of Labour representative on the Mines Rescue Trust Board but not a member of Mines Rescue as such, but as you said, he's investigated, not just Black Reef and Roa but also the
25 Terrace Mine disaster. Dr Emrys is an occupational health practitioner whose labour group chief advisor to the workplace, but do you understand that he has any experience underground or knowledge underground?

A. I don't think so sir. His background is in the chemical industry.

30 Q. Yes, am I right, just to pre-empt my dealing with him further, that he in fact was given the operational role, as you've described in your brief, in the Wellington end of the department's operations here. You were strategic and he was operational?

A. Sir, that's how it's described in my brief.

Q. Yes. Well, it seems very clearly drawn in your brief, Ms Haines, that that's how you did it, you would take the high-end strategic decisions and consultations, he would be the person who would link with operationally with the police through their Wellington structure. Is that right?

A. Yes sir.

Q. I'll come back to it in a minute. We have Mr Booyse.

A. Perhaps just saying, sir also, bearing in mind the comments I've made earlier that our primary mining expertise I chose to direct to the mine so that they could be of assistance directly in the process.

Q. I am concerned with the way this was then handled at the decision-making end of the Department of Labour and as I understand it, it's squarely you, strategically, and Dr Emrys operationally in dealing with the police. Is that right?

A. Yes sir.

Q. And we have Mr Poynter who was inspector. Now, I can't identify anyone in the structure of the department in those names or in other names that Mr Hampton has brought into the record this morning with you, who actually has any experience in a rescue operation underground. Was there such a person who put their hands up and said, "Well, I can tell you something about this from experience?"

A. Not to my knowledge sir. I do know that some of our mining staff have been involved in mining tragedies in other places but I don't think in an emergency management role.

Q. But can you tell us who are those people? Is there anyone you can say did have experience underground in a rescue or recovery operation? Any one person?

A. No sir.

Q. Now, you describe in your evidence that the department's role with CIMS is in support and you say in your evidence that you gave, in that regard, a technical and expert information and advice about mining in safety issues. Can you advise the Commission of anyone who actually

gave advice to another party here about mining issues that you're aware of, from the department?

5 A. Sir, I think that some instances of that were referred to earlier where the police asked us for some basic support around mining and the practice of mining. Mining terms et cetera.

Q. This is the mining 101?

A. That's how we'd describe it sir.

10 Q. So the role in mining advice was, I presume, through the inspectors saying to the police, "Well, this is what a roadheader is or a drift runner and what these things are, that sort of thing?"

A. Yes sir, and people with knowledge, like for example, Mike Firmin and Kevin Poynter around the configuration of the mine, et cetera, et cetera.

1010

15 Q. One of the things you say in your evidence is from your paragraph 13, I'm talking about your primary brief unless I say otherwise, you refer to that, "On the West Coast input into decisions was given by the department, decisions by the incident controller." Now you knew from the outset who the incident controller was in Greymouth, from the 19th November?

20 A. I knew who was in charge for police in Greymouth, yes.

Q. And did you know who the alternate was, who the other incident controller was at any time, or recall described as such another police officer?

25 A. I know there were two on shift. I can't recall the alternate's name right here and now.

Q. Alison Ealam is recorded as an incident controller in some of the records, E-A-L-A-M. Do you recall that?

A. No, I don't, sir.

30 Q. We'll come back to this, but I just wanted to get this point secure with you, you were aware from the night of the 19th that Superintendent Knowles was the incident controller, is that right?

A. Sir, I'm not sure that I was aware on the night of the 19th. I was certainly made aware of that on the 20th.

Q. Let's be clear about this then, so what you're saying in your evidence is that on the Coast, you would give input into decisions by the incident controller, that's how you describe it, and in Wellington, what you call "senior officials", would contribute to the police decision-making processes. Who –

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A. Sir, can you direct me to the paragraph please?

Q. This is in paragraph 13 of your brief.

**THE COMMISSION ADDRESSES WITNESS – EARLIER BRIEF NOT
SUPPLEMENTARY**

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CROSS-EXAMINATION CONTINUES: MR DAVIDSON

Q. Who were these senior officials in Wellington?

A. The main person in fact was Geraint Emrys, sir.

Q. Well is there anyone else you know, you know, who contributed from the Department of Labour?

15

A. Well, me sir.

Q. You?

A. Mmm.

Q. So we look at you and Dr Emrys. Now, I want to understand then, if we look at Dr Emrys' brief and because you're the only witness here Ms Haines, it falls on you to help if you can?

20

A. As best I can, sir.

Q. Yes. We look at Dr Emrys and he says that – I'm not going to take you to the paragraph unless I need to. He says that, "He began in this incident on the 20th of November and under the allocation of roles, he was operational and you were strategic. You held the decision-making power and he was to attend meetings with the police." Pretty much as you've described to us, right? That's correct, is it not?

25

A. Yes, sir, I'm not sure of the exact words in his brief unless you direct me to the paragraph, sir.

30

Q. Well I'm going to make an assumption that I'm correct at what I'm putting to you Ms Haines –

A. You're quoting from his brief, I take it.

Q. Yes, I'm taking it from his brief. But you held the decision-making powers and let's go through the structure then, that's Wellington and then the departmental presence would be at the mine site with Sheila McBreen-Kerr co-ordinating the team at the mine site and in
5 Greymouth, all right?

A. Yes, sir.

Q. That's how you set the structure up?

A. Yes, sir.

Q. What I'm puzzled about then and I'm for the families, is that Dr Emrys
10 says in his evidence at his paragraph 10, he didn't attend a meeting with the police until the 23rd of November at Police National Headquarters, and I'm taking this from paragraph 10 of his brief. Now if we take it as correct, we've got four days on the calendar anyway, going by before the operational head of the Department of Labour role in Wellington
15 actually meets with the police, and you'll understand the reason for my question which is, how could that be that the man at the top, working just under you, doesn't meet with the police until the 23rd of November?

A. Sir, I think I need to explain how the decision-making frame evolved
20 over time. So, from the outset I wanted to make sure that the department provided input where it could and in a timely way and didn't hold up processes unduly, and in the early days I think the formal process for risk assessments, et cetera and decision-making really didn't shape by the police until I think the Sunday after explosion.

1015

25 Q. Yes, I'm going to come to that for you - to help you through this explanation?

A. Yeah. And so during those early few days in the rescue phase decisions were being made by national headquarters police by Assistant Commissioner Nicholls or his alternate and our work was being done at
30 the mine or in Greymouth and whatever material I provided as advice to the police on the department's view of the safety or otherwise of proposals was relayed from Sheila in Greymouth to me directly to Mr Nicholls, so we didn't actually have any additional technical input in Wellington. The process changed as our briefs indicate, as we moved

into the recovery phase, and at that point most of our input was from, our technical input was from Geraint in Wellington and no longer in Greymouth or at the mine.

5 Q. Well this is very important, Ms Haines, to get clear, so my summation of that is that you were picking up information through Greymouth through Sheila McBreen-Kerr?

A. The work was being done in Greymouth and at the mine.

Q. At the mine?

A. Mhm.

10 Q. But it would come to Ms McBreen-Kerr and then to you and then to Mr Nicholls or his alternate, right?

A. Mhm.

Q. And you were simply relaying information on, is that right?

A. Yes.

15 Q. And I take it then that the major discussions that were taking place within the police headquarters you would have been aware of as you communicated with Mr Nicholls?

A. Yes.

20 Q. So you'd be told the major matters occurring on the 20th, 21st, 22nd and so on, is that right?

A. Yes, and I also had, as our evidence shows, regular teleconferences with our staff, some of whom had, you know, from Greymouth but who had been at the mine and also staff in Greymouth themselves.

25 Q. I'm just focusing finally on this point that at the Wellington end Dr Emrys doesn't meet with the police until the 23rd, you are the person who effectively is the conduit and the holder of information from Greymouth to Wellington to Police National Headquarters. Is that right?

A. Yes.

30 Q. Now just to complete the point. Dr Emrys says that, in his paragraph 11, the 23rd meeting, dated the 23rd of November, was to consider proposals to facilitate rescue and discuss air quality, structural stability and so on, and on that day, the 23rd, the creation of what's called "the panel of experts". Now you're familiar with that expression aren't you?

A. Yes.

Q. So he for the department participates in the assembly of the panel of experts on the 23rd, four days after the first explosion?

A. Yes.

5 Q. And that's to assist the police with safe rescue. That's the purpose of that panel?

A. To assist the police in their decision-making and to provide advice to them about safety matters.

10 Q. Now we've got Dr Emrys where he says he was. Now your brief then. We go back to Greymouth now and look to what you say that the department's role was on the coast "to provide input into the incident controller's decisions". Right?

A. Yes.

Q. And that input would come from, I presume, the people who were at the mine, the department people at the mine?

15 A. Yes, from the staff in Greymouth in consultation who, yeah with people from the mine.

Q. But you would expect the staff at Greymouth, that's Ms McBreen-Kerr?

A. Yeah.

Q. And who else?

20 A. Inspectors, depending on which ones were in Greymouth.

Q. Now, what comes as a real surprise for the families is Ms McBreen-Kerr's evidence, which comes at her paragraph 21 - I beg your pardon. Ms McBreen-Kerr's evidence is that she wasn't aware that there was an incident controller in Greymouth at all as of the 21st of
25 November. I'll take you to the passage. Could we bring up please Ms Basher DOL7770020002/8, I'm going to refer to paragraph 29.

1020

WITNESS REFERRED TO DOCUMENT DOL7770020002/8

30 Q. Now you can see this is the last of her paragraphs regarding the 21st of November before we move to the 22nd of November, and you see that she was unaware there was a second command at the Greymouth Police Station between the mine team forward command and the Wellington team. Now it seems extraordinary, I'm putting the question to you on that basis, that the person who was the key collector of

information, and the person you've just described as one of the in-putters into the decision-making by the incident controller didn't know there was an incident controller in Greymouth. Have you registered this point before?

5 A. Sir, I think the point I would make is that in the first couple of days after the explosion there was a lack of clarity about roles and at different levels definitely, so yeah.

Q. Well we can this, I mean had you realised this before now?

10 A. No sir, but what I can tell you is that Sheila in Greymouth was very active in making sure that she worked with her counterparts, worked out who they were and what their roles were and clarified that at different times, as her evidence shows.

15 Q. Well this is not a criticism intended of her, but if she worked so hard at finding who her counterparts were, you believe she was in-putting with the incident controller and she didn't know there was one?

20 A. Sir, she was certainly in-putting with police in Greymouth. I think what that refers to is exactly the structure of decision-making and who in fact the incident controller was. We've heard some evidence earlier in the Commission around the incident controller and their positioning in Greymouth as opposed to at the mine.

Q. Well, I mean, I don't think you're going to argue with me, or contest with me, that it's pretty vital to get your lines of command communication squarely established at the beginning of a process such as this?

25 A. Yes I agree sir and I think that's one of the areas, lessons for many parties that's come out of this incident.

30 Q. I see. I just want to go now, and working backwards from Wellington to the mine site, and I'm going to the 19th, I'm just going to work quickly through the days following the 19th and the department's role. Now first of all, Mr Bellett hadn't been to the mine site previously he tells us, but when he got there he was with Mr Poynter, and you'll know that from communications at the time I take it Ms Haines?

A. Yes.

Q. And there was an issue immediately on the 19th about getting up to the vent shaft to get samples. Did you become aware of that on the night of the 19th?

A. I don't recall sir.

5 Q. Well in essence, both Mr Poynter and Mr Bellett, and Mr Bellett not having been there before, said he was privy to the discussions about people going on foot up to the vent shaft because conditions were too bad to fly. You recall that?

10 A. I don't recall it at the time, I've certainly read it in evidence and, yeah, seems consistent with my experience at the time.

Q. The reason I'm raising this with you is that what Mr Bellett says is that after it was said that this was a very dangerous idea to try and climb to the vent shaft to get this vital gas information, "That we added our voices to the company's statement, I think that's the Pike company statement, and the police heeded our advice." So that seems to be the sort of snapshot of the way the department was looking at things, "What are you going to be doing, is it safe?" Answer, "We added our voice and he police heeded our department's advice that it wasn't safe to climb the mountain?"

20 1025

A. I do notice the evidence from other parties who also gave the same advice to police at that time.

Q. Yes, I'm not challenging what was said, nor that it was correct, but I'm trying to get the picture of what the department was really doing, saying, "We don't think it's safe to go up the mountain." Mr Bellett's one of these people who has never been there before, it doesn't matter. Now, what Mr Poynter says, seeing how you interact on the ground in his brief, because he got there at 7.30, in his own words, he says from paragraph 3, "Mr White was, 'Fairly busy,'" which I imagine he was. By paragraph 4 Mr White has become, "Really busy," and men at the vent shaft are sampling and Mr Poynter asked a couple of questions, how they were managing the sampling process and in his words, he felt their answers made him, "Reasonably comfortable." He goes on that really in this first phase, the 19th, it was just a listen and observe, but he did

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- make the observation, in paragraph 10, that walking up to the vent shaft was, "Quite risky." Now, these things are going on, the department's contributing in this way and these are in these few hours after the explosion, up to midnight on the 19th, and we can see that a lot is
- 5 happening by looking at any of the other evidence available, particularly from the police and Superintendent Christian, or it may be Acting Commissioner Christian, at the time, in his police brief, and I'll just refer this for the record, which is 12/11, refers to, in paragraph 46, "The seat of the explosion." This is evidence from this police officer in Wellington
- 10 and as he is trying to comprehend what is going on at Pike, he refers to the seat of the explosion. Obviously of significant relevance to any rescue and recovery operation. Did you gain any information, that night the 19th, or subsequently as to what that expression indicates, "The seat of the explosion," was, where it was?
- 15 A. Sir I don't think I've read that brief and the answer is no.
- Q. So, nowhere in the course of the next few days did you get involved in a discussion which tried to identify or discussed where the seat of the explosion may have been?
- A. Sir, can you just clarify, the word, "The seat of the explosion?"
- 20 Q. Yes, where it occurred, the heart of it. The place where it occurred?
- A. Oh, the place in the mine where the explosion occurred?
- Q. Yes.
- A. And so your question to me is?
- Q. I want to know whether at any time you can recall a discussion in your
- 25 role for the department as to where the explosion may have been based, the seat of it, in the mine?
- A. Sir I'm aware that there was a lot of discussion at the mine around that issue.
- Q. What did you hear?
- 30 A. Well, that there was discussion around where the explosion may have been, where the men were, all that sort of thing including uncertainties around gas et cetera. It was not a matter that I discussed with the police assistant commissioners there.

Q. Well, I take your answer, you discussed it with nobody as to where the explosion was based in the mine?

A. Sir, I'm not a technical person.

5 Q. I understand that, I'm just asking you a question. Now, all right. Now, I'm coming to the 20th and we'll talk about the zero risk matter and because it's been dealt with I can take you through it quite quickly. Looking at the different perspectives and Mr Hampton has put up two pages of evidence which refer to this. It's on the 20th Mr Poynter, in his paragraph 15, says he met Mines Rescue Service who gave the re-entry criteria. They told him what the re-entry criteria were and his concern, "For me," was that we must take a, "Zero risk approach to this. No one else must be put at risk." All right so that – did you understand, comprehended both those who might go in and those who were still in the mine?

10 A. Yes sir, and he would've been meaning zero risk of serious harm, sir, to any people, either surviving or attempting to rescue.

1030

20 Q. And your evidence at paragraph 16 is that you told the police early on that a decision, the decision was being taken by the incident controller was one you disagreed with about re-entry, it will be stopped by a prohibition notice. That's your evidence at paragraph 16. So not just Mr Poynter on the ground, but you told the police early on to this effect?

A. Yes, I think, yes, that's right.

25 Q. Was that simply your call, or was it something more than that? Where did that come from that zero risk policy and decision?

A. Sir, I think it's been traversed pretty extensively. It comes from the department's role and ability to issue a prohibition notice under the Act.

30 Q. I'm not concerned about that. I'm just, the expression telling people, "Zero risk is our position", zero risk. Does that come from above you or is that the position you adopt as the decision-maker for the Department of Labour?

A. Sir, I'm not sure that I ever used the words "zero risk", but the idea that any action which was likely to cause serious harm to either anyone surviving in the mine or to anyone attempting to rescue people would be

something that the department would prohibit and wouldn't ever want to have to prohibit, we were doing everything we could to make sure that plans that were being developed were safe, sir.

5 Q. The example you give, is that on the 24th of November – this is your paragraph 17. You say, “Certain proposals had come from the West Coast to you at Wellington for consideration, and this was the proposition that there might be an entry on that day, or re-entry on that day.” Do you recall that?

A. This is on Wednesday, 24th?

10 Q. Yes.

A. Yes, I do recall it well.

Q. And that’s the example you give of a circumstance in which you may have had to take that step or at least contemplated that you might, is that right?

15 A. Yes.

Q. Now, all right, we’ve got fixed then that this is the position you adopt and you’ve explained that enough now, I just want to understand then on the 20th what you also understood as the top of the Department of Labour hierarchy here. Mr Firmin in his paragraph 33 refers to an explanation being given by Mr Poynter that the sampling problem occurred because of dilution of the gases that were being sampled because the double doors were blown out and short-circuiting thus took place, sending the re-oxygenated air up the shaft. Were you aware from the beginning that this was a huge issue in terms of getting accurate air samples from the vent shaft?

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A. I was aware that there was a lot of difficulty of various nature in getting accurate samples of conditions in the mine.

Q. I want to stay on the 20th, and in Ms McBreen-Kerr’s brief at paragraph 17, she talks about a 9.00 am teleconference with Wellington where sealing was discussed and prohibition discussed. Now do you recall that? This is on the 20th, 9 o’clock in the morning, the question of sealing is raised as early as that? Do you recall that?

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A. Sir, I can't recall the exact conversation, the teleconference, at this point but I do recall the tenor of that conversation, yes.

5 Q. Well it was a big moment wasn't it, it's a few hours after the explosion and the contemplation, at least in the discussion, is the possibility of sealing and the response equivalent to what you've just said as Ms McBreen-Kerr puts it rather well, "Our agreed position was that however slim the chance we needed to make decisions that maintained the possibility of life."

A. Yes.

10 Q. That was the bedrock position wasn't it?

A. Yes it was. As I've explained before, we thought that was our duty.

15 Q. Now I need to take you back to that again, I just want to look now at what you understood as this day wore on. If we look at Mr Bellett's evidence, one thing he saw, as he said in paragraph 20 on this day, you needn't go to it, I'll just tell you, if you want to you can. He saw the CCTV footage of the explosion, were you aware of that footage on this day, the day after the explosion when you're trying to get to grips with it all?

A. Sir, I can't recall when I was aware of the video at the portal.

20 Q. You have seen it?

A. Yes I have seen it.

Q. When did you see it?

A. I can't remember, sometime –

Q. During the immediate few days after the explosion or much later?

25 A. I can't give you an exact date, but several days at least after the explosion.

Q. Were you aware it existed on the 20th?

A. On the 20th?

Q. Mmm, where Mr Bellett saw it?

30 A. I don't think so.

Q. Now I'm just picking up what Mr Bellett says, and I'm trying to pick up from that how much you knew of this. He says in his paragraph 24 that he had discussions about full sealing, bulldozing soil across the portal, and that he in hearing those discussions said the department had the

ability to issue the prohibition notice, consistent with what we've been through, right? So sealing is on the table for him and that's the response when it's raised with you, in the 9.00 am teleconference a similar thing. In his paragraph 26 he refers –

5 A. Sorry, just to clarify that sir?

Q. Yes.

A. My understanding, and I was never at the mine, but my understanding was that there were discussions going on at the mine about sealing and there were a number of people proposing that that was the best thing.

10 Q. And that's what he says?

A. And so paragraph 24 just explains what was our position at that time.

Q. Yes, fair enough. And then in his paragraph 26 he says, "Partial sealing was raised by Mines Rescue Service," and that was in the context of the compressor sending air down the mine still but restricting the air into the mine, that's the compromised position if you like as to sealing. Were you aware of that discussion taken place on the 20th?

A. No I don't think I was sir.

Q. He goes on in his paragraph 27 to say, "The department's position, there'd be no complete sealing or flooding with inert gas," and he refers to the partial seal being advised by Mines Rescue to sustain life but there was an elevated risk the partial seal may increase the fire or explosion risk but also may not. So that's pretty much as he describes it on the frontline, here's a possibility sealing, department position is, "No, it will not take place," partial sealing, well on his evidence of that time, "It may work but it may have the opposite effect." Did you become aware of that discussion?

25 A. Not for some time later.

OBJECTION: MS MCDONALD (10:39:40) – PUT ENTIRE PARAGRAPH TO WITNESS

30 **CROSS-EXAMINATION CONTINUES: MR DAVIDSON**

Q. Well bring it up for you, it's DOL7770020004/6.

1040

WITNESS REFERRED TO DOL7770020004/6 – PARAGRAPH 27

Q. See paragraph 27 there. Now, my question was simply whether you understood the position as he described it on that day. Read the whole paragraph, I have no reason to re-put the question to you. Did you understand, on that day that the position was as he describes there, Mr Bellett?

A. I wasn't aware of that at the time. I would note that, so as I read that there was a discussion at the mine about partial sealing and people at the mine made a decision as is described in paragraph 28 to try the partial seal option. I do not recall at any point any proposals around partially sealing coming to Assistant Commissioner Grant Nicholls to approve.

Q. But I'm not asking that. Were you aware, in Wellington, on this day, that sealing had been discussed on the frontline and your people had been involved, or partial sealing had been discussed?

A. I was aware that sealing had been discussed. I wasn't aware that partial sealing was discussed at that point.

Q. But when did you become aware that partial sealing was, at least, on the table?

A. Well, I'm not sure that it ever was on the table?

Q. Well, it was discussed as a possibility?

A. It was, I mean, there were lots of discussions occurring at the mine. It was very difficult, frankly, even for people at the mine to be aware of all the discussions that were occurring at the mine.

Q. Well, I'll leave the point on the basis that you don't recall any discussions about partial sealing at this juncture, anyway, on the 20th?

A. Correct.

Q. Now, if we carry on with Mr Poynter on this day, he makes some comments about the meetings he was attending being too big, in his paragraph 21. We've heard this from other witnesses Ms Haines. Did that get through to you as a concern?

A. Can I have his evidence please sir?

WITNESS REFERRED TO DOL777002000509/3

Q. You have read his evidence I take it?

A. Yes. Mr Davidson, can you remind me. So this is out of Kevin's evidence on which day?

Q. This is on the 20th of November, the day I'm taking you to now.

A. Saturday. Mhm.

5 Q. I'm just concerned to know, did this get back to you?

A. So your question is, "Did the view of our inspectors at the mine that incident control meetings were too large, get back to me?"

Q. Yes.

A. Yes.

10 1045

Q. And if we look here at the other problems that Mr Poynter was facing, in his paragraph 24, he was communicating with Greymouth by landline. So he was communicating with Ms McBreen-Kerr by landline, but there was no cellphone, they couldn't send emails and they didn't want to tie up the landlines at the mine. So communication was obviously a real problem from there?

15

A. Yes communication was a problem particularly in the early days.

Q. Yes, from there at the mine to your conduit in Greymouth, Ms McBreen-Kerr to you?

20

A. Mmm.

Q. So there's obviously a real potential roadblock here in communication?

A. Yes, and I think there were the same issues for other agencies involved. I don't know that it's in our evidence but I do recall that Sheila McBreen-Kerr at some point managed to get hold of a satellite phone to improve our communication.

25

Q. Now I come to the issue which is at the heart of the questions I want to put to you. If you go to Mr Poynter's paragraph 29?

A. Are we still on the Saturday, paragraph 29?

Q. Yes, paragraph 29?

30

A. Mhm.

Q. You see the reference to the active fire there?

A. (no audible answer 10:46:51)

Q. Now this is 3 o'clock on the Saturday. "Indication there's an active fire." And we now know that the fact that there is an ignition source in a fire

that this evidence has turned out to be correct, is a very major factor in everything, every decision that was taken from this point on. We're aware of that now Ms Haines. When did you become aware of the suggestion or what Mr Poynter was saying he was told at the briefing at 5 3 o'clock that there was an active fire? What did you know about that on that day?

A. I can't recall whether it was immediate, but it was certainly that day.

Q. And did you have –

10 A. I also recall that there was quite a lot of, as was described, that there was quite a lot of uncertainty and that there was different interpretations of that evidence around whether there was a fire or not.

Q. Well just pause there. On this day, can you tell this Commission today that on the 20th you understood there was a debate about whether there was a fire or not?

15 A. I'm not 100% certain that I knew on the Saturday but I'm pretty damn sure I did.

Q. Now before we go on from here, we can see that on this day, and I'm just going to refer to the reference. It's in the police sequence of events at page 22 at 1930. You are recorded, 7.30 at night, that you would 20 welcome expert advice from Australia especially in the interpretation of results, gas results. Do you recall that?

A. Can I have the extract please sir?

Q. Can we bring up the sequence of events please Ms Basher, page 22? This is at page 22 at 1930. Can you see the reference to your name 25 there? Do you recall that?

1050

A. Yeah, so this was on Saturday afternoon and evening, and Assistant Commissioner Nicholls rang me and I'm not 100% sure, but I think the context was that, look there were offers of help pouring into 30 police from all parts of the world and I think that was the context for this and he was asking me whether expert advice on gas, interpretation of gas results would be of value to their decision-making and my recollection is that I consulted with Geraint Emrys and subsequently

replied to Grant Nicholls that, yes, the department thought that would add value for the police decision-making process.

5 Q. I just want to get this right. Was it Assistant Commissioner Nicholls contacting you about getting expert advice from Australia, or were you contacting him?

A. My recollection is that he rang me a couple of hours before that time and asked me whether the department thought it would be of value and so this was my reply to him.

10 Q. So, just to be, crystallise it, he rang to ask you if you thought it would be of value if expert advice was obtained from Australia?

A. If the department thought advice from Australia would be useful. I think the context was that the police were being offered advice from Australia.

Q. And you said, yes, you thought that would be a good idea?

15 A. I consulted with Dr Geraint Emrys and on that basis said, yes that may help in decision-making.

Q. It may help in the decision-making?

A. Oh, I can't remember whether I used those words exactly Mr Davidson, but that was the general gist.

20 Q. But did you, through Dr Emrys or yourself, assist the police by providing information about who could assist with such evaluation of results, sampling results?

25 A. I can't recall at that time. At different times during the process we did provide advice to the police, Dr Geraint Emrys provided advice to the police about who in particular might be able to assist. I'm not sure that we did it that time.

30 Q. See, the reason I'm asking, and it may seem of no consequence to you, but it really picks up on Mr Hampton's questions, if at all it consisted of was, "Do you think it will be helpful to get some expert advice from Australia?" And your answer is, "Yes, we think it would," after some consideration, that hardly advances the matter, does it? It's like saying, "Well, that's a good idea?"

A. Sir, I'm not sure what your point is?

Q. Well, I can't see what the point of this was, that's why I'm asking the question. I just can't understand that the inquiry of you as recorded is

for your view, whether it might be a good idea to get some expert advice from Australia?

A. Well, I don't recall what the police did with that, but I presume it was to inform them as to a decision as to whether to take up the offer of help that was requested – that was offered, I don't know.

5

Q. Right, now I'm going back to the fire. Now, I'm not going to go to the briefs unless I have to, but I'm going to call on Assistant Commissioner Christian, because I think that's what he may have been, or acting, in his police brief, and I'll just go to the record, in 12, stage 3, paragraph 46, refers to advice being given of the carbon monoxide gas sampling at 700 parts per million, and the advice that he was given by Mr Stuart-Black which appears at paragraph 47 in Mr Christian's brief that, "This is lethal after 30 minutes exposure." Now that's an exchange at the Wellington end about gas and the effect on survivability on that day. Were you party to any discussion about that?

10

A. Sir, can you put the paragraphs up for me please?

Q. All right, it's POLICE.BRF.12/3, paragraph 46 and 47, look at 46 first.

WITNESS REFERRED TO POLICE.BRF.12/3

1055

20 A. So this is from the police on the Saturday the 20th of November?

Q. Yes.

A. In the evening.

Q. He is at this very high end, this is, I'll call it Mr Christian, alternating with Mr Nicholls, is getting information as to survivability which is obviously a crucial consideration. Now you see that, and I want to know whether anything of that came to you in Wellington on that night, we're a day after the explosion, and the question of survivability is on everybody's mind. Did it get to you?

25

A. I don't think that particular document got to me. I'm just reading it to check whether I had the information directly from my own people. I certainly knew that there was evidence that suggests that there may have been a fire. And as I understood it, that there was a question of interpretation. My recollection is that there was some reading which people questioned for different reasons and that there was no certainty

30

and there was considerable debate about whether there was a fire or not but, yes, I was aware of that. Exactly the detail of all of that, no sir I wasn't aware of.

5 Q. I see. Well did you have a discussion of your own with anyone, either police or Department of Labour, Wellington, about what was known as to the gases and the survivability of them, or in them?

A. Did I myself have a –

Q. Yes, a view yourself?

A. No, no I didn't.

10 Q. Now if we look at the New Zealand Fire Service institutional brief, which is NZFS0015/43, at paragraph D68, read that. You see that?

A. Yes I've read that.

15 Q. That it's become apparent there was combustion inside the mine and this was passed on to Police National Headquarters. This is from fire service, your head of the Department of Labour's operation here in Wellington. Did you become aware of any of this information in the way it's expressed there?

A. Not the way it's expressed there.

20 Q. So I'm taking it then that as much as you knew was that there was a report of combustion or a fire of some sort but there was doubt about it?

A. Yes, I wasn't aware at that time that the fire service were as clear as expressed there around fire.

Q. And can we go to paragraph D72 please Ms Basher, and bring that up. Just take a moment to read that. You read that?

25 A. Yes.

1100

30 Q. It's pretty stark isn't it that if there's a fire the only way to effectively fight it is to seal the mine and starve the fire of oxygen. So life has to be extinct. That's the way it's expressed. The reason I'm raising this with you is to understand then, in the hierarchical structure, or the structure that's been established, how much was getting through to you about this crucial information relevant to survivability, to rescue and ultimately recovery. How much was getting to you of the detail that we see here?

A. The detail wasn't getting to me but I was well aware, as were our people at the mine and people in Greymouth, that, yeah, I haven't seen it as starkly as this but that the prospect of survivability was reducing rapidly.

5 Q. Now, just before we move onto the last points I want to come to, you, at this stage, had squarely put the department's position with regard to any entry, re-entry, in terms of risk that could be done. The position of the department was I think, I hope you would accept, was there would be no sealing while there was a slim chance, even any chance of life?

A. Yes.

10 Q. And at this point, with that being your position, on the 20th, a full day after the explosion, were you aware of what self-rescue capacity the mine held for any man who survived the first blast?

A. In general terms, yes. I'm really not the right witness to answer these questions in detail, but yes, in general terms, yes.

15 Q. So, you understood there had been a fresh air base disestablished, decommissioned in the drift?

A. I'm not sure that I was aware of that at that time, I can't recall.

Q. Did you know how long a self-rescuer would last, the two time intervals, time periods that the rescuers would operate for?

20 A. I had a general sense. I mean, I can't remember, 30 minutes, 45 minutes, whatever. I knew they were short.

Q. Did you know where they were held in the mine?

A. I think I knew that there was a stash of them in the fresh air base and that miners carried them.

25 Q. Did you have a plan which showed you where the, so-called, fresh air base was?

A. No I didn't.

Q. You didn't?

A. No.

30 Q. So you didn't have a mine plan with you in Wellington?

A. Perhaps, just to clarify, my role wasn't to be a technical person assessing information, et cetera, et cetera. That was the police. I was relying on my people to provide advice on the health and safety issues to assist the police in their decision-making.

Q. But a health and safety issue and the decision-making process required some understanding of survivability and the conditions underground, did it not?

A. Yes.

5 Q. And so knowing these things were highly relevant considerations to survivability and the position that you would adopt with regard to re-entry? Life had to be extinct. That was the position you'd taken. I'm now trying to find out what you brought to bear in your decision-making about this?

10 A. I think what we did was quite early on in the process, we started asking questions about how a decision about survivability would be made because it seemed to us that that was really crucial.

Q. And to everybody.

A. Yeah.

15 Q. But where's the record of this. Is there a minute, a memorandum, criteria, a matrix, is there anything?

A. Well, the police did set up a process as described in Dr Geraint Emrys' evidence and also in Jim Stuart-Black's brief and that was the process that was used.

20 1105

Q. Well, back to my question. In evaluating this issue, you didn't have a plan to look at, to calculate either the seat of the explosion which I've already raised with you, or where the self-rescuers were actually situated in the mine. You didn't have such a plan?

25 A. No we didn't. Our job was to support the exercise and we did suggest at different times what needed to be the focus and what sort of information the police would need to help them make decisions. We tried to do that as a contributor to a process rather than by running parallel processes.

30 Q. Yes I understand that. I'm just trying to find out what you knew, Ms Haines. Now I'm going to refer briefly to NZFS0010/1, which is the incident log of the New Zealand Fire Service.

WITNESS REFERRED TO NZFS0010/1

- Q. And I'm going to take you to some pages here for a very brief reference, firstly, at page 3 at 0710. So we're still sticking with the 20th of November. This is not record, but I'm going to take you shortly to reference to the Department of Labour's representation at meetings referred to in this record. If we look at 0710 there's an attendance, and this is the fire service attendance, at Police National Headquarters briefing. Now I'll just clarify this. I take it you didn't go to those briefings or did you?
- 5
- A. Not to that one.
- 10 Q. What was the basis you attended briefings at Police National Headquarters?
- A. Not – on occasion basically.
- Q. Well I've already taken you to Dr Emrys. He didn't actually go, fulfil that operational role at a meeting on the 23rd. So between the 19th and the 23rd, who was going to these meetings at Police National Headquarters from the Department of Labour?
- 15
- A. The Department of Labour wasn't present at those meetings.
- Q. But you remember going to some?
- A. Yes.
- 20 Q. You don't know what days?
- A. Evidence is in my brief, but we certainly initiated a meeting with police, I think it was either on the Monday or the Tuesday morning around the approach that they were taking to decision-making and dealing with issues of survivability, et cetera.
- 25 Q. I accept immediately from my questions this is not your record, but I'm going to ask you about for a start at page 3, at 0710 the last bullet point, "Planning needs to commence for a mass fatality but not public". You see that?
- A. Yes I see that.
- 30 Q. You weren't party to a discussion with the police about that at that time?
- A. Not that I recall. I don't recall the police speaking to me about exposure standards to verify information provided by the mines company either.
- Q. Turn to the next page Ms Basher at page 4, at 0845. "A general sense," in the fifth bullet point, "that Mines Rescue are realistic to the situation

and consider K41 likely.” You had no communication with the police or Mines Rescue or the fire service about that position being taken? This is the 20th?

5 A. I was aware that parties considered that it was likely that everybody had been killed or no longer survived at that point.

Q. Okay, so that was your factoring that in. If we look at the bottom of that page at 1036, there’s a message left with Mike Hall, fire service, regarding a watch group meeting. Now, you remember what the watch group was?

10 A. Yes I remember the watch groups.

Q. And you went to those meetings?

A. Yes. I'm just trying to think. Yes, either me or someone from the department. I think one of my staff attended one of them.

Q. And why was that set up?

15 A. The watch group?

Q. Yes.

A. It wasn't a decision-making body. It was set up as a way of keeping agencies, especially agencies who were not so intimately involved with the Pike River disaster, informed as to what was going on and how they – to help them work out how they needed to respond.

20

1110

Q. So that was something for you to go to, right?

A. Yes it was, although I was in pretty close contact with Assistant Commissioner Nicholls anyway so, you know, that wasn't their major function.

25

Q. Now I want to just go to page 5 please for one moment, at 12 noon, a watch group summary chaired by Steve Brazier and the department shown as there. Were you there?

A. Which day are we, Saturday or Sunday, Sunday are we?

30 Q. We're on the 20th?

A. Saturday.

Q. Do you go to that meeting?

A. Actually I'd have to check my evidence, I can't recall, either me or one of my staff. At this time we were all in at the department and working

through both how we were going to support the rescue and recovery, this was very early that morning, and also how we were going to initiate the investigation and where we were going to source our staff from, from around the country in order to do all those things. So that was a big priority for me at that time, I can't remember to be honest whether I attended this one. I definitely attended the one the following day.

5

Q. We'll just close off this day, if we go to page 7, and we're now up to 1938 when there was a call from Mark Boere, B-O-E-R-E, and the reality of the situation is clear to the Pike Mine team. "Advised Mines Rescue that things are moving to recovery." This has come up in the inquiry but I want to ask you this question. "Department of Labour have spoken to Crown Law, advised that mine cannot be sealed and flooded with nitrogen." Were you involved in any discussion to that effect?

10

A. No, I'm very puzzled as to, I've seen a couple of references to our discussion with Crown Law, there were no discussions with Crown Law. Well there were no Department of Labour discussions with Crown Law.

15

Q. Well we've got to try and clear this up, and I'll do so just before the break if I can.

OBJECTION: MS MCDONALD (11:12:42)

20 **LEGAL DISCUSSION - QUESTIONING**

COMMISSION ADJOURNS: 11.15 AM

COMMISSION RESUMES: 11.31 AM

THE COMMISSION ADDRESSES MR DAVIDSON – ONLY WITNESSES INVOLVED IN CONVERSATION

5 CROSS-EXAMINATION CONTINUES: MR DAVIDSON

Q. So, with that Ms Haines, I'm going to move to the last part briefly of my questions of you, and they relate to the risk assessment process. I'm not going to go to every paragraph of every brief, it will take too long, but I have to refer to other person's briefs because you're the witness for
10 the department here, so unless we need to go there, we won't be looking up paragraphs in the interest of time, all right?

A. I'll do my best on that count, sir.

Q. I'm working from Mr Firmin's evidence in this regard and as I understand his brief and I'm just going to refer to the paragraphs to help us in the
15 record, in paragraph 54, and he's on the frontline here for the department, "On the 22nd November he came to the mine with Mr Booyse and Mr Ellis said they were having trouble getting risk assessments approved and Doug White," this is as sent, Mr Firmin received it, "Had not been able to do anything as risk assessments had
20 not been approved from Greymouth, and the risk assessments were those for the conveyor, running the conveyor, using the robot and putting the camera down the Slimline shaft. The task of doing the risk assessment was allocated by the company and to their own personnel." So, Pike had asked for a risk assessment to be done and in
25 paragraph 55 Mr Firmin says, "One criticism was that too many Pike people were involved and they needed someone independent." And Mr Ellis, paragraph 56 said, "What was needed, work needed to be done, approved by all parties so quick action should take place." Now, then what followed, and this seems to be where the department came
30 in, in paragraph 57, "Steve Ellis needed the risk assessments done and everyone was frustrated." So Inspector Canning, in paragraph 58, was the policeman and approached and asked Johan and Mr Firmin for help,

Mr Booyse and Mr Firmin. The department would move away from the regulatory role and take a more active role in risk assessment.

1134

5 Q. This seems to be the point at which the ground moves, Ms Haines and Mr Firmin checks with Ms McBreen-Kerr, paragraph 59, and asks if it was okay for the department to critique the risk assessments very thoroughly, and then send them to Ms McBreen-Kerr by email and then she would get another team to look at them. This seems to be the structure that was set up by a risk assessment as at the 22nd of 10 November. So I suppose for a regulator, something of a sea-change in the position. Did you understand that at the time?

A. Could you please direct me to the evidence. I'm not sure whose brief you're reading from.

15 Q. This is Mr Firmin's brief. I'm reading in particular now from page DOL7770020003/11, paragraph 59.

A. So, your question Mr Davidson?

20 Q. Were you aware that this was the role the department seems to have taken on from the 22nd of November at the request of Inspector Canning for the purpose of actually critiquing risk assessments in the way described at paragraph 59?

A. Was I aware of that conversation on that day?

Q. Yeah.

25 A. I don't recall. What I can say is that at various times different parties pointed out to us things that they thought weren't working about the process, and in each case we did endeavour to make changes to make it work better for all parties. I think that's an example. I think Sheila's evidence at the front of her brief talks about how our people at the mine were there to support in whatever way they could, and I read the statement as Mike Firmin just clarifying that he wouldn't be making final 30 calls on the department's position about the safety of staff because we had the process in Greymouth which did that, but that he was playing a part at the front-end.

1137

- Q. Look Ms Haines. Sorry, I just need to get it clear. Until this time, until this date and these events described in this brief, it seems that the department was not critiquing risk assessments but at this time agreed to do so by the structure that I've just put to you?
- 5 A. At the mine?
- Q. Yes.
- A. That's how I read it also.
- Q. Yes. But it didn't just involve the mine because it was going to go to Greymouth, at paragraph 59, "She said it would be okay to critique risk
10 assessments very thoroughly, send them through to her email address and she'd get another team to look at them."
- A. Yes, so that was our peer review, QA process.
- Q. And who was doing that?
- A. Sheila and the other inspectors who are in Greymouth.
- 15 Q. So, we've got a critique at the front, as it were, critique, a reviewer in Greymouth and then it would go back for the operation in question or to say nothing?
- A. Or to, in some cases that's what did appear to happen, it formerly went from Greymouth to the incident controller in Greymouth, sometimes to
20 speed things up there was contact made directly with people up on the hill.
- Q. So, if we look at paragraph 66 you wouldn't be involved in this but there was a risk assessment for the robot sought by Nick Gribble and this is at page 12 of this document. And Mr Firmin says, "We changed a few
25 things. I can't recall exactly what. We asked Nick to make the changes and to email it to Sheila for a further peer review. This was initially undeliverable as we had her address wrong." Small thing it may seem, but I'm putting it to you because there is a lot of complaint about delays in the risk assessment process described in the evidence and you would
30 have read that?
- A. Yes I have read the participants, the other evidence about that and I have made a statement about it myself in my supplementary brief.

Q. And we do know from the same record that the department was working very late hours, through early hours of the morning, for example on the robot, 3.44 am on the 23rd of November?

A. Mhm.

5 Q. And Ms McBreen-Kerr rang Mr Firmin to ask if she could discuss it with him at that time. And what we know is that, from paragraph 73, I'm not going to bring the page up, at that time, Ms McBreen-Kerr suggested Mr Booyse and Mr Firmin go to another room and assess the issues from a technical point of view and then pass it on to her. Once that was
10 done, Mr Stewart and Mr Bellett reviewed the risk assessment more generally so as not to influence each other. So two components of the department working on this. And it was sent through to Wellington after being signed-off by Ms McBreen-Kerr at 5.37 am. So, it's late night stuff for the department?

15 A. Early morning stuff yeah.

1140

Q. And that eventually became –

A. And my understanding is that when Sheila did use processes where she had more than one peer on the job, that they were done in parallel, not
20 in series.

Q. Yes. And eventually the load on the department became such that you saw the need, I think, to comment in your brief that you felt, this is your paragraph 40 and you'll know it, the process of late night work became very worrying to you because the risk assessments themselves were
25 not safe. You'll remember this paragraph Ms Haines. "The reviewers were simply too tired to do the work?"

A. Yes, and that was after the weekend when I wasn't present and Geraint had been acting in my role and was observations he made to me at that time.

30 Q. Yes.

A. And I think it's fair to say that by that stage in the process, after many days of around the clock work, there were many parties who are pretty fatigued by then.

Q. Yes, and of course. And you didn't have a shift system as many other parties did. You didn't have a formal changeover did you, in the department, not as a criticism, but you didn't?

5 A. No, we didn't. We did spell our people in an informal way. With a few more people I think in future I would instigate a formal shift system.

Q. Now two other points about this risk assessment. Dr Emrys raises in his paragraph 27, which I'm not going to bring up, his concern about another type of conflict of interest to that which Mr Hampton's raised with you, a conflict of interest between the department developing the plans and reviewing them. This is what Dr Emrys says in his paragraph 27. So it's clear what he's saying. He says the department is contributing to the formulation of plans for work at the mine, whatever that may be, but then reviewing them. So what plans did the department generate?

10

15 A. What I read from Geraint's briefs, and it's not what I wrote, is that we needed to be clear that we were at the mine site, we were helping the company to prepare plans, and as you just pointed out in your earlier exchange around Inspector John Canning, at times that was actually doing work on risk assessments, but that we had a quality assurance sign-off process which didn't involve those people and I think just making that really clear.

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1143

Q. I'm not going to go to what we see in all the evidence, but what we read, for example, of Mr Firmin, is that there are accusations flying around that there were delays in the process that were holding everything up and there are counter-assertions that one of the problems was that what came to the department for assessment was inadequate, lacked information, lacked detail and couldn't be processed without going back for more information. You would have seen the exchanges in the evidence which can be addressed in submissions and my question of you is it seems, am I right, that eventually this became a point of real conflict between those who were generating risk assessments to viewing them, returning them, delays in getting them completed became

25

30

– were laid at the door of the department. Now, the department had its own response to that which it wasn't the department's fault. Is that fair?

A. Yes that's true.

5 Q. Mr Poynter even in his evidence at one point refers to being concerned enough about the position and what the department was taken to have done, that he went to the mine to get a receipt signed for a risk assessment that was completed in which he was involved.

10 A. I don't recall that in his evidence but so be it. I think the department, where it became aware of delays in the system, it took action and I think this is in the evidence of several of the people who have provided briefs from the department to clarify and to speed things up so, and as I said in my initial brief I mean clearly somebody having the wrong email address is a source of delay and that's a mistake that somebody genuinely made. However, I do think that in general terms the department
15 processed risk assessments really efficiently as best it could. Sometimes processes weren't clear, sometimes things were delivered back onto police officers' desks and they weren't found there. There was quite a number of different things that went wrong. I, yeah, I think that the department when things were pointed out to it, took steps to
20 make the process work as best possible.

Q. Two final points. First, what would you have changed? What would you change now in terms of those communications and the department role that was undertaken?

A. Go back to the material in my supplementary brief?

25 Q. Yes, I've read that.

A. I do think that the levels of decision-making didn't help, from my papers, and I think more decisions being made at the mine and some critical decisions being subject to some quality assurance in review I think is the way forward. I would note, however, that in fact I have reservations
30 around how well that would have worked. In this case, I think that my observation is that at the mine there was clearer structure and better processes needed to be put in place and they would've had to be there in order for this to work.

Q. And what would be the department's contribution to that process in such a situation?

A. Sorry?

Q. What would the department contribute to that?

5 A. To?

Q. To the better structure?

A. Oh, how would the department contribute in future?

Q. Yes.

A. Well I do see us as available to provide health and safety advice and, as
10 I mentioned earlier, my personal view is that I would see the chief inspector as having a role as formal health and safety adviser to the incident controller and more of the decisions being made by the incident controller at the mine.

Q. Finally, you had a representative at a meeting which the families called
15 on the 23rd of May in Christchurch, the Commodore Hotel, do you remember that?

A. Yes I wasn't there but we did have a representative at that meeting, yes.

Q. And could you bring up Ms Basher, MRS0100?

WITNESS REFERRED TO MRS0100

20 1148

Q. Now I just record on the second page of this letter the signatures from the families, the union and the Mines Rescue Service, and on the page we have on the screen, the police, the department and the company in receivership. And it records the need for work to be commissioned to
25 assess feasibility and plan re-entry, to recover the men or to assess alternative proposals for re-entry, and all parties recognise the importance of recovery, and all parties are committed to expedite this process. And at the end at paragraph 4, "Further meetings will be scheduled to progress all our specs of this process." That was signed
30 off for the department, can you indicate what role the department has played in the processes since that time to achieve the aims of the families to re-enter the mine?

A. I think the main part of the contribution we are making is set out, I think, in my brief of evidence, attached to the back is the letter that I wrote to the receivers of Pike River Mine?

Q. Yes.

5 A. We had discussions when the receivers took control of the mine around managing health and safety at the mine and made some suggestions to them about how they might do that and also asked that we be kept informed of proposals to recover, to re-enter the mine for the purposes of recovery and for other purposes also, and we are being kept informed
10 by the receivers of their plans and will play a health and safety role consistent with our role in the department's mandate to make sure that whatever is done in the future to assist with the recovery of the men and the recovery of the mine is done safely.

Q. Were you aware that the proposed reconnaissance walk into the mine
15 that has been talked about for some 12 weeks now was something that Mr Ellis would not approve?

A. Not until I attended the meeting the other night, last week.

Q. But you'd have known for weeks before that this proposal was an active proposal?

20 A. I knew that there was a proposal being developed. I was aware of that and I'm sure that John Kay and my mining inspectors had more detail about that, because John Kay has been kept informed directly by the receivers.

Q. Were you aware of the, as a word, "Agreement or understanding,"
25 between the small committee established to represent the families and Pike River regarding the remote sealing of the rockfall?

A. I wasn't aware of that myself personally until the meeting last week Mr Davidson.

Q. You realise how crucial these two things are to the family, and you've
30 known that for months now haven't you?

A. Absolutely.

Q. And so that proposal for the sealing of the rockfall just never came passed you until last week, you didn't know of it till last week?

5 A. I know the department did, I subsequently followed up back at the department to see what information we did have, yes. So the department is being kept informed and any proposals that the company has will be quality assured by us as agreed with the receiver in due course. The decision around proposals sits with the company, it doesn't sit with the department.

Q. Of course. What the families now need, as you heard in evidence yesterday, is an immediacy about this, matters proceed swiftly, can you give the families that assurance from your perspective?

10 A. Absolutely.

Q. You will?

1152

15 A. Absolutely. Bearing in mind the caveat that I've mentioned to a couple of other parties, and that is that timeliness is really important, but so is safety. So we will make resources available to do what we can to make sure that work is done in an appropriate way which doesn't compromise the safety of any further persons, and we will do that as quick as we jolly well can.

20 Q. That's a given, and so you are committing publicly to what's contained in this document which is on the screen now, to expedition?

A. Yes. I was aware – yes, I mean that document was run past me before we agreed to sign it, so it was signed with our, my blessing by our representative.

CROSS-EXAMINATION: MR MOORE

25 Q. First of all, I just want to ask you some questions that arose from cross-examination by Mr Hampton. It was put to you that, and these are my words rather than Mr Hampton's words, that it was inappropriate that Mr Bellett indicated that the Department of Labour might have to invoke its statutory powers to issue a prohibition notice and you were referred
30 to the brief of evidence of Mr Poynter at paragraph 32, and I'll just ask Ms Basher to bring that up, but for the record it is DOL77700020005/09.

WITNESS REFERRED TO DOL77700020005/09

Q. Paragraph 32, sorry it should be page 4, I think and if we could just blow that up please, paragraph 32 just so that we can see it expanded here, just to remind you of what you're being asked about in relation to that. Doesn't that passage simply convey the correct legal position that, in other words, Department of Labour inspectors were letting others know that there was a power of veto, that's the way in which it's being described here?

A. Absolutely, that's how I read it.

Q. And that paragraph isn't suggesting for a moment that there was a question of at least exercising it at that point, does it?

A. Correct. I think that Dave Bellett reflects in his second sentence. "I don't think this option was ever close to being needed to be acted upon."

Q. Is it your understanding that that was part of the collaborative process that operated between the various agencies involved in this exercise, the sharing of knowledge and where appropriate, advice as to what the law said?

A. Yes.

Q. Mr Stevens asked you about a meeting that you attended at Police National Headquarters on Monday the 22nd of November at 11.00 am, and suggested that there was some confusion arising from the police sequence of events document in relation to this, and I'm going to ask you please to refer to the brief of evidence of Assistant Commissioner Nicholls, which for the record is POLICE.BRF.29/39, 39 is a reference to the page and the paragraphs I'm going to ask you to look at are paragraphs 148 to 152, just so we get the context.

WITNESS REFERRED TO POLICE.BRF.29/39

A. 148 to 152?

Q. 148, yes, and we'll go over to the next page, thank you Ms Basher. In particular, if you'd look at paragraph 151, does that correctly set out the agreed process for decision-making on the question of re-entry to the mine, at least as you understood it from the police perspective?

A. Yes. The discussion we had with the police that day, I note Dr Geraint Emrys was also at that discussion and it was around getting clear,

clarity from police about the decision-making framework they were going to use in terms of making very critical decisions, and that was what Grant Nicholls subsequently laid out as the process he was going to follow.

5 1157

Q. And these were questions referable to Superintendent Knowles as the incident controller, is that your understanding, questions which he needed to ask himself in relation to decisions?

A. If I could just read the...

10 Q. Certainly.

A. Yes it relates to the comment in the previous paragraph 150. "The police incident controller being reliant on expert advice, the consensus on the ground based on expert advice which would result in decision on the ground which will be signed-off at Police National Headquarters."

15 Q. And part of that exercise, that decision-making exercise, required Superintendent Knowles to be satisfied that the Department of Labour supported the particular decision in question here it relating to re-entry?

A. Yes.

Q. Is that your understanding?

20 A. It is.

Q. Mr Stevens also asked you a question which related to the installation of the video camera at the Slimline on the 23rd of November and it was suggested to you that Sheila McBreen-Kerr had held up or wrongly delayed the risk assessments relating to the installation of that particular camera. Do you recall those questions being put to you?

25

A. Yes I do.

Q. And you refer to an email which suggested that the police's legal advisor, Anna Tutton, was asking about the risk assessment for this at 3.28 pm on the 23rd of November. That was the timing of the email that was put to you. Do you recall that?

30

A. Yes, I can't recall exactly the 28 pm et cetera.

Q. Right, well you can take it from me that the timing is 3.28 pm. Are you aware now that that camera actually went down the Slimline shaft at

1.23 pm that day, in other words, a couple of hours before that particular...

A. I am aware that there are a number of decisions and actions taken without formal sign-off of risks.

5 Q. And by 2.00 pm that day, and for the purpose of the record this is an IAP. PIKE.00152 which records, "The camera inserted down the Slimline shaft recorded no evidence of mine personnel but evidence of windblast damage." So, if that's correct, Mr Stevens' proposition that there was delay in fact isn't correct is it?

10 A. It would certainly suggest an action took place, so, yes.

Q. Yes, and two hours before the email that you were referred to?

A. Mmm.

Q. Thank you.

MR WILDING ADDRESSES THE COMMISSION: ISSUES TO BE DEALT WITH BY WAY OF WRITING

15

QUESTIONS FROM COMMISSIONER HENRY:

Q. Ms Haines when you became leader of this difficult task, was it a full-time job for you or did you have to carry on carrying out your other duties as deputy CE?

20 A. No it wasn't a full-time job for me, Mr Henry.

1202

Q. So, the amount of time that you were able to devote to it, was that on top of your normal duties?

25 A. Yes. Obviously quite a lot of normal duties got pushed out of the way where they could. It also was a job which involved me, you know, through the night on several nights, et cetera at different times.

Q. And for Sheila McBreen-Kerr, was it full-time for her?

30 A. Yes. While Sheila was being Greymouth we relieved her of other duties. We were keen in fact to not keep her there too long. We had – she was the regional manager of the southern region of the group and as such was dealing with the effects of the September earthquake for the staff, the office and the workplaces in the Canterbury region.

Q. That's fine. Had the Department of Labour been involved in any previous rescue, recovery operations before Pike River, let's say in the last 10 years?

5 A. Not to my knowledge. We're not an emergency management agency in most circumstances.

Q. So would it be true to say that you weren't familiar with the CIMS system?

10 A. I was careful to check at the beginning of the process around our powers, the duties of other parties and the way the police were going to run things, so that was the way that I felt I could familiarise myself with things, but I had had no formal training in CIMS.

15 Q. Would you be aware that under the CIMS system, the Department of Labour, although it would be involved in the control function as part of the incident controller's team, it would retain its own command structure?

A. I wouldn't have been aware of that, but that's what I would have expected. It's consistent with the sort of general management principles and approaches.

20 Q. Now, very briefly, on the new High Hazards Unit, my understanding is that you are going to have two chief inspectors?

A. Mhm.

Q. One will deal with the mining industry and one will deal with petroleum?

A. Petroleum and gas yes.

25 Q. Petroleum and gas, and there will be three inspectors under each of them?

A. Yes.

Q. Now reading the proposals, it appears that that's really directed to compliance, and by "compliance" I mean not just enforcement but advice and assistance to those industries?

30 A. Absolutely yes, to enable us perform our regulatory function. We also envisage that it will give us the capacity to do two things. One is to work more closely with industry as opposed to individual companies. As well, I think that's an important role for us in terms of standards, et cetera, and also to work more closely with Australia in terms of the professional

support for our inspectors and also we're hopeful of being able to access – we've got more resources now, so we will be able to access specialist advice and expertise when it's not available in New Zealand, so we're envisaging that that will help us.

5 Q. But that High Hazards Unit at least, I mean in part you have to wait for the findings of this Royal Commission to decide whether to go further. That's your public statement or the Minister's public statement?

A. Absolutely. It is.

10 Q. But my question really is, that High Hazards Unit and those people in there, that increased capacity, are not aimed at rescue and recovery are they?

A. No. The department doesn't see itself as an emergency management organisation but I think in both cases, in both of these high hazard cases, whether it was an offshore gas or petroleum event like happened 15 in Florida last year or something like Pike River, that the department would play a role, but albeit a small role, we're a small organisation.

Q. Yes, and as a small organisation you've got to watch out for what I would call "mission creep" haven't you?

A. Mmm.

20 Q. Would you agree?

A. Yes.

QUESTIONS FROM COMMISSIONER BELL:

25 Q. Ms Haines, I've just got a few matters, some of which have been canvassed before, but I'm obliged to ask some of these questions. In section 15 of your report, of your abbreviated statement, the third dot point you talk about that the risk assessment was too technical in parts. I find it a bit strange that a risk assessment can be too technical. Can you comment on – to me, if it's too technical are the wrong people are looking at it?

30 1207

A. I think the comment relates to the fact that at times the risk assessments were too technical for the decision-makers who were a non-technical audience.

Q. That's what I'm trying to make, I mean I just don't understand why they should be making the decisions?

A. Yeah, which is the point that I've noted around where decisions should be made in future in these circumstances.

5 Q. In section 16 of your statement you talk about your group approved the robot, I think it was a police robot, to go into the mine. I mean this robot was not intrinsically safe and ended up short-circuiting or whatever in the mine that could've been a very dangerous moment if there had been gas there, but people with limited technical knowledge were signing off
10 on it. I mean, I just find that very difficult to comprehend?

A. I'm not able to comment on that but I understand that our people who did that risk assessment were aware of the risks though and they were adequately managed.

15 Q. I just also notice in your first report that the union was the group that notified your department about Pike, is that normal that a union would be the first people to tell you?

A. Well I haven't been in this situation before so I don't know what normal would be but I was very grateful that the CTU thought that they should let us know because they'd learnt through the EPMU –

20 Q. But wouldn't it be a requirement for the mine to notify the inspector there'd been an incident?

A. Yes, yes, yeah, I imagine there was. I don't imagine that would've been the first priority for the Pike River Mine at the time, I don't know. I don't actually know whether that happened but we were on site pretty soon
25 after anyway.

Q. I also found it a bit strange that you took it upon yourself to actually ring an inspector. I mean why did you ring that far down the organisation, why wouldn't you have just contacted Ms McBreen-Kerr or the person running the system there and left that to them?

30 A. Well I did endeavour, it's probably not in my brief but I did start with Sheila and then I moved on to Margaret who worked for her, it was just after 5.00 pm on a Friday night, neither of them were answering their mobile phones at the time, I did leave messages for them, but I thought

in the circumstances it was important to mobilise resources as quickly as I could.

5 Q. I'm not trying to be difficult here, but I actually occupy exactly the same role as you do in Queensland, I have the same almost identical responsibilities and I'm just trying to understand how I would behave in that situation, whether I would get involved to the extent that you got involved. I'd understand it's different in terms of size and everything else but I'm just having difficulty rationalising that.

10 A. Well just a couple of things around that. I mean we are a small organisation, especially the parts of our organisation that work on mining are small and even with the High Hazards Unit that Mr Henry refers to we are still very small, so I think that needs to be taken into account. And I guess the other thing about this particular operation was, you know, when I checked with police about how they were going
15 to run the incident clearly a lot of decisions were going to be made at Police National Headquarters, I took that into account in working out the department could best help.

Q. Yes, I accept a small country argument, my only comment there is that coal mines cause problems in small and big countries?

20 A. Yes.

Q. As we've seen here.

A. Yes.

Q. So there's no real shortcuts about how they can be managed?

A. Mmm.

25 Q. And just finally, I asked the same question of Doug White, do you find it strange that in the life of Pike no prohibition notices were ever issued, no improvement notices were ever issued by your inspectorate?

30 A. You've probably read Mr Bell the evidence put forward to the Commission, the review done by Gunningham and Neal around our interactions with Pike River, and that goes through quite a lot of detail around how our inspectors related to Pike River. I think the department's general approach is that, as Mr Henry referred to, as regulators we see ourselves as having three functions. First of all to educate, make sure employers are aware of their responsibilities,

second to engage with them around how they will fulfil those responsibilities and third to enforce. I note that in the case in one of the mines that it's not currently not operating underground, we do have what we call a negotiated agreement in place where they won't go into the mine without agreement from us and subject to certain conditions.

5

1212

A. I also note that the Australian's, in fact a member of your own staff, I think, Tim Watson and Brett Garland, conducted an audit of the other underground coal mines shortly after the Pike River explosion and over the early parts of this year, and they made no comment about our, the way we approached things. They were happy with the negotiated agreement with that mine and they didn't think that there was anything else we needed to have done. Yes, that's about it.

10

Q. Well just at this point I'm going to put it to you that we would not have one mine in Australia that would've gone that length of time without some sort of compliance or enforcement, not one. And I just find it very unusual that a mine can run for six or seven years, and I'm not saying it's got to be shut regularly or anything else, I'm just saying there wasn't even an improvement notice. It was almost like no one had gone there, or if they'd gone there, they'd just done very little, anyway, I accept what you're saying to me, I accept what you're saying.

15

20

A. I just want to make one other comment and that is that, I think, when you get to Phase Four, there's aspects of the way our regulations are written that I think need to be changed. There's no absolute standards and it does make it quite difficult for us in enforcement role at times.

25

RE-EXAMINATION: MS MCDONALD – NIL

WITNESS EXCUSED

**MR GALLAWAY CALLS
TREVOR COLIN WATTS (SWORN)**

MR GALLAWAY ADDRESSES THE COMMISSION – TIME

5 EXAMINATION: MR GALLAWAY

Q. Mr Watts, your full name is Trevor Colin Watts?

A. That's correct.

Q. You are the general manager of the New Zealand Mines Rescue Service?

10 A. That is correct.

Q. If I can just lead on these matters at the moment, you have been in that position for two years and prior to that you had four and a half years as the Rapahoe Station Manager?

A. Yes, that's correct.

15 Q. And you've had 19 years as a brigade member in addition to that?

A. That's correct.

Q. Your qualifications are set out in the individual brief that you have filed as an annexure and I don't intend to go through those in detail, but you do have a certificate in co-ordinated incident management system to level 4?

20

A. Yes, that's correct.

Q. And can you also, for the Commission, please just describe your experience in the fire service?

25

A. Yes, I've had 23 years service with New Zealand Fire Service as a volunteer fire fighter and I spent the last eight years as deputy chief fire officer.

Q. And in terms of management experience you've had six and a half years in mine rescue management, 10 years as a business owner and manager, and you've been a relieving mine manager from time to time as well?

30

A. That's correct.

Q. Just then – you have a copy of your brief with you?

A. Yes.

Q. If you could turn to page 2 please, Issue 2.3, and begin reading please at paragraph 3, and in fact of course, it's the institutional brief, not your personal one?

WITNESS REFERRED TO INSTITUTIONAL BRIEF

5 1217

A. "Mines Rescue form the view that the initial shockwave of the first explosion would probably have killed most of the men immediately or rendered them unconscious. If any of the men had not been killed immediately then they would have been quickly overcome by noxious
10 gases or lack of oxygen within minutes. If there had been some men who were able to don their personal self-rescuers then they are unlikely to have survived for any longer than the duration of the one self-rescuer, the only additional self-rescuer units were contained in the Slimline shaft area at the bottom of the FAB. If the men had survived and had been
15 able to reach the additional self-rescuers in the FAB, MRS believes that the men would have been able to walk out of the mine. This view was reinforced by MRS when it viewed the video of the first explosion. Compared the intensity and duration of the explosion with the size of the mine and also considered the limitations inherent and the self-rescuer
20 equipment available, the experiences of the two Coal River Limited personnel who did manage to self-escape and the nature of the gases created after a large explosion of the type witnessed."

Q. Now, you've heard the evidence of Mr Ellis in relation to survivability and that of Assistant Commissioner Nicholls?

25 A. Yes I have.

Q. And are you able to comment on their views that there was still a prospect that the men could have survived up until the time of the second explosion?

A. I have heard their evidence. I can understand why Mr Ellis was
30 optimistic. He stated that he was an optimistic person. He had 29 of his men down the mine and he would've been hanging on to all hope. In regard, just if I can quantify here, our position was survivability. We did know that Pike River was a very small mine. The video evidence that was clearly apparent and available on that first evening showed that

there was a large explosion that lasted for 52 seconds. The workforce were trained to self-escape. They were trained to self-escape in the first instance, not to barricade themselves in. All men had self-rescuers available to them as belt-worn units, 30 minute units. Maximum distance that the men would've had to walk from their workplace to the FAB, I believe was around 700 metres maximum.

5

Q. What's the relevance of that?

A. The belt-worn unit that they had available to them would've been sufficient to get to the Slimline shaft area where the additional self-rescuers were contained. Was all downhill to that point. There was a self-rescuer cache available at the FAB or the Slimline shaft area as we know. There had been no communications from within the mine outside of Daniel Rockhouse's initial call. There had been no communications from the Slimline shaft from 8.00 pm on the 19th when a Mines Rescue radio was lowered into the Slimline shaft area. The Slimline shaft was down casting at 8.00 pm on Friday night, that meant fresh air was going down the Slimline shaft at that time, it was witnessed by Mines Rescue and Pike River personnel who were at the Slimline shaft at that time, meaning there was fresh air right at the bottom of the Slimline shaft. Natural ventilation was going into the mine to the first intersection. There was a natural ventilation that determined the survivability of Mr Rockhouse and Mr Smith. If people had been able to walk to the point where Mr Rockhouse had survived, they also would have survived. There was very little compressed air going into any of the upper reaches of the mine. This was known in the early stages from, we heard from Mr Rockhouse, that when he opened the compressed air valves that it didn't blow his head off or his eye out like he suspected it should have done with a fully charged compressed airline.

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30 1222

A. On the Monday, the 22nd, it was known that the compressed airline was fractured and our understanding was from the graphs or the work that the engineers had completed on site, that the compressed airline was fractured in the main drift. When they looked at those graphs it was also

conveyed to us that you could see that the compressed air, the pressure in the line or the flow rate, had immediately dropped significantly. It wasn't a slow taper-off if you like, it was immediate. We understood the mechanics of an explosion. We've already heard those and seen
5 evidence of the mechanics of an explosion yesterday when reference was made to the New South Wales black book or commonly referred to in our profession as "the Bible", where at 35 kpa a person is thrown seven metres, 100 kpa, lungs are damaged, and 240 kpa is probable fatal. Unfortunately, we haven't seen the results of the work that the
10 police have commissioned with experts overseas. Look at the explosion and the footage that was available and computer model of that explosion and there may be a day when we get a clearer picture of the pressure that was determined back in the central part of the mine where all the men were. We knew earlier on, 9.00 pm on the 19th of
15 November, there was 900 parts per million CO being recorded at the vent shaft. A highly diluted reading of carbon monoxide. Just heard evidence before. Mr Stuart-Black stated that 700 ppm was unsurvivable after 30 minutes. We also knew that the second means of egress is not available for the men.

20 Q. So in terms of Mr Ellis' comment that there could have been men barricaded in stubs, what's your view in relation to that?

A. I don't know how men could have survived barricaded in with the compressed airline fractured. That could have been the only way that they could have survived. They only had a 30 minute self-rescuer unit.
25 We've heard of air pockets being in the mine or pockets of oxygen. I've heard this on numerous occasions in the last 10 months. There were no air pockets. There were no pockets of oxygen. The top section in the mine filled with methane very very quickly. How quickly, we don't know. What we do know is the mine was a gassy mine. Obviously the gas
30 drainage line was ruptured. Methane, we all know, is lighter than air and its buoyancy means that it fills the roof cavities very quickly and then will displace any air that's in those cavities and continue to displace any air in the mine as it fills the mine. I'd like to describe it as being like water. If we tip a thousand litres of water or 10,000 litres of water into

this room it's going to find its own level and it certainly won't leave any pockets of air underneath your desks. Methane does exactly the same thing except on the roof.

5 Q. All right then, if I could ask you then to jump forward in your brief to page 54 please. In paragraph 317, we're dealing here with the opportunity for the men to have taken steps towards self-rescue, and if I could just ask you to read from paragraph 317 please Mr Watts?

1227

10 A. "The planning for and training of coal mines and self-escape is of crucial importance. In its 81 years of operation Mines Rescue Service has rarely rescued miners after an explosion but has instead often undertaken a recovery of victims and a recovery of the mine. The importance of self-escape is critical and each mine needs to be planned and organised to ensure that everything has been done to assist the
15 miner to evacuate safely. This involves training and providing equipment and access to multiple egress options."

Q. And then if you can leave paragraphs 318 to 322 please and carry on at paragraph 323, "Egress issues to enable self-rescue?"

20 A. "This issue has already been addressed in the brief of evidence with attachments dated 5th May 2011 the Phase One filed by Trevor Watts on behalf MRS. MRS confirms that evidence and elaborates further below. In terms of the construction of the mine there as a major issue with its design. The vertical shaft coming out of any mine when there is a fire or explosion situation underground is always going to be of very
25 little use as an egress. Pike was a single entry mine which if blocked in the event of an emergency mean that the men would go to refuge and wait for assistance rather than attempt to escape. I took part in a risk assessment process which looked at whether the main vent shaft could be considered to be a second means of egress. I instigated that
30 process" and if I could just clarify where it says, "I instigated it," it's my understanding that Mr Rockhouse actually instigated the process but that followed on from an audit report that I provided to Mr Rockhouse.

Q. So just to clarify, does Mines Rescue have the power to conduct audits or does it have to be invited to do so by a mine owner?

A. No we don't have the power to conduct audits. We are invited by the mine owner.

Q. And if you make recommendations in those audits as to safety does Mines Rescue have any ability to enforce those recommendations?

5 A. No sir, no.

Q. If you could just return to your brief please, paragraph 325?

A. "Process, because I did not think it was a suitable means of the second means of egress. As a result of the risk assessment the main vent shaft was not considered by MRS to be an appropriate second means of egress and Neville Rockhouse acknowledged this in an email dated 10 22nd January 2010. MRS did not hear anything further from Pike about this issue but was aware that a fresh air refuge was installed at the bottom of the Slimline shaft."

Q. Now we've heard evidence that Mr Poynter, the Department of Labour 15 inspector, approved the second means of egress and in timing that was after your audit, do you have any comment in relation to that?

A. No, Mr Poynter was a mining man, I only heard or saw evidence of this over the last two weeks. I was a bit gobsmacked to be honest, to know that Mr Poynter considered the shaft to be a suitable second means of 20 egress from the mine in a situation that was going to be related to an irrespirable atmosphere.

Q. I don't think you need to deal with the issues in your brief, "The equipment and resources available to the men." So if I then ask you then to turn please to the passage beginning at paragraph 347 where 25 you talk about the training in relation to self-escape. So that's on page 60, paragraph 347?

A. "This is after reference to the training mine worker programme that Mines Rescue assisted Pike River in and it was developed in conjunction with Tai Poutini Polytechnic here in Greymouth. One of the 30 training segments dealt with self-escape. If a miner is unable to self-escape because he is trapped or there is an obstacle in the way then he is taught to barricade himself in and take refuge and wait for rescue, otherwise all of the training is concentrated on self-escape in the event of an emergency."

1232

- A. And just to elaborate on that, in any training that Mines Rescue ever undertake with regard to self-escape, we always emphasise that barricading yourself in is an absolute last resort, when all other options are exhausted to you. Quite often I've used the analogy, "While I've still got a breath left in my body that would be, I'd be heading for daylight." "Self-escape training which MRS provides at the station, being the rescue station involves miners putting on a training self-rescuer unit, which is essentially the same as a real self-rescuer. The miner opens it up, pulls it out, puts the mouthpiece in, puts the nose clip on and then breathes normally. The self-rescuer training is completed in the training room and also in a simulated environment of darkness and no visibility. Trainees are given smoke goggles with the lenses blanked out and have to don the self-rescuer with no visibility. Trainees are also put through their training tunnel at the station and they follow the lifeline with cones, with no visibility until they reach the opposite end, or what we would term as a place of safety. Obstacles are put into the tunnel to simulate an underground environment. The Pike trainee miner programme included three different training days with self-rescuer training and the trainee mine worker programme was over three months, so three different days. One of these days was held underground at the mine which targeted self-escape and self-rescue, or self-rescuers along with a number of other things that are touched on during that days training. Self-rescuers have a lifespan of approximately 30 minutes. They can be changed in an irrespirable atmosphere, sorry, irrespirable, toxic or oxygen depleted atmosphere, simply by removing the old rescuer from the top whilst the new one comes underneath. Best practise is to have an air curtain which is compressed air which flushes air down over the top of the miner whilst he is changing the self-rescuer. Given the small size of the mine, anyone working in the pit who survived the explosion and was able to escape with the help of the self-rescuer, and to simply try and get down to the fresh air circuit. This circuit was established early on by natural ventilation. FAB was only 400 to 500 metres from the working face, so if the miners could get their self-rescuers on, then

the walk to the FAB was downhill, as was the walk out of the tunnel to the portal. Pike River asked MRS to provide training on basic gas detection and awareness for contractors and some of their other staff on March 10, 19, 25, April 7, 29 and May 31, and July 31, 2010. At that stage the gas detection used was a small handheld unit slightly bigger in size and thicker than a cellphone known as a Draeger XAM 2000. MRS did some training in relation to that particular unit. Pike subsequently purchased new handheld gas units which MRS understands were distributed not long prior to the explosion on 19 November, 2010. MRS was not asked and did not provide any training with this new unit. The new MSA MX4 units are a different model, make and size. The new units do the same job but the display panel on the front of the unit, the information is presented slightly differently.”

Q. Then I'd ask you to move to issue 2.6 please, which is the content of any emergency response plans of the company and other organisations which were in place at the incident date?

A. “As mentioned above in issue 2.5, Pike's ERP was not implemented after the explosion on 19 November 2010. MRS is aware that Pike had a duty card system in place, but this system was not used in the early stage of the emergency, nor were roles assigned, apart from the mine manager of Pike assuming the role of incident controller up until the police assumed this position. The duty card system ensures that critical roles are filled in the event of an emergency and personnel filling the roles know what to do.”

25 1237

Q. Now, you've heard the evidence of Mr White?

A. Yes.

Q. Who said that the emergency response plan was activated and some duty cards were handed out. Do you have any comment in relation to that?

30

A. No, certainly heard the evidence of Mr White and a number of other people through this and it's clear that the ERP was enacted in the early stages. The duty cards, so some degree, were issued. It just, at the

time when this brief was written, the comments were that it didn't appear that the ERP had been enacted.

Q. Yes. But you accept Mr White's evidence in relation to what he said about the ERP?

5 A. Yes.

Q. Just carry on then please at paragraph 354?

A. "The Health and Safety in Employment Mining Administration Regulations 1996, recognised that the mine manager has overall legal responsibility for everything occurring onsite. In the event of an emergency, the mine manager or someone appointed by him must assume responsibility of the situation and become the incident controller. However, this did not occur and the police assumed this position at 3.00 am on 20 November 2010." And just to clarify there we know that from evidence of Mr White that he did assume the role of incident controller early on in the piece after it became apparent that they had an emergency situation.

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Q. Paragraph 355?

A. "An IMT is critical for managing an emergency event and it is the responsibility of the mine whose incident it is to form and lead the IMT. The objectives of an IMT following an incident, such as the one which occurred at the mine, are first to assist people to self-evacuate and secondly to assist MRS wherever possible in terms of information and resources to undertake a rescue and recovery. An IMT was not formed immediately by Pike, because it's ERP was not implemented."

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25 Sorry, I was just going to ask you to just remove the last part of that sentence.

A. Yes.

Q. So it's, "An IMT was not formed immediately by Pike." Paragraph 356. Carry on please.

30 A. "An IMT is critical for gathering information to ensure robust and effective –

Q. Sorry, you've just left out the second part of paragraph 356.

A. "Because an IMT was not formed this lead to a lot of confusion in the early stages following the explosion. An IMT is critical for gathering

information to ensure a robust and effective decision-making processes are utilised. The lack of an IMT made it very difficult for the MRS officer in charge, Rob Smith, to obtain a full briefing on the incident and start the information gathering processes required before MRS teams can be deployed. MRS expects each mine to have its own ERP. As mines operate 24 hours a day, seven days a week, best practice is that the surface controller is the first contact under the ERP. When there is an incident underground the surface controller pulls out the documented ERP which should be written somewhere, as a loss of power can cut electronic access to documents, and gather the information he requires. In an emergency it is important to gather critical information usually on a document with set questions to determine the level of emergency response required and which agencies to contact. For example, St John, MRS, fire service,” and obviously police, which I've left out in this brief and for no pre-determined reason. The police would certainly be one of the people that would be contacted. “A list of contact details should be easily accessible by the surface controller. An effective and robust ERP will assist the controller to follow the processes and procedures required. For example the duty cards. It must be recognised that the early moments of an emergency situation require that onsite personnel know what to do and how to do it. A multitude of activities must be co-ordinated and managed to ensure the situation is rapidly and effectively controlled.”

Q. Right, I'll ask you to leave out paragraph 359 and 360 please?

25 1242

A. “CCTV footage at the portal and entrance to the mine which is recorded and stored by the surface control room was readily available. The video camera was up on the screen in the control room, but the surface controller did not notice the blast exiting the mine portal,” which is understandable given Mr Duggan’s evidence of how many different screens they had to control. “MRS understands there was no alarms to say that gas levels were increasing or to indicate that an explosion had occurred. The only alarm was the fact that the power had gone off

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underground. There was no evacuation of underground staff ordered as far as MRS is away and no triggering of Pike's –

Q. You can leave that last part of that sentence out. So paragraph 360 finishes with the word "aware"?

5 A. Aware.

Q. Paragraph 351?

A. I'd just like to elaborate too, that from Mr Duggan's evidence there were other alarms and we've heard that from him. "There was approximately a 45 minute delay from the explosion occurring in the time when Pike notified MRS. The delay in calling MRS contributed significantly to the response time of rescue teams. At the real time monitoring system alarmed when all points were lost. This may have provided the controller with enough information to initiate the mine's ERB. A tube-bundle gas monitoring system would also have been invaluable as it would have alarmed and supplied valuable information approximately 15 20 minutes after the first explosion occurred."

Q. Now Mr Watts, I think we can leave out the paragraphs up until paragraph 378 on page 68. So the issue is the extent of the information available to the company and the external entities involved in the search and rescue and so on? 20

A. "There was very little information available from Pike for MRS upon arrival at the mine. In particular, there was no confirmation of the number of men underground; no information on whether there were any survivors underground; no information of where the men had been working prior to the explosion; no information of the atmosphere underground; no information of what gases were present in the mine; no Maihak tube-bundle system to show information such as which gases were present underground; no established boreholes from which gas sampling could begin to be taken and monitored; and no possible explanation for what may have occurred underground to cause the explosion. Pike should have gathered all the information it needed to present to MRS in a clear and concise manner, but it did not have any information because it had lost all of its monitoring systems. The mine manager made the statement that nobody was to enter underground 25 30

including MRS personnel, and the main reason for this was the lack of information available in regards to the situation underground, particularly what caused the explosion. Pike was able to explain that not long after the explosion the mine had lost power and communications. An
5 electrician was sent underground to see why the power had gone off. Apparently, he had only got so far up the main drift and then he saw Russell lying on the ground (Russell Smith) at the back of the loader. The electrician was apparently having trouble breathing so he turned around in his vehicle and exited the mine,” and we've heard from
10 Mr Strydom, and he certainly was having difficulties breathing. A very very tough situation for him. “MRS were told that two people had walked out of the mine after the explosion, Daniel Rockhouse and Russell Smith, and the police had tried to get some form of information out of them during a basic interview process at the hospital. They were
15 shocked and MRS were told that all Daniel Rockhouse said was that there had been a large bang. There was a lot of white smoke and he was knocked to the ground. Daniel Rockhouse had been in the fuelling bay of the pump station area at the time of the explosion. MRS was told that Daniel Rockhouse staggered to the telephone to inform the control
20 room that there had been an explosion. Once on site, MRS saw the two survivors before they left in the ambulance but they were not in a fit state to be spoken to by MRS.

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A. There was no information from Pike about the atmosphere within the
25 mine, nor was there any confirmation of what gases were present. Pike was able to give MRS gas levels from readings taken by handheld gas monitors taken by the main vent shaft on the evening of 19 November but there was major contamination interference to the accuracy of these levels caused by dilution with fresh air. Pike was not able to confirm the
30 number of men underground when MRS arrived on site, nor was it able to comment on what the workers activities were likely to have been immediately prior to the explosion. Pike was continuously working on ascertaining the number of men underground from the time MRS arrived until approximately midnight. Initially it was thought that there were

approximately 36 men missing underground. At the 10.00 pm IMT it was thought that there were 27 men missing but at midnight it had been confirmed that there were in fact 29 men underground. The mine was not set up to provide accurate information, there was no tube-bundling system, no remote sensing, no automatic airflow monitors and there were access constraints. The only measure of working out who was underground was a tag board. The problem was that workers came and went from the underground pit and did not remove tags on each occasion. Pike did not have any explanation as to what could have caused the explosion and it did not attempt to collect information about what had been going on underground prior to the explosion. Pike did not obtain information such as speaking to the surveyor, had caught a lift out of the mine with the McConnell Dowell vehicle which existed the mine one and a half minutes prior to the explosion. McConnell Dowell personnel were allowed to leave the site that night without being interviewed by Pike, the police or MRS. Later on MRS made its own enquiries in this regard, Dave Stewart spoke with Joe Edwards from McConnell Dowell. The statutory mine manager gave incorrect information about the location of the self-rescuer caches. This was critical information relating to possible survival within the mine, which MRS specifically asked for. Pike was not able to produce an accurate and updated plan of the mine workings. MRS staff obtained plans from the Pike surveyor, who printed them off in sections and hand-drawn extensions added to show current workings.

25 1250

A. MRS marked possible working locations of the men on the plan after making enquiries of other Pike staff. This mine plan became a key working document for MRS staff, but ought to have been readily available. Pike was not able to provide information relating to vehicles and equipment in the mine workings until later on. This information relating to potential obstacles was important to MRS planning. MRS spent a significant amount of time trying to gather the information it required. There was very little assistance from Pike. MRS also tried to establish an IMT and regular ICM's which was the responsibility of Pike

to establish. This was a difficult task. By default Rob Smith was responsible for getting the IMT and ICM process established.”

Q. And he’s a Mines Rescue person, Mr Smith?

5 A. That’s correct. He was the officer in charge of Mines Rescue on the 19th.

Q. And paragraph 391 please?

A. “Overall the information available was very limited and Pike did not do a good job of gathering this information and presenting it to MRS when it arrived.”

10 Q. And then if I ask you to leave out the next page please, and turn to paragraph 396, the role of the police?

A. “Several hours after being onsite, the police made a statement at the 3.00 am ICM on 20 November, that they would be the lead agency in charge of the search and rescue operation and a formal structure for decisions would be implemented. Risk assessments would be required and would need to be signed off. The police acknowledged that they were out of their depth with mining terminology and would defer to experts such as MRS for knowledge in mining matters. MRS is of the view that from that point on the police did a good job in attempting to make sure that IMT was well structured. MRS was surprised that the police said that they were lead agency in charge of the operation and lead incident controller. This may be explained by the fact that the police thought that there were going to be fatalities from the incident and they were preparing to act on behalf of the Coroner. The statutory mine manager has a statutory responsibility for the underground operation and it was MRS’ belief that the statutory mine manager would be the lead incident controller. The police, however, assumed this position and made it clear that it was not open to debate. It was not challenged by the statutory mine manager at this time. On Sunday, 21 November 2010, after Dave Bellett and Johan Booyse had stated to the IMT that all decisions including plans to seal the mine would have to go through Crown lawyers in Wellington, the statutory mine manager appeared frustrated and angry that he was not able to make decisions onsite and including any plan to seal the mine.”

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Q. Then the role of MRS, paragraph 399.

5 A. "Almost immediately after arriving onsite, MRS tried to establish an IMT and regular ICMs. It was intended that information would be gathered and circulated at these meetings and then any decisions could be made. MRS wanted Pike and the police to take part in this process. It was very dysfunctional and chaotic in the early hours of the rescue operation. MRS initially led the charge in terms of establishing an IMT and gathering relevant information as to what happened and the current
10 situation underground. MRS found it was difficult keeping everybody together in one place to obtain the information it needed. MRS thought it would play an important role when decisions were made requiring mining expertise. This was, however, not the case and MRS advice was often not taken onboard. MRS thought there was a gap between
15 IMT structure and planning. There should've been a structural mine group set up with mining experts onsite who were asked to look at specific issues and provide recommendations. The IMT did not have the required expertise and the operation appeared to be an exercise in incident management. The IMT was also too large and at times
20 involved duplications in personnel. The police did not interfere with police day to day operation onsite and the tasks and risk assessments which brigade members had been asked to complete by MRS officer in charge. In some instances, the police offered to assist arranging facilities and resources. MRS and associated expertise from
25 organisations such as, New South Wales Mines Rescue Service, SIMTARS, Queensland Mines Rescue Service were poorly utilised. The IMT focused on ways to find out if anyone was alive in the mine whereas it should've focused on what needed to occur to get a rescue team underground. Decisions were made offsite, but MRS believes that
30 the IMT should have managed the rescue recovery operation. Furthermore, the focus on survival within the mine meant that the rescue status of the operation could not be moved into a recovery operation which MRS believes would have significantly changed decisions and allowed for a better outcome."

Q. And the role of the Department of Labour?

5 A. "MRS is not exactly sure what role DOL played but it was told at an early stage of the operation that no one onsite from DOL had the power to make a decision. DOL conveyed that any decision to enter the mine would be sent to Wellington for Crown lawyers to approve. This removed any power for the statutory mine manager to make the decision despite legal authorisation to do so."

Q. And then issue 2.10 please, paragraph 405?

10 A. "The New Zealand Co-ordinated Management System known as CIMS is the system employed in New Zealand when there is an incident involving multiple responding agencies, such as the Pike incident. CIMS is a generic framework which can be adapted for each situation or incident as it arises. CIMS is used by all emergency services and the police, fire service, St John and MRS are all familiar with its operation. 15 The framework provides for an IMT and IC, both of which were established during the Pike incident."

Q. I think you can leave out paragraphs 406 and 407, as its repetitive and go to paragraph 408 please?

20 A. I'd just like to clarify as well, I'm a strong advocate for the CIMS model and framework and the same with the MEMS model that's established in Queensland in Australia. It's essential that you've got a very robust management structure, and both of these models lead to that. "As far as MRS is aware the CIMS model focuses on an effective onsite decision-making and did not anticipate the level of anonymous external review and control that was evident in this operation from an early 25 stage. This level of external involvement resulted in a sense of operational paralysis that frustrated MRS, Pike, police and others onsite. From an MRS perspective the objective getting in control of the underground atmosphere, getting underground to recover the miners and determine the cause of the explosion was never the main focus. 30

Instead a process of trying to find out if anyone was alive and then a series of risk assessments, review of risk assessments and approvals by external committees not on site had taken over.”

COMMISSION ADJOURNS: 12.59 PM

COMMISSION RESUMES: 2.00 PM**CROSS-EXAMINATION CONTINUES: MR GALLAWAY**

Q. Mr Watts, if you carry on reading please from paragraph 409 of your brief, page 74?

5 A. "All the decisions relating to the rescue operation had to go through the police. All the risk assessments were reviewed and approved by the police and/or Department of Labour before action could be taken. It was very frustrating for a number of the agencies on site, including MRS, that were working through the risk assessment processes because of
10 the delays between submitting a risk assessment and receiving approval to complete the particular task. DOL was directly requested by MRS to join some of the risk assessments but instead chose to wait until the police had handed them over to DOL to review, which wasted valuable time. There were various occasions where decisions relating
15 to risk assessments were delayed, either as a result of the police or the Department of Labour. There was one instance where MRS had done the risk assessment and needed it to be signed off by DOL externally in Wellington but was told it could not be signed off until 8.30 am the next morning when people came into the office in Wellington. Rob Smith
20 tried to explain the urgency of the situation and said it needed to be acted upon now but it had to wait until the next day. DOL was one of the few teams on site who only had people there during the day but these members of DOL were not able to make decisions. Sometimes there were questions asked by whoever was reviewing the risk
25 assessments. At times there would be valid questions asked but at other times they were rejected for minor errors. One risk assessment was rejected because there was a spelling mistake contained in the accompanying document so it had to be resubmitted. Risk assessments appeared to be viewed as a static document, focused on
30 liability issues rather than a dynamic tool allowing for a real time response to what was an evolving environment. Given the seriousness and changing nature of the situation rejection of documents on overly technical ground was inflexible, frustrating and inefficient use of time

and resources. The delays in the risk assessment process were very frustrating.

1403

5 A. There was a sense of a real lack of urgency to make decisions, particularly after the second explosion. There was no one onsite who was able to make a decision. MRS was told that decisions were to be made in Wellington. MRS were not entirely sure of the chain of command for the decision-making process, despite requesting clarification. The system of communication broke down with the frequent changing of police dayshift personnel. It was hard to keep track of the police personnel onsite as they seemed to change every eight hours. This was frustrating for MRS and presumably the police personnel involved, because there would be one group of police who would just grasp the concepts of underground mining and the correspondent jargon and then were changed down. Obviously there would be roster changes, but there was a lack of continuity in police personnel. It slowed everything down when MRS had to repeat information. MRS is of the view that the IMT should have been able to make decisions onsite. The information was being gathered onsite and the necessary expertise including SIMTARS, gas analyst, mine management, ventilation officer, mining engineers, geologist, surveyor, extending senior mining officials, deputy chief mines inspector from Queensland, Mines Rescue Service, New South Wales Mines Rescue Service senior managers and seven first class mine managers of which the total in New Zealand was 13, was also onsite to advise the IMT and provide the expert and technical mining advice required.”

25 Q. Now, yes, if you just carry on at paragraph 415, please?

30 A. “MRS is of the view that the lead agency and incident controller should have been the statutory mine manager. MRS also believes that the recommendations it made should have been listened to and acted upon, and particularly the advice to seal the mine should’ve been accepted. In the event of an emergency underground at a mine, MRS always works very closely with the IMT which usually consists of the mining company and MRS, because both parties have the required expertise in

underground mining. Having the police involved in the IMT for a mining incident such as Pike is desirable, but the police should defer to the people who have the required expertise, which in this case was MRS. This is a requirement of section 10 of the Policing Act 2008.”

5 1406

Q. Could I just ask you to stop there because you're going to refer to a model shortly and perhaps we can thrash out some of those comments later on. If you can look then, please, at paragraph 424, the decision to seal the mine, on page 77 please Mr Watts.

10 A. “No decision was made about sealing the mine despite
recommendations from MRS to do so. The delay and lack of decision in
this regard severely affected the outcome of the recovery. There was
resistance from Pike earlier on in the rescue operation to accept the fact
15 that the 29 workers trapped were likely to have died shortly after the first
explosion. Once it had been decided that it was a recovery operation,
Mr Whittall made comments in the media that the boys would be
brought home for Christmas without accurate information about the
timeline for the recovery operations. These comments affected
20 decisions being made on and offsite. After the second explosion it
should've been a simple decision to block the air going into the mine
and prevent further explosions. But no one was prepared to make that
call. The sealing of the mine needed to occur urgently but it still took
another four days after the second explosion, with subsequent or
25 damaging explosions in the interim before the decision to seal was
made. Immediately prior to the second explosion, a working group of
four people, including myself, was developing a re-entry logic appraisal
document. Part of this meeting involved looking at the issue of the
extinction of life given that it had been five days since the first explosion
and no other survivors had walked out. The group was looking at likely
30 causes of death, such as carbon monoxide poisoning but this was put
on hold after the second explosion. The second explosion meant that
this working group was put on hold. Straight after the second explosion
myself, on behalf of MRS, made it a formal recommendation, a repeated
formal recommendation to seal. There had also been a previous

recommendation by MRS for sealing made on Sunday 21 November. DOL did not give permission for sealing to take place on the second occasion. MRS is of the view that the decision to seal the mine should've been made a lot sooner than it was. Sealing the mine at the earliest opportunity would have resulted in three things. It would have allowed for the recovery of the bodies. Important evidence would have been collated in relation to the cause of the first explosion and it may have allowed recovery of the resource, in other words the mine could have been saved and accordingly mined again.”

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10 1409

Q. Then if you could turn please, Mr Watts, to page 85 paragraph 459 please, and I'll ask you to read down through to paragraph 466.

A. “MRS was continuing with preparations to re-enter the mine subject to gas analysis information prior to the second explosion on 24 November 2010. Risk assessments and planning was underway, but the explosion occurred before re-entry could actually take place. The media portrayed the situation that MRS teams were sitting kitted out in their gear at the portal and ready to enter. This is not correct. Planning was underway on Wednesday for re-entry but this was unlikely to have actually happened until early the next day, 25 November, when the mine's atmosphere would have been more stable. Between 2.00 pm and 4.00 pm the mine usually reached the explosive range in the area of the main junction in terms of methane levels, so this would not have been the time to stage the entry. The natural ventilation process had a significant effect on the mine. All the explosions occurred during the afternoon and this is when the hill is at its warmest and the warmest area at the bottom of the hill, which means there is a minimum amount of airflow. MRS and its supporting organisations were able to build up a pattern of readings which emphasised the variations in natural ventilation, but this critical information was not provided by Pike to MRS at the outset and nor did it appear to be understood by Pike. MRS strongly believes that there was no possibility or window of opportunity as it is being described in the media to deploy teams underground into the mine. The window of opportunity as it is called can be a very varied

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period. This period is not a science as it depends on so many factors including methane make under normal mining conditions, void volume of the mine, mechanical or natural ventilation at the time and post-explosion, type of ignition, likelihood of post-explosion hotspots or other potential ignition sources. After an ignition the difficulty is predicting how much of the fuel (methane) has been consumed by the first explosion, remaining hotspots and increase of air back into the mine following the ignition.

1412

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- 10 A. Methane drainage systems must be taken into consideration, and as was the case at Pike River the first explosion had ruptured or broken the methane drainage line which led to an additional 800 litres per second of methane blowing off into the mine. Given that the void volume of the mine workings inbye of the first cross-cut only totalled approximately
- 15 70,000 cubic metres the impact of the broken gas drainage line on the so-called window of opportunity was significant. What must be remembered is the so-called window of opportunity becomes non-existent if you have a known or suspected ignition source, fuel, being methane, and the ingress of oxygen. All three of the above factors are
- 20 the three legs of the store required for an explosion to occur and all three were present following the first explosion that occurred on 19 November 2010. The most difficult of the factors to be determined was the existence of an ignition source. In the first few hours following the initial explosion light brown smoke was clearly seen to be coming
- 25 from the main vent shaft, observed by the first Mines Rescue team who flew over the shaft en-route to Pike River.” And was also, I would like to add, observed by Mr White who flew up to the vent shaft, and to be perfectly honest you couldn’t have had a better set of eyes to look at the vent shaft post-explosion, Mr White. “There was never a window of
- 30 opportunity to enter the mine. Following the gas results from the borehole the likelihood of an ignition source was confirmed from the GC analysis, trends and ratios that were being interpreted. The second explosion that occurred on 24 November was proof enough that an ignition source was present and it was only a question of when it was

going to be triggered. The gas analysis showed that the main vent shaft moved in and out of the explosive range on several occasions.”

5 Q. Yes, thank you. Now Mr Watts I'd ask that that concludes reading of the institutional brief and I'm not going to, as I've indicated for the Commission, ask you to read your individual brief. I do have some supplementary questions for you. The first of which relates to the bucket being dropped down the Slimline shaft on the evening of the 19th of November last year, and the issue of whether or not that action had been approved by any person. Are you able to explain to the Commission what happened in relation to that please?

10 A. It was my understanding from discussions with the officer in charge at the time and other people that were involved in the very early stages of Pike that a discussion did occur between officer in charge Rob Smith and Mr Doug White, who was the mine manager, about trying to get a communication system established down the Slimline shaft. I believe this was an excellent initiative. To try and gain information out of the mine in these early stages was critical. And what was known was that the self-rescue cache was at the bottom of the Slimline shaft and that if people had taken refuge in this area that we may have been able to make contact with them and get some information from inside the mine. So there was a formal discussion and I think Mr White did acknowledge that in his brief of evidence as well. And yeah, in my opinion that was an excellent initiative.

1416

25 Q. There has also been reference to the SMV that was placed in the portal, do you recall that?

A. Yes I do, I do recall.

Q. And are you able to explain how that happened and what your views are in relation to it?

30 A. A little unclear myself how it occurred. It did occur before I was onsite, however.

Q. Do you understand why that occurred, what the reason was?

A. Yes, the reason an SMV was taken to the portal area was for immediate deployment of rescue teams should the information from the mine

determine that it was safe to deploy a rescue team, so it was placed there on standby. Unfortunately, it was placed in the portal and it was a mistake. It should not have been parked in the portal, and whilst I wasn't there I accept responsibility for that.

5 Q. Now, in terms of the gas sampling that took place at the vent shaft again on the first night, as I understand it there has been some reference to it being, perhaps, unconventional in terms of MRS people taking handheld samples there. Are you able to explain your understanding of what happened and who took part in that process from an MRS point of view?

10 A. My understanding was that an MRS member went up to the vent shaft with two employees of Pike River to obtain gas samples with gas chromatograph sample bags and they also took handheld detectors with them. My understanding around the deployment of those gentlemen was that they sent up a highly experienced Mines Rescue member with
15 over 30 years' mining experience, a very safety conscious guy as all our Mines Rescue members are, plus experienced personnel from Pike River. One of them being surveyor Callum McNaughton, I believe who was also an ex-Mines Rescue member or still a Mines Rescue member in Australia. These gentlemen fully understood mine gases
20 and the legal limits that they could expose themselves to and fully understood the effects of carbon monoxide. They had handheld detectors with them and did not place themselves in any position of danger while they were trying to obtain those bag samples.

Q. So can you just describe for the Commission how those samples were
25 obtained?

A. It's my understanding that the samples were obtained from in front of the fan evase and just with an aspirator bulb to fill the gas sample bags that were used and that the gentlemen took all precautions not to expose themselves to the high levels of carbon monoxide that were
30 present there at that time which, from memory, was recorded by Mr McNaughton as 900 parts per million CO.

Q. You'll recall when Mr Devlin gave his evidence he was asked about the concept of partial sealing and he indicated that he didn't really

understand how it could work. Could you, again, just explain that concept and how it arose?

5 A. Concept of partial sealing was one of the discussions that was undertaken around sealing of the mine. It's my understanding, I wasn't involved directly with these discussions because it occurred while I was home asleep, however, the partial sealing was in reference to the possibility of sealing off the ventilation shaft in the Slimline shaft to try and bring the methane fringe down past the first crosscut to an area known as the grizzly borehole where there was some sampling occurring from. The grizzly was always fresh air which was no surprise because of the natural ventilation.

10 1421

15 A. It was considered that if we could bring the methane fringe down beyond this point, that there'd be no ignition source at that time, and then methods of re-entry would occur. It was going to be difficult. It was one of those – the whole issue with sealing, it was put out there because it needed to be discussed and needed to be planned as strategies. And if I could just add to that, I've heard comment that sealing was, sealing the mine and walking away, going home, sealing the mine was terminating the rescue effort, but both of those things are a long way from the truth.

20 Q. Are you referring to the comments made by Superintendent Knowles in his evidence?

25 A. Yes, yes. I think there was reference to sealing the mine and going home. However, this concept wasn't just thrown out there lightly, or it wasn't thrown out there at all. It was raised. It needed to be raised early on as part of planning, if you like, because Mines Rescue were well aware of the need to gain control of the atmosphere within the mine and that's why the whole discussion around sealing eventuated. It felt that, I believe it was raised at a number of IMT meetings and that, that this should've been raised through a planning structure, or through the planning co-ordinators role, but the structure in the early stages didn't tend to lend itself to that and that it was raised at the IMT meetings then, and several other occasions as well.

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Q. And you've heard the police comments about future operations and the need for parallel contingency planning in relation to issues like sealing. I imagine from what you've said, you agree with those comments?

5 A. Oh, yes, and acknowledge Assistant Commissioner Nicholls and Superintendent Knowles' comments that, you know, in the future that, certainly the planning co-ordination and operations areas could sit with mining specialists or experts and that we have heard many times before about parallel planning, but this is what we mean by parallel planning with sealing, partial sealing and survivability, all these issues, and just
10 something that's popped into my head, partial sealing included leaving the compressor running in the likelihood – this is in the early stages mind you, we did not know that the compressed air was fractured at that time, if there were anybody that had barricaded themselves, then they still would've had compressed air. The only way people could've
15 survived at that time when partial sealing was discussed, was that they were barricaded in with compressed air. That's the only way.

Q. And what did you consider the prospects of that to be?

A. Highly unlikely given the men were trained to self-escape.

20 Q. The issue of communication with the families, and the meeting that you were asked to attend by Superintendent Knowles, and you decided not to, could you explain why you didn't want to attend that meeting, or why you thought it better not to?

A. I'll try and answer this as clearly and concisely as I can. I was asked on two occasions to attend family briefings, by Superintendent Knowles on
25 the 23rd, and again by Mr Peter Whittall on the 24th of November. I'd like to state that both of those days were critical times in any rescue effort. And what I mean by critical times is at that time we were waiting for borehole 43 to break through. Initially it was thought that borehole 43 was going to break through on the 23rd, but of course as we know, the
30 drilling conditions were very very hard and it did delay the breakthrough until the 24th, which was another critical period of time, and I know that was when Mr Whittall approached me to see if I could address the families that day.

1426

A. We've heard on numerous occasions over the last couple of weeks how important it is for people that are in critical decision-making roles to be removed from emotion and pressure. I'm a West Coaster, I'm a born and bred West Coaster, very proud of it too. I knew every one of those men in that mine. Up until the time of the second explosion, I only knew of two men in the mine by accident. I completely removed myself from knowing who was in the mine from media. I was trying to act in a very professional manner when my closest friend's son's in the mine. I knew a lot of these men personally. They'd all come through the rescue station many times in their training. I wanted to make sure that I was in a position to make clear decisions. We've seen it in evidence presented, the ultimate decision to deploy Mines Rescue teams into that mine rested with me. I knew that before I flew out of the North Island on the 19th of November when I first received the call, where I was visiting at the time a rescue station up there. The ultimate decision to deploy rescue teams in that mine rested with me. Now I carried that with me and I was going to act professionally. If I'd gone to one of those family briefings, and God help me I wanted to go to those family briefings and just help these people, I don't believe that I would have been able to carry on in the capacity as general manager of New Zealand Mines Rescue because I know so many of these people that are involved. We're a tight-knit community, and I think it's hard to explain to people that perhaps hadn't been involved in an event where you do know people, unfortunately I have been in this position before on numerous occasions because the West Coast is small, of the other complexity that it throws into the mix when you know the people that are involved, and I had to remove myself from that.

Q. Have you finished your answer?

A. Yes.

30 Q. Could I ask then that you comment on the media statements that you made, sir, on the 21st and 23rd of November. Have you had a chance to review those statements?

A. Only just recently.

Q. Can you just explain how you came to be involved in making those media statements?

5 A. My recollection is that I was requested by and I'm sure it was from Superintendent Knowles, if I could come to a media briefing, and my recollection and it is a while ago, that it was to sort of just talk publicly about what Mines Rescue had in place for the rescue attempt.

1430

10 A. The first media briefing I attended everything was such a blur from that time, given that I'd remained at the mine site to about 11.00 am on the Saturday morning, I think got into bed about 3.00 pm on Saturday afternoon and had three hours sleep and returned to the mine until the early hours of Sunday morning. When I went back to the mine site after another couple of hours sleep I was requested to return back to Greymouth. And at that time on the 21st we're still trying to get a feel for
15 what was going on at the mine and on the 23rd it was just a continuation of just basically talking about the resources we had in place for any rescue operation.

20 Q. Just before I ask you to comment on a model that Mines Rescue thinks would be prudent in the future, I understand you have some comments you wish to make about the police you worked with?

25 A. Over the course of 10 months I've heard a lot of criticism about the police, and we've had Assistant Commissioner Nicholls and Superintendent Knowles sitting before the Commission, and like all of the members of our organisation that have worked closely on this, we've lived and breathed this for 10 months, we have nothing to say against
30 any single police officer that worked on this terrible event. Our beef, if you like, is around the structure that was there at the time. I think I've worked with some of the finest people I've ever met in my life over the last 10 months. And I don't say this lightly but every police officer that attended that mine site did their very very best. They were dedicated, they were committed. And I know that they felt frustrations at times as well when we were talking in a foreign language, if you like, with mining jargon. They did everything they could to pick up mining terminologies and learn as much as they could, as quickly as they could, and to assist

us in anything that they could assist us with. They made themselves available for anything. We only had to ask for any resource and it was supplied to us. They worked very closely with us from, I think when Superintendent Knowles delegated Inspector Mark Harrison to work with us, I think it was around Monday the 22nd, we just had continual contact with the police, and certainly with their DVI team who were absolutely brilliant to work with.

5
Q. Could I ask that the document, Ms Basher Mine Emergency Management System is brought up please? Now Mr Watts, is this a document that you have prepared?

10
A. That's correct.

Q. And can you explain what it's intended to show please?

A. Over the last two weeks we've heard a lot about the structure at the mine site and now I'd like to acknowledge Assistant Commissioner Nicholls and Superintendent Knowles in their statements around that they firmly believe that incidents in the future can be managed differently with an incident management team.

15
Q. Just before you go on to talk about the aspects of this diagram, who do you think in an emergency of this sort of nature should be the lead agency?

20
A. Our organisation's belief is that the lead agency for any future event on the scale of Pike River will be the New Zealand Police.

Q. And can you explain why that is the case please?

A. New Zealand Police have the resources that can deal or manage some of the complexities that we were faced with in this operation that no other agency in this country can. And I'm talking about dealing with the likes of embassies, customs, politicians, Ministry of Trade, Foreign Affairs. The lead agency, we believe, sits with the police. The lead agency, we believe, sits with the police. The structure that we've put up here, MEMS, I've used this title from Queensland, if you like, and hopefully I don't get arrested for this.

25
30
1435

Q. Just can I explain how you see it sitting with the CIMS model, are they mutually exclusive what you're proposing or do they sit...

A. When you look at the MEMS structure and the MEMS manual, if you like, the underpinning principles are identical to CIMS. The terminologies are the same, the functional areas are the same, so the MEMS structure that they applied in Queensland, I believe, just dovetails so neatly into CIMS structure that all our emergency services work with here in New Zealand. The structure that was put up here for a major event, such as Pike River, God forbid, would see the incident controller remain with the mine manager or somebody that the mine manager delegates his authority to.

10 Q. And I see that has, in the diagram, it's got first class certificate, is it intended that that person would have a first class certificate?

A. That's correct. The company executive that would be a senior official from the company, general manager, operations manager and the like would be part of the IMT. Senior police officer, and I'm sure that would be at executive level, that would be part of the IMT. The Department of Labour mines inspector. Senior official for Mines Rescue and this is particularly when Mines Rescue teams would need to be deployed into an irrespirable atmosphere. So there's a direct link between the senior official for Mines Rescue and the incident controller.

20 As we know the ultimate responsibility to deploy rescue teams would sit with the senior official. That applies in Queensland and New South Wales. Planning and operations co-ordinators, those positions would be filled by the incident controller with the most appropriate people that he could fill those roles with, more than likely senior mining people from, if it was a large company, from within their own structure. May have to co-opt people in from other organisations to assist in those roles, could sit with an undermanager or tech services manager type role. In a situation of a small mine it may be that Mines Rescue can fill those roles in the early stages until they can co-opt people into those roles if

25 required. But the logistics co-ordinator deliberately left police in there for a large scale event. You could not ask for a better organisation to be in charge of a logistics role. Whatever you ask for you get very quickly.

30

Q. And the operation and planning co-ordinators?

- 5 A. Built from mining people. So, this structure here has a heavy influence on mining people, but with the police and the Department of Labour and the senior company executive all part of the IMT, it enables for the replacement of the incident controller should he become emotionally stressed, should the police have any concerns about his behaviour or in that case the Department of Labour have any concerns about the behaviour of the incident controller at the time. There's any issues with criminality that the police were concerned with, there's ability to intervene. Where possible, the company executive, or the senior person from that mining company would be replacing the incident controller with an appropriate person where possible.
- 10 Q. Now, under the model, could you describe how you envisaged that decisions would be made, recommendations made, where they would go to for final sign-off?
- 15 A. A lot of work would be done through the planning co-ordinators role, obviously, and we've talked about parallel planning and developing of strategies. Those strategies would go into the IMT and we firmly believe that the incident management team would be advising the incident controller of the recommendations and what steps should be taken.
- 20 1440
- A. Ultimately it is the incident controller's decision as to what will occur. Under this model that we're describing here, we do acknowledge to be objective and have good quality assurance that there may need to be a review – well, there does need to be some kind of review of risk assessment of plans, operational plans, by mining people at the mine site. So a group can be established, it sits at the mine site so they have direct link with the incident controller and the teams that are developing the risk assessment or the plans, but they are there at the site.
- 25 Q. So, are you saying that all the decisions in relation to an emergency like this should be made at the mine site?
- 30 A. That's correct. And I understand that we've heard that a couple of decisions should be made away from the site, one being survivability. This is a decision that can't be taken lightly, obviously, and may need to have another level of intervention with close link to the incident

management team and in particular the incident controller. The deployment of Mines Rescue teams, we firmly believe sits with the incident controller and the incident management team. The experts that you need to determine whether there's an acceptable, tolerable level of risk to deploy Mines Rescue teams into a mine, the expertise sits at the mine site. If your gas analysts, your Mines Rescue personnel, senior mining personnel, geologist, ventilation officers, whoever it may be, the expertise that you require sits there. One of the things that I'd like to just briefly touch on for the future, we have talked about the future, and obviously there will need to be some serious discussions about how an emergency management system can be introduced into the mining industry for the future in this country, and just touching on that subject of mine re-entry, I'd just like to acknowledge the work of Queensland's Mines Rescue, New South Wales Mines Rescue, SIMTARS, Coal Mine Technical Services and Professor David Cliff, who have worked over the last two years on a Mine Re-entry Emergency Management System, it's an ACAR project in Australia. We were fortunate enough to pick up on the back end of it and actually apply it at Pike River just recently when we constructed a temporary seal up there. These gentlemen and some of the best minds in mining that you'll find anywhere in the world, have come up with a structure and a software package that will assist in the decisions and the decision-making process to deploy Mines Rescue teams underground. I recently attended a forum in Australia where this was rolled out to the industry in Queensland and it was followed on the following week in New South Wales and I believe it's been warmly received in Australia. There's two parts to the system if you like. The first part is 70% of the information that is required in an emergency event is already known at a mine site, and this system collates and maintains the information which is readily accessible in the event of emergency. The other part of the system, the software is called MRAS Mine Re-entry Assessment System, focuses on asking critical questions to determine whether it's safe to enter a mine and that's questions around explosability, sampling points within a mine, are they representative of what is going on in the mine, are the sampling areas

sufficient. Mines Rescue New Zealand want to facilitate a forum, two forums in New Zealand as soon as we can get these gentlemen together and bring them out to New Zealand and roll this out in this country as well.

5 1445

A. We hope to do that within the next few months. And what I would like to happen at those forums is to bring along senior police officers right through to Assistant Commissioner Nicholls' level and certainly the area commanders from the Waikato and the West Coast region and other senior police they would want to have involved, the Department of Labour mines inspectors to attend those forums to see the robustness of the system that has been developed so they have a level of confidence, I guess, in the decision-making processes that would occur at a mine site before MRS teams are deployed underground.

10

15 **THE COMMISSION:**

Q. Mr Watts, is this the group that Messrs Brady and Devlin are both on and spoke of last week?

A. Yes sir. An enormous amount of work has gone into this and I believe it's a fantastic system. We did work with it for the construction of the temporary seal at Pike. We worked with an incident management structure not too dissimilar to what you've seen here or same as CIMS with an incident controller, operations manager, planning co-ordinator, logistics co-ordinator. But every incident management team meeting we reviewed our data, and every morning prior to rescue teams being deployed we had before an incident action plan was issued there was a sign-off on the document by the mine manager and lastly by myself as Mines Rescue senior official, that determined that we were confident of the data we were getting from the mine and that the highest level of risk in the mine had been identified and all the critical questions around the safety of those Mines Rescue personnel was answered.

20

25

30

EXAMINATION CONTINUES: MR GALLAWAY

Q. And finally Mr Watts, can I ask that you comment on Mines Rescue's willingness or desire to retrieve the men from Pike River?

5 A. I would find it hard to articulate how our Mines Rescue members have
felt since the 19th of November 2010, to not having the opportunity to
bring home the loved ones of all the people that are sitting in this
courtroom today. Not having the ability to do what they were trained for
because of the conditions that existed at the time. To a man, every one
10 of our members is totally committed to bringing home as many of those
men as possible, and we will do whatever we can to assist the mine
owner in a recovery operation. We firmly believe that it will - is going to
happen. I firmly believe personally that in time the top part of that mine
will be entered where the men are and we will work very closely and
assist where we can to get some closure for families of those men that
15 are still in the mine today.

EXHIBIT 30 PRODUCED – MEMS STRUCTURE

1450

COMMISSIONERS CONFER**THE COMMISSION:**

20 Mr Gallaway, there's just one other aspect, we had thought that it may have
been drawn to your attention, Mr Watts has given very helpful evidence about
the issue of re-entry into the mine, had it emerged as a possibility in light of
the atmosphere readings that were obtained, in order to fully appreciate that
aspect the Commission needs to understand what a re-entry would have
25 entailed, what equipment, how long would it have taken, how many men
would've had to be deployed and so-on, because without a proper
understanding of that it is difficult for not only the Commission but also for the
public and others to understand why there was no window of opportunity as
has been said by so many witnesses.

30

MR GALLAWAY:

Yes, no I understand that sir.

EXAMINATION CONTINUES: MR GALLAWAY

Q. Mr Watts, you've heard the questions from the Commission, are you able to describe how a deployment into the mine would have taken place?

5 A. Certainly.

Q. Perhaps if you could start with the number of men who would've been involved, and as you've heard His Honour talking about the sort of equipment they would've been using?

10 A. Yes. Initially we deployed four Mines Rescue teams to Pike River so that we had sufficient amount of personnel onsite to deploy a minimum of two teams into the mine if required and have backup teams available at that time. The equipment that Mines Rescue operate with in New Zealand is the BG4 long duration breathing apparatus, which is the same as used by New South Wales and Queensland Mines Rescue and
15 would be some of the most, well it is the most up to date long duration breathing apparatus available. The initial planning was comprehensive into how the rescue teams were going to enter the mine if the atmosphere had been deemed safe to do so. Initially a SMV, or a drift runner, man carrier, was going to be used to transport the men as far as
20 the loader which was known to be in the mine.

Q. Is that the loader that Mr Smith was working on?

A. Yes, yes, correct, at the 1500, almost 1600 metre mark. My recollection is that initially we talked about deploying two teams. One team was to remain with the loader and remove the loader from the drift and park it
25 back in the first stub, which was not far away from there, so we cleared the roadway, or vehicle access.

Q. Just pausing there. How long would it have taken the team to get to that point?

A. Driving in a vehicle it would've only taken maybe five to 10 minutes to
30 get to that point in the vehicle. Then they would've had to set off on foot, the team that was going to explore inbye. The fresh air from the natural ventilation would've meant that the rescue teams did not have to go under oxygen at that point, however they would've had all their minimum equipment with them. And the minimum equipment that we

carry here in New Zealand, without going into all the detail, is very similar, if not exactly the same as used by rescue services in Australia. The team that was to set off on foot were to explore the A&B headings of the pump bay areas and that.

- 5 Q. Would it be helpful to have the map put up please Ms Basher. Try exhibit 14 please.

1455

WITNESS REFERRED TO EXHIBIT 14

- 10 Q. Now, have you got a laser pointer, you've got that Mr Watts. Could you indicate where you're referring to please?

THE COMMISSION ADDRESSES MR GALLAWAY – HIGHLIGHTING DOCUMENT

EXAMINATION CONTINUES: MR GALLAWAY

- 15 Q. So if you indicate, the loader is not quite in that blown-up area, is that right?

- A. In the enlarged area, there the loader's just back out of shot there. The pit bottom area, as we know and here in stone, when that rescue team was to go further into the mine they would have completed a quick reconnaissance of those stub areas there, bearing in mind that a couple of those areas are full of water, being a dam, a water holding area and they wouldn't have entered those but certainly around the pump bay et cetera. They were then to make their way on foot to the first intersection in the mine and to complete a reconnaissance to that point and see what conditions existed up to that point.

- 20 Q. And was it envisaged that they would be wearing breathing apparatus at that stage, or using them rather?

- A. What was known was that the natural ventilation going through the mine would've had fresh air going right to the very first intersection, so if the men were to have to go into oxygen, it would've been from that point.
- 30 We knew that the mine had been very quickly filled with methane down to wherever the ventilation control devices were destroyed. It's firmly believed by all those involved that the double doors that were in the first

crosscut between intake and return were destroyed. But the rest of the mine would've been full of methane. The problem that our rescue teams were then going to encounter was a fringe of methane which was potentially in the explosive range and somewhere would have been in the explosive range because you can't go from having a methane-rich environment to a methane-lean environment without being in the explosive range somewhere. What would've occurred from that time...

5

Q. I just wonder if I can interrupt you there and ask that MRS0096 be put up? It might make it easier for you.

10 **WITNESS REFERRED TO MRS0096**

Q. Now, do you recognise that document?

A. Yes, this was a document that was put together by the rescue teams that worked throughout the 24 hour period on the stages of re-entry and there are a number of other plans that do go with this, if you like, that clearly indicate the search pattern that the teams would've used had they had the opportunity to get into the mine.

15

Q. Now, can you just describe that in stages for the Commission then please?

A. Stage 1, is showing up to the end of the pump pit bottom area. I've just described that the men would've gone through to the first intersection. That would've been determined by what damage that the rescue teams encountered when they got to the end of that pit bottom area. Stage 2, the next section in pink would've been completed by another team.

20

Q. Now, can you just explain why another team would have to come in and complete it?

25

A. We wanted the other team to report back.

1500

Q. That's the stage 1 team?

A. Yes, so we would've had communications obviously with them as well. By deploying the other team in there, we were going to look at how we gain control of the mine atmosphere beyond the first crosscut, so trying to determine what atmosphere was in that portion of the mine.

30

Q. So what would you have to do in order to determine what was necessary to gain control of that area?

- 5 A. Initially we thought that the way that the top area of the mine would've been searched to create a non-explosive atmosphere for the teams to travel through, it, brattice seals, temporary seals may have had to have been erected to re-ventilate part of that first area of the mine and around here, or to hang sheets that would create an area of the mine that was fuel rich and create an airlock that the men could've gone from a fresh air environment straight through to a methane rich environment without having to work in an extended period of an explosive atmosphere. The fresh air base would've been established back in, from memory, it was the crosscut – the stub at the grizzly.
- 10 Q. Could you point to that please?
- 15 A. The grizzly area here, well, it was known as the grizzly borehole, and that would've been the fresh air base should a irrespirable atmosphere operation commence. The search pattern then would've gone in the stages that we can see here, and stage 3, 4, through to stage 7. The other mine plans that go with this show the direction of travel of the rescue teams and they had also coloured those and numbered those for each of these roadways that we can see in the mine plan here, so they were very clear on how they were going to go about their search pattern.
- 20 Q. How did the geography of the mine impact your decision-making and in particular, I'm talking about the length of the drift?
- 25 A. The main drift was, and still is, a significant concern for any operations obviously. It meant that we had to be absolutely certain about the environment within that mine before teams could be deployed because they were in a – I'd liken it to a gun barrel, that's maybe not the right terminology, but they were in a direct line of any additional explosions. As we've unfortunately seen of the video footage, had our rescue teams been in that main drift when that second explosion had occurred, we wouldn't have injured them. They would've been killed. We had to be absolutely certain of that environment. The next significant issue for the rescue teams was at the first intersection, as once the men, rescue teams went beyond that point, if there had been any strata failure at that point when our teams entered, or extended beyond there, there was no
- 30

return. There was no way for them to escape from that area. There was only one way in and it was via that first intersection. We will never know the damage that was caused to that first intersection on the first explosion, but it was of a significant concern all the way through out planning processes.

5

Q. And presumably you were working on the basis that there was only one way out and that was the same as the way in?

A. Absolutely, that's correct. One of the other things that I'd need to point out, with the deployment of rescue teams up here using a vehicle, and any work that went on in the mine, it could've been the actions of the rescue team or teams that initiated the second explosion. The very fact that we were going to use a vehicle could've been enough to alter the natural ventilation flow to induce the second explosion. To do anything with the ventilation in the mine, because we had no idea where an ignition source was at that time. So hanging your first sheet may have been enough to induce an explosion while the men were in the mine that's why there was so much diligence in trying to gain knowledge of the atmosphere that existed.

10

15

1505

Q. So is the 2.4 kilometre drift in terms of planning an operation to re-enter a mine, can you comment on the degree of complexity or difficulty that a drift like that creates?

20

A. Any planning that goes into a rescue effort or rescue operation such as this needs to include predictions of what is going to happen with the atmosphere in the mine in the future. Mr Brady covered this off quite comprehensively the other day. But any of the planning or the operational planes, an assessment of the environment needs to include enough time for rescue teams to be able to exit the mine safely should conditions within the mine start to change, and that's a significant factor when you're 2.4 kilometres away or up here, if you were up in this area, three kilometres from a point of safety, which was at the surface mine portal.

25

30

Q. How heavy is the equipment that the Mines Rescue teams would have been carrying?

A. Breathing apparatus that the men would have been wearing weighs 14 kilograms. They carry between five to 10 kgs of equipment each. The minimum equipment –

Q. In addition to the breathing equipment?

5 A. In addition to the breathing equipment, one of the pieces or the minimum equipment we carry with us is a stretcher. Our teams are a minimum of five, a maximum of eight for the universal size of a rescue team, so that if a rescue member was to collapse for any reason or become injured his colleagues can carry him to a point of safety as no
10 one comes to rescue Mines Rescue. If you like, we have a back-up team that can come in and assist. We've got to be self-sufficient because of the duration that we can work with.

Q. So in terms of this phrase, "the window of opportunity," you've given us an indication as to what you would have done had you got in there.

15 What information did you need to ensure that it was safe for the Mines Rescue teams to deploy in there?

A. We needed gas data from within the mine that was truly representative of the mine atmosphere. Not the diluted sampling that we were getting via the vent shaft that was diluted with natural ventilation going through
20 the mine, and we've often heard it talked about how that ventilation going through was just taking the fringe or wisps of the mine atmosphere up the vent shaft with it. We only had the grizzly borehole here which was in fresh air. No surprises there, because of the natural ventilation. We had to have some representative data for these gas
25 experts, Mr Brady, Mr Mason, Robin Hughes, Professor Cliff to work with to determine what atmosphere we had in the mine.

Q. And how could that be obtained subject to your satisfaction?

A. Work closely with SIMTARS coal mine technical services and the experts that assisted us with this operation, Seamus Devlin, et cetera, in
30 determining how we get enough information out of this mine and the position of boreholes that were required. Initially we know borehole 43 built up in this vicinity, I believe from memory, to try and gain a clearer picture of the atmosphere within the mine, so then we had another source of information.

1510

A. Clearly getting representative data out of the mine was critical, given the three things that we knew. It's smoke coming out of the ventilation shaft, it's gases out of the ventilation shaft that were consistent with combustion, we had fresh air going into the mine. What had to be determined was the smoke and gases that were coming out of the ventilation shaft, were they the product of an afterdamp atmosphere or were they the product of combustion. As Mr Brady demonstrated the other day, the document on the wall, the gases that are found in afterdamp are also found in combustion. It had to be determined, whether it was an afterdamp atmosphere or was it an atmosphere from combustion, and was an ignition source present.

Q. Can you just describe what an afterdamp atmosphere is?

A. Afterdamp atmosphere is the atmosphere that remains in the mine post-explosion.

Q. Is it dangerous?

A. Afterdamp atmosphere can be toxic, can be oxygen depleted, and it can be explosive. What is not known after an explosion is how much of the fuel is used up in the explosion. What is known, following an explosion, high levels of carbon monoxide exist, that can be from thousands of parts per million to tens of thousands of parts per million, depending on the size of the explosion the amount of fuel, the mixture at the time, where the coal dust was ignited. We know that there's an oxygen depleted atmosphere. In Moura, the last Moura explosion a graph is in existence that shows that the oxygen content within the mine fell below 10% immediately post the explosion. And I believe that that data was one of the reasons that Queensland mining, and maybe even Australian mining, went away from filter-type self-rescuers to self-contained oxygenated self-rescuers because of the data they received out of Moura. And it is known that a significant amount of oxygen is used up in an explosion.

THE COMMISSION:

Q. Mr Watts, can you put a timeframe please on the implementation in that search plan that you've got on your diagram?

5 A. Yes sir. The first stage to get up to the back of the loader would've been a short timeframe given that we could've used a drift runner
vehicle. Likewise, the search at stage one that we're talking round pit
bottom area, could've happened in quite a short period of time, given
the short distance the rescue team would've had to travel by foot. If the
10 loader that was in the main drift could not have been moved or started
there was a provision to bring in another machine and tow that loader
out of the mine or back into a stub. The rescue teams had worked with
the engineering team at Pike River to have a towing mechanism
available and there were plans in place of how to move that loader. The
rescue teams did take with them compressed air cylinders that the
15 engineering staff believe would've been enough to start that loader.
And there was no reason to believe the loader wouldn't have started
given the short period of time that it had been there. Once the loader
was out of the way then you had vehicle access right up to the grizzly
area which would've become the fresh air base. And the search area of
20 the mine from that time, it's a little bit of an unknown depending on the
conditions that you find within the mine and from evidence that have
been taken from explosions in other countries in the world there is a
significant amount of damage that is done to infrastructure that's within
a mine and it'll always be an unknown till we get in there how much
25 damage is in here, and of course we will not know how much damage
the first explosion caused because there have been three subsequent
explosions. With the conveyor structure and other infrastructures within
the mine it could've made travelling conditions very slow and a number
of remedial tasks may have had to take place before rescue teams
30 could've gone further into the mine.

1515

A. This is only a small mine and I believe the maximum distance from the first intersection after the furthest away roadway is 700 metres. I might be slightly wrong and it may be a 100 metres short in that but I

believe its 700 metres. So it's not a great deal of distance. The walking conditions up into here, the roadway conditions, it was uphill, the gradient, from memory, around about one in five in places I believe, uphill, so it wasn't a large mine to search and could've been completed

5 in a relatively timely fashion. It's hard to put a specific time on the entire mine including the south section here. This again is not a large section at all because we were unsure of the conditions that we would be faced with. Not sure if that answers your question appropriately sir, but.

Q. Well, can I ask one more question. If everything went as well as might

10 be realistically possible, would you have completed a search in one entry into the mine, or could you have completed a search upon one entry?

A. If it was in an irrespirable atmosphere, I doubt it sir given the 700 metres up to the top part of the mine and the amount of time that would've

15 taken to search the areas, all the roadways sufficiently, it would've been doubtful that it could've been completed in one operation. It may have needed, at E, a second team to go in and takeover from where the last team had finished. With the resources that we had available to us too, just to touch on that slightly, is we know that Mr Devlin and another

20 senior manager for New South Wales Mines Rescue were here on the Saturday. On the Saturday night another team from New South Wales of seven or eight personnel, I think, that their gas analyst came with them at that time as well, was on the ground in Christchurch and then subsequently over in Greymouth, so we did have another team of very

25 experienced Mines Rescue personnel from Australia that included ventilation officers and first class mine managers that were able to assist in a multitude of roles with any rescue effort that transpired.

MR GALLAWAY ADDRESSES THE COMMISSION

THE COMMISSION ADDRESSES COUNSEL – APPLICATIONS FOR

30 **LEAVE TO CROSS-EXAMINE – ALL GRANTED**

COURT ADJOURNS: 3.20 PM

COMMISSION RESUMES: 3.37 PM

THE COMMISSION ADDRESSES MR MOORE – CROSS-EXAMINATION

CROSS-EXAMINATION: MR MOORE:

5 Q. Mr Watts, first of all, and this isn't a question. On behalf of New Zealand
Police may I thank you for your gracious and generous comments about
the police and your dealings with them, and your dealings with them,
and that might be nice to think that they might be reported. I want to
touch on the question of the history of New Zealand Mines callout and
10 perhaps, in fact, look at a history of disasters, mining disasters in New
Zealand and if we could have the Department of Labour tier 2 paper,
page 6, paragraph 6, brought up on the screen? That first page,
obviously deals with events going through into the 19th Century, but if
we could have the next page over from that, just so we can get in
15 context and in fact the next page as well, and the next page, and the
next page. If we look through those incidents which are recorded there
from the middle of the 19th Century, it's – and we look at page 5 of that
analysis, perhaps going back to the last entry on page 5, 1967 that was
the Strongman Disaster, which involved 19 deaths and then after that
20 really where the most recent involving substantial multiple deaths was
November really last year, wasn't it?

A. To that scale, sir, yes.

Q. Yes. Can we have up please, the rescue callout history between 2000
and 2010, which is your document MRS0004?

25 **WITNESS REFERRED TO MRS0004**

1543

Q. That's a document which has been prepared by you and again short
circuiting events, starting from 2000 there are events described as
spontaneous combustion events. What are those?

30 A. Basically coal fires sir. It's one of the most significant hazards, if you
like, for underground coalmining on the West Coast is that coal wants to
go on fire before you actually put it in a burner.

Q. And if we look through that catalogue we can see that in fact they're very numerous, almost every year, if not every year?

A. Yeah, that's correct sir.

5 Q. In 2006 I think there was the event at Black Reef and also the Roa Mines, deaths there, that right?

A. Yes, that's correct.

Q. And on those occasions Mines Rescue really played the role as incident controller in conjunction with the police. Isn't that right?

A. Yes, that's fair to say sir.

10 Q. And even in 2006 there were lessons that were learned because it was quite apparent from your perspective and from the police's perspective that there were things that could've been done better?

A. Certainly, and after Black Reef we had a debrief with a sergeant, I think she was at the time, Alison Ealam.

15 Q. Yes.

A. And made some big steps forward with our relationship with the police from that time and that was clearly evidenced at the Roa incident, if you like, in the support that the police provided, and certainly the working relationship at the Roa mining incident, which occurred six months after
20 Black Reef.

Q. As a result of those events in 2006 how would you describe your relationship with the police?

A. An excellent working relationship with the police here on the West Coast. I can't speak for the North Island because I've been based
25 down here on the West Coast. But since 2006 we've communicated regularly. We've actually put quite a number of their staff, and in fact I think it was later 2006 or early 2007 the entire police force here on the West Coast came to the Rapahoe Station to gain an overview of Mines Rescue and our resources, our capabilities et cetera, and some
30 of the senior police staff that were around at the time, and I think it may have even been the area commander, were taken through an underground mining induction and taken underground at the Spring Creek Mine. I think, thank you to Solid Energy that they allowed for that

to happen, and they gained an appreciation of an underground environment, something that was quite foreign.

1546

5 Q. As far as that was concerned, did you deal with Sergeants Judd and Cross and Senior Sergeant Ealam?

A. Certainly with Senior Sergeant Ealam and Sergeant Cross. I have had dealings with Sergeant Judd on numerous occasions as he was a police officer located in my hometown for a number of years, yes.

Q. So you knew him well?

10 A. Yes, yes.

Q. In fact I think one of them was a volunteer fire brigade member when you were in the brigade, is that right? Is that Sergeant Judd?

15 A. He may have well done sir. I know there were a couple of policemen that joined the fire brigade in Reefton while I was there. Yes, I'm not sure if it was Sergeant Judd.

Q. As at 19 November of last year, how many underground coal mine operations were there? Sorry, in New Zealand?

20 A. In New Zealand, one in the North Island, Huntly East Mine, Spring Creek Mine, two mines at Roa, Pike River, and the Terrace Mine in Reefton was on care and maintenance. There was a very small private underground mine that had just started in around the Reefton area. That pretty much was it sir. Coal.

Q. So you'd accept at least in comparative terms, New Zealand is a minnow compared with the states of Australia?

25 A. Yes sir.

Q. In terms of numbers and sophistication and size and scale and all those sorts of things?

A. In terms of numbers, I'm not sure about sophistication but...

30 Q. Do you remember Mr Brady telling us about the necessity to undertake, I think he told us, every mine having to undertake a level 1 exercise every year which lasted for a 12 hour shift? Do you remember the telling of that?

A. Yes sir, yes. I'm familiar with the level 1 exercises, only having read them and discussing with Queensland and New South Wales members.

Q. Were there any level 1 exercises undertaken by New Zealand Mines Rescue to your knowledge?

5 A. Not to the scale, where you're talking about a 12 hour exercise. There was a full evacuation exercise conducted at the Spring Creek Mine in April of 2010 which we fully participated in and I assisted in the organisation of and that was a multiagency exercise that involved police, fire service and St John ambulance along with ourselves.

Q. What was your understanding before the 19th of November last year of Pike River's emergency response management plan?

10 A. My understanding of the plan, the only time that I came into contact with it was in 2008 when Mr Neville Rockhouse had requested Mines Rescue to have a - review it for him and to have a look at its "robustness" if you like, and I handed that task on to one of the training officers that we had working for us at the time who unfortunately died a short time later and he undertook that, he was a very experienced Mines Rescue member having been the general manager for 10 years, and he undertook that review for Mr Rockhouse and provided him with some feedback on it.

1550

20 Q. Did you note that it didn't appear to have any provision in terms of emergency response in the event of an explosion in the mine?

A. I can't recall sir.

Q. You knew this was a gassy mine didn't you?

A. Correct.

25 Q. In fact, I think you'd experienced an occasion when the ventilation went off and it was noted that the mine gassed-out pretty quickly didn't it?

A. Yeah, that's correct, that was about six weeks prior to the 19th of November.

Q. Do you remember how long it took for the mine to gas-out?

30 A. I think I've said in a brief that it may've been nine hours and that was my recollection at the time I prepared that but it was in quite a short space of time sir.

Q. Now, Mr Stiles, Glenville Stiles, he contracted to MRS for first aid training, he was a medical auditor and he contracted those services to your organisation, is that right?

A. Yes sir.

5 Q. Were there any other specialised roles in MRS which were contracted out in a similar fashion?

A. No sir.

10 Q. Did you see a role for MRS as far as monitoring or providing advice to whoever needed to receive that advice on issues relating to safety and evacuation issues at Pike River Coal Mine?

15 A. I do see a role for MRS sir and to elaborate on that slightly, for quite a number of years now, it's probably from recall, since 2005, the Spring Creek Mine had contracted Mines Rescue to complete a monthly audit of all their emergency equipment underground, including breathing apparatus, looking at lifelines, fire fighting equipment, escapeways, just a bit of a holistic view, if you like, from an independent set of eyes and we still do that to this day, sir, on a monthly basis. At Pike River, Mr Rockhouse invited me in 2009, from memory, to undertake that audit
20 up there. We weren't asked to go back and do another one. It was my understanding that they were doing a lot of their auditing in-house and Mr Couchman actually spoke to that the other day, sir.

1553

Q. Did you before the 19th of November know about the problems in relation to a second egress?

25 A. Yes, sir. The audit that I undertook in, I think it was August 2009, when I wrote the report to Mr Rockhouse, I did make note of the second means of egress and I think I used the words that, in my opinion that it would've been virtually impossible to use in the event of a fire, or an irrespirable atmosphere. I'm not sure of the wording, but...

30 Q. And whose attention did you bring that to?

A. To Mr Rockhouse and I believe that was what initiated the risk assessment process.

Q. And we heard from Mr White about that, didn't we? Did you know anything at all about the availability or the appropriateness of fresh air bases or changeover stations?

A. I go back to the completion of the risk assessment when I last attended.

5 It was my understanding it was clearly determined at that time that the ventilation shaft was not an adequate means of egress from the mine in an irrespirable atmosphere and that subsequently a refuge bay was going to be provided at the base of the Slimline shaft. Discussions through the risk assessment process, I recall, were around the
10 establishment of the refuge with a proper, properly constructed wall with an airlock going into it and that was my understanding at the time that I finished with the process that Pike River were actually going through with that and I do recall the, I think it was Mr Moynihan, at the time, sort of spoke in some detail around how that was going to occur. Along with
15 a roadway from the south section of the mine, it was going to come back up into the Slimline shaft and basically form a crosscut or cut-through and there were going to be stoppings or airlocks constructed on either side of the Slimline shaft, gave access into the refuge area from both sides. Unfortunately I believe that that roadway that they were driving,
20 the ground conditions were poor and they couldn't continue because that roadway collapsed.

Q. How's MRS funded?

A. We're funded by a levy that is paid by the coal sold. The levy is set by the Government, under the New Zealand, under the Mines Rescue
25 Trust Act 1992, so it's - the levy is legislated.

Q. Is that based on a tonnage, certain amount per tonne?

A. Yes, and there's a different rate between underground coal produced to open cast or open-cut.

Q. Open cast's about half of what underground is, isn't that around about
30 the proportion?

A. Correct, half, it is half for open cast operations with underground workings and slightly less for virgin coal.

Q. Solid Energy represents more than 82% of New Zealand's national coal production, isn't that right? That seem to you to be about right?

A. It sounds about right, sir, yes, yes.

Q. So, that more than 80% of Mines Rescue's funding would come from Solid Energy based on this levying process that you've described, that be right?

5 A. Correct.

Q. Now, on top of that, you also, that is MRS also has a commercial arm which charges for certain services like audits and training and that sort of thing, doesn't it?

10 A. Yes, that's correct, sir. We've, for a number of years now, we've become a more proactive organisation, if you like, we've gone away from being the ambulance at the bottom of the cliff and tried to assist companies wherever possible with health and safety issues and certainly training and getting knowledge and education into our industry.

1558

15 Q. I mean would it be fair comment to say that essentially the position, as far as this hearing is concerned, of MRS is indivisible with Solid Energy's position, and I'm really asking that question in the context of the number of Solid Energy members of Mines Rescue Trust who have also provided briefs to this Commission?

20 A. Mines Rescue Trust is made up of two Solid Energy members. And it actually has three on it at the moment because Mr Hughes, Robin Hughes, was co-opted onto the Mines Rescue Trust not long after its inception. At the time he was the Chief Inspector of Coal Mines.

25 Q. Well for 22, and I'm reading s brief of evidence which has been filed by Craig Smith, and for the record it's SOL381667/3, paragraph 4.1 and 4.2, clause 22 of the brigadesmen who attended the incident were Solid Energy New Zealand employees. Would that seem right to you?

30 A. Yes, that would sound right. Not all of them are directly New Zealand Mines Rescue Service members, but certainly they contributed significant resources to assist with the Pike River emergency sir.

Q. And again, would it be fair to say that on these issues of the sealing, on the issues of survivability, a partial sealing, that the views expressed by the Solid Energy personnel is largely parallel to those expressed by Mines Rescue in their briefs?

A. That'd be correct sir. They're senior mining people and they understand mining.

Q. Now on the question of sealing, your proposition that Mines Rescue on Saturday the 20th is starting to quietly work on plans to seal the mine?

5 A. Yes, that'd be correct sir. That was when it was first discussed amongst Mines Rescue staff as contingencies.

Q. Right. And the purpose of that, I think you've already told us there were a variety of purposes, was one of those to quench, what I think has been described in other evidence as a likely methane fire?

10 A. Yes.

Q. And when you say, "Working quietly on plans," that was because this was this parallel contingency planning that needed to be put in place in the event that it was necessary to move relatively quickly on the question of sealing?

15 A. Yes, that's right. The contingencies were being explored and that's why the issue was raised to try and get some formal process around sealing options.

Q. The first time the question of sealing was raised in IAP appears to have been the IAP to the period of six to 8.00 pm on Saturday the
20 20th of November. Would that seem about right to you?

A. It may be in the first IAP. I believe that's on a Saturday afternoon. Mr Robin Hughes attended two incident management meetings to convey what he was seeing in the gas analysis and his expert opinion on the likelihood of a fire maybe burning underground. And at the time
25 he advised that the only way known of extinguishing the fire in these circumstances is to starve it of oxygen. But it was more to assist the incident management team with critical information that would be required for decision-making processes.

1603

30 Q. Well whenever it was raised there really wasn't any question of being shut down by the Department of Labour or the police, so the question of sealing couldn't be discussed was it?

A. Well, my understanding from being there with Mr Devlin when it was raised, that it was just sort of a flat "no," that that wasn't going to occur

at that time and there was no lead as to well let's put this into the planning co-ordinator's role and let's put some structure around that.

5 Q. I take it from your evidence that you were strongly of the view that this needed to continue to be provided for rather than sort of shut down and cut off at the ankles by some comment attributed to the Department of Labour or the police. Would you agree with that?

A. Sorry, can you repeat the question.

10 Q. In terms of that decision, the question of sealing, it's your evidence that that was something that needed to be continually discussed as part of this parallel contingency planning?

A. Certainly, with some mining people yes, yeah.

Q. Well it must have been a matter then of very considerable concern to you that it appeared that the police and the Department of Labour were stopping this discussion wasn't it?

15 A. From the Mines Rescue people onsite I guess there was some frustration that it wasn't able to be planned further, if you like sir.

Q. Who was it who said that and shut the conversation down in the fashion that's been described?

20 A. I couldn't give you a name sir because I wasn't present for each time that sealing was discussed. Some of my colleagues and the likes of Mr Hughes or Mr Bell, Mr Smith also attended those briefings with police and whoever else was there. We believe that somewhere along the line that there was discussions held with Mr Bellett, Mr Firmin and Mr Poynter, and I believe that there was even a phone call from
25 Mr Stewart through to Ms McBreen-Kerr is it? Sorry, I apologise for forgetting her name, but from the DOL.

Q. Well was it shut down in your presence?

30 A. It was discussed, well it was raised by Mr Devlin on the Saturday night, midnight on Saturday night just if anyone considered the issue of sealing and it was "No, we're not going to go there."

Q. And who said that?

A. My understanding at the time was the police, sir.

Q. You were there weren't you?

A. Mmm.

Q. So do you remember who it was who said it?

A. No I can't sir. There was so much that happened in that time and I'd like to just expand on this slightly. This was a very dynamic and fluid event. The last thing we were going to try and do was to get into arguments, if
5 you like, with decisions that were being made. We needed to, we went away and discussed that further.

Q. So did you feel that this wasn't something that you could advance more robustly in that environment?

A. Yes correct sir, and I think that that planning structure wasn't one that
10 lended itself to openly airing these ideas that, because you need to consider all possibilities and start to develop strategies if you like and have small planning groups and to use the term that's been used a lot, "parallel planning," yes.

Q. But this was obviously an important consideration as far as you were
15 concerned, this question of at least having a parallel contingency plan for the sealing of the mine. It was an important in your mind and the minds of Mines Rescue presumably?

A. Yes, that's correct.

Q. So even if you felt that you couldn't deal with it at that particular
20 meeting, what steps did you take to raise it with the other police. We know from your evidence you've already given that you knew well, the Sergeant Judds, Crosses, Ealams if you knew it was in the -

A. Sergeant Judd was there the first night that I was working there and I
25 think he did return again at some stage. I worked at various times obviously there was someone filling my role or that was acting as the officer in charge of Mines Rescue while I was absent from the site, but it was raised on numerous occasions through the Sunday and again on Monday by not myself in particular but certainly by Mr Hughes, Mr Smith and Mr Bell along with Rob Smith, our officer in charge.

30 1608

Q. And I take it they reported back to you that they were meeting this
intransigence, this war on the question of sealing. Did they tell you that?

A. Yes we were in conversation around the sealing issue.

Q. Did you raise it with the police that you knew, did you ring them up and say, "Well look, actually, this is terribly important. We don't feel that we're getting a voice in the incident management team meetings, look, this is really important, we need to talk about this."

5 A. Yes, I did have a conversation with an inspector on the site, I can't recall when that was, I think it was around the 26th of November.

Q. Well, that's after the second explosion?

A. That's correct.

10 Q. I'm talking really about this, what we've been calling the rescue phase, up to and including the 24th. Up in that period, where you're concerned about the question of sealing this mine, what steps did you take to raise that issue with people more senior within the police?

A. Conversations that I would've had around that time, I know that I met with Mr Knowles on a couple of occasions, and to be fair, I can't recall
15 having a conversation with Mr Knowles about sealing.

Q. So you didn't have a conversation with him?

MR GALLAWAY:

Let him finish.

CROSS-EXAMINATION CONTINUES: MR MOORE

20 Q. I'm sorry, have you finished?

A. I do recall that Mr Knowles had appointed Inspector Mark Harrison to be a liaison with us. I'm sure that, from memory, that we did discuss the issue of looking at sealing of the mine and I just want to reiterate, sir, that this was something that we wanted to be discussed and planned, if
25 you like, as a contingency and needed to be explored thoroughly along with, we knew that this was going to be a very difficult decision. The decision around sealing can be interpreted in a number of ways and obviously it has been and the whole issue of survivability would have been raised early with those discussions around sealing and looking at
30 survivability would've been an issue that started to raise its head then, I believe, to plan.

Q. Did you raise the issue of sealing with Inspector Harrison?

A. I'd had a number of conversations with Inspector Harrison and, to be honest and to be fair to Inspector Harrison, I don't recall whether I voiced my strong opinion on the sealing of the mine to him at that time. I know we had discussions around survivability.

5 Q. And you don't remember whether you raised it with Superintendent Knowles?

A. I would recall if I'd raised it with Superintendent Knowles and I don't recall that. I only met with Superintendent Knowles on very few occasions. I think it was the Saturday night and not again until the
10 Sunday when I came down for the media brief and at that meeting, it was very, very brief and the discussion was around the media briefing with myself and Mr Whittall and that was it.

Q. To your knowledge did anyone else who held this view about sealing, raise their frustrations with anyone in charge of the sort I've mentioned
15 already, the sergeants, or the superintendent or the inspector?

A. With the incident management team we thought, well, my understanding from talking with my colleagues and that we believed that we were talking to the incident controller for a number of days and it took a while for us to work out, if you like, that there was another tier, if you like,
20 where Mr Knowles was working out of the Greymouth Station and then later on in the piece that we've discovered that in fact there was a third tier with Mr Nicholls in Wellington as well. So, I guess in the early stages we really thought that we were talking to the incident controller.

1613

25 Q. The inflatable seal was requested, when was that requested?

A. It was requested quite early on I believe sir through police. And I think that that's something that they accessed very quickly and had manufactured in Western Australia from memory. It was requested while I wasn't on site, however I do understand it was -

30 Q. Who requested it?

A. I believe it may have come from Mines Rescue actually sir, yeah.

Q. It's likely to have isn't it?

A. I think so, yes, yeah.

Q. And you know that it was ordered on the 21st of November, two days after the explosion, within two days of the explosion?

A. Yeah, I believe that's correct sir.

5 Q. So there was no question there, was there, over lack of contingency planning information to a possible seal that could be deployed was there?

A. No, not in that circumstance that's for sure.

Q. Do you remember when that seal arrived in New Zealand?

10 A. No I can't recall the date when it arrived. From memory it was manufactured relatively quickly and flown to New Zealand relatively quickly, yes.

Q. And after it arrived in New Zealand it was available to be deployed before the second explosion on the 21st?

A. I couldn't tell you sir, no.

15 Q. You've got that inflatable seal at Rapahoe, is that right?

A. That's right sir, she's a big beast.

Q. And the question of the possibility of a fire inside the mine was a debatable issue at these IMTs wasn't it? It wasn't a question of being shut down on that issue either was it?

20 A. No, no, I don't think the police ever attempted to shut down the issue around a fire. And in fact in Mr Hughes' evidence I think he, correct me if I'm wrong, but it may have been in the institutional brief that, yes the police certainly acknowledged Mr Hughes' advice, if you like, and they were genuinely concerned with the information that was being passed
25 them by Mr Hughes.

Q. And of course you were present when Mr Brady gave evidence about this whole issue of whether or not there was a fire and the sorts of diagnostic signals that some might interpret as being a fire, in fact being somewhat misleading and perhaps being vapour from the remnants of
30 the explosion, the afterdamp? Do you remember him saying that?

A. Yes I do and Mr Brady explained that quite well.

Q. Was that something that was raised at any of these IMT meetings before the second explosion to your knowledge?

A. The possibility of vapour?

Q. Yes?

A. I'm not sure about whether it was vapour. I know in the early stages, I've already spoken about today, that when our teams flew over there was a brown smoke that was issuing from there. There were reports of
5 a light white smoke seen at the time. I do recall Mr Hughes saying to me that if people could've seen what he'd seen at the vent shaft they'd understand it was on fire with the heat haze that was coming out of the mine.

Q. I suppose what I'm really trying to convey here, and I'm wondering
10 whether you agree with this proposition, that these IT meetings were in fact quite dynamic in terms of the opportunity for people to put up ideas from their various perspectives and bounce those ideas around. One was the question of sealing, another was a question of whether there was a fire or not, and another I take it would be the question of
15 survivability, would you agree with that analysis?

A. Certainly with the fire, yes, and there were a number of occasions when sealing was discussed. It was definitely an inappropriate forum for discussion of survivability due to the number of people that were in the
20 IMTs and the makeup of the IMTs. We've already heard about the size of them, they were very large. It appeared that everybody that was involved, and certainly no criticism of any agency that responded to Pike River, everyone worked very very hard up there but we had every agency represented in the IMT meetings and it wasn't appropriate forum to discuss the issue around survivability. It wasn't until a later date that
25 that was really formally put into place.

1618

Q. I wonder if two documents, and we've already seen them before, but I don't think we've seen them together and these are the options models that were put up and already there's been some evidence about them,
30 two documents, I wonder if they can be put up together, simultaneously, the first is PIKE.12533 and the other is MRS0063/1? It may not be possible given that configuration needs to be lengthwise rather than vertically. If it can't be done, we can do them separately, perhaps if we first put up PIKE.12533?

WITNESS REFERRED TO PIKE.12533

- 5 Q. Now, it's a little difficult to read that, but is that an options model that was nussed out in – well done – in collaboration with a variety of parties and I'm talking about PIKE.12533, which is the left hand image as we look at it there?
- A. Yes, correct, sir.
- Q. Were you engaged in that exercise?
- A. Yes.
- 10 Q. And this, at least is stated to be the options model as at the 23rd of November 2010?
- A. That's correct, and I believe that initial discussions around this may have started on the 22nd.
- Q. Now, if we look down at the options there, there is fire exists to the left, yes, to the right, no, correct?
- 15 A. Correct.
- Q. So, certainly as at that time the question of the existence of a fire was equivocal, wasn't it, as either possibly, possibly not?
- A. Yes, that's correct, sir, yes and we've heard clear evidence from Mr Brady around that.
- 20 Q. And if we look towards the left-hand side of that chart, we can see that certainly the question of survival is certainly left open with the words, can you see there, "Any potential survivors at this stage will have needed to have a self sustaining air pocket that's unlikely to be altered with these options." Do you see that?
- 25 A. Yes, correct, sir.
- Q. That would certainly indicate at least to the uninitiated reader of that, survival was still a live issue as at the creation of this document on the 23rd. Would you agree with that?
- A. What was – it's just trying to state that for anyone to be alive at this
- 30 stage, they would've had to have been on the end of compressed air, that's correct, yeah, and I think it was around this time that it became known that the compressed airline was fractured.
- Q. All right, well, perhaps you might look at the next document, which for the record is MRS0063/1?

WITNESS REFERRED TO MRS0063/1

Q. That's a more recent iteration of the document I've just been referring you to, isn't it? Do you agree?

A. On the right-hand side?

5 Q. Yes, on the top right hand corner, "Created 23/11/10", which would presumably relate to the first document and "Updated on 25/11/10", do you see that?

10 A. Yes, yeah, I'm not sure, like with the update it would've, obviously post-second explosion when the options for inertisation started fully, if you like.

Q. Right. If we look at the top of the document, you'll see, "Options model operation Pike – V2." Does that refer to version 2, do you think?

A. Yes, I presume so, sir.

1623

15 Q. And the contributors to that document are listed in the top left-hand corner aren't they?

A. That's correct.

Q. And they include you amongst other experts, correct?

A. Correct.

20 Q. And again even at that stage the question of survivability hasn't been ruled out as an option has it?

A. It hasn't been taken off –

25 Q. Because again we can see the words, "Any potential survivors at this stage will have needed to have had a self-sustaining air pocket. It is unlikely to be altered with these options." So that's certainly a comment which has endured from version 1 to version 2 hasn't it?

A. It's carried over sir, and it's – I don't know why it would have carried over, to be honest.

30 Q. The question of partial sealing, and you talked about it in your evidence earlier. Where did that notion come from?

A. I guess it was out of a discussion amongst Mines Rescue members that were on site. I don't guess, I know. Just looking at contingencies, how they could gain control of the mine atmosphere. And it was just one of the things that was discussed, and like with any dynamic operation,

emergency event, you need to start tossing ideas about and contingencies.

Q. Were you aware of any other model internationally or locally where partial sealing had been utilised?

5 A. Partial sealing? Not in an event such as Pike River, where explosion with –

Q. What event? If it wasn't Pike River, not like Pike River, can you think of another occasion when it was used?

A. Partial sealing. No, I can't see it on the top of my head, mmm.

10 Q. You'll remember the evidence of Mr Devlin on that particular matter. He, it seems on the evidence, arrived at the site about 8.00 pm on Saturday and he told us, and this is referred to in the notes of evidence at 2073 between lines 1 and 6, that he just couldn't get his head around that as a motion. Have you heard that evidence?

15 A. Yes I have yes, and I can understand when you've got a fire situation, that is generally only one way you can seal and that's fully seal, and yeah the partial sealing was a discussion if you like, and it needed to be certainly thrashed out in a robust way and may have never got over or beyond that point of a robust discussion.

20 Q. And you were present here with Mr Brady when he gave his evidence. Do you remember?

A. Yes.

Q. Were you present?

A. Correct.

25 Q. And, I've already covered this, but would you agree with the proposition that really you wouldn't be able to know whether there was a fire underground until gas readings to emerge from borehole 43, would you agree with that?

A. To confirm suspicion that there was a fire underground required further
30 data, yes.

Q. Would you agree that the most effective means of being able to test the environment underground would be readings in borehole 43?

A. Was going to be the only other option, yes.

Q. And of course we know that the first reliable readings for that didn't emerge until about 7 o'clock in the morning on the 24th of November, the Wednesday, the day of the second explosion?

5 A. Yeah, correct, and I don't think they were reliable even at that stage. It was quite clear from discussions with Mr Brady, Mr Singer, and advice that we'd received from Mr Mason from Coal Mines Technical Services we need a number of hours of sampling to be confident that we were getting truly representative data from the borehole.

10 Q. And would you agree with the evidence of Mr Devlin, for the record at page 2073, as well as Mr Brady that sealing wouldn't necessarily prevent a second explosion in any event?

1628

15 A. Yes, correct sir, we understand that sealing could have induced a second explosion, it's an unknown. On the other hand we also know that doing nothing could have led to a second explosion, so damned if you do and damned if you don't situation.

Q. It was wasn't it? That's real dilemma that you and others found yourselves in?

A. Correct.

20 Q. Over that whole period.

A. Yes and that's where, you know, a big learning, and it's been acknowledged before and I don't want to dwell on it but is around that whole planning, that the planning and intel side of this incident such as this can never be underestimated and well, there's a lot of learnings for that for the future.

25 Q. And really the same could be said, couldn't it, about survivability?

A. Oh, absolutely sir. Again, it's something that we've heard that can start in the very early phases and it's not a decision that can ever be taken lightly and it's one that, unfortunately, somewhere along the line has to be made.

30 Q. We've heard different tests thrown around about this question of survivability and when you might seal and it's been referenced to, you wouldn't seal before there was a zero chance of anyone being alive and others have talked about, "Well, you wouldn't seal unless you were

satisfied, beyond a reasonable doubt that there was anyone left alive.”
Would you have a test yourself that you would apply in terms of what
you, or the level of satisfaction you’d need to be happy with before you’d
be sealing?

- 5 A. I think one of the most critical things that’s required for any decisions is
that you have the right people involved in the processes of determining
survivability and I mean very experienced people, not necessarily just
mining people either, I mean that there needs to probably be a cross-
section of people to a certain degree to bring some objectivity to it.
10 However, it would be an evolving process from the very early stages
where you’re working with the information that’s available at the time
and taking all those factors into consideration that I mentioned earlier on
in my brief this afternoon, around things that we do know and there are,
of course, things that we don’t know.
- 15 Q. One source of information would obviously be those who know the mine
best in the form of the owners and managers of the mine, do you agree
with that? That’s a source?
- A. A source of information about the mine itself, yes.
- Q. Well, what about survivability at least in terms of their understanding of
20 the geography and the layout of the mine that which they own and
operate?
- A. They obviously would have views on survivability, yes.
- Q. And those views would be views which, like your own, you’d put in the
pool wouldn’t you?
- 25 A. Correct.
- Q. Now, you’re also aware of the assertion that a phone call was made
from that mine after the explosion?
- A. Yes.
- Q. Are you aware of that assertion being made?
- 30 A. Yes, and it was our understanding that, from being in an IMT meeting
when police reported back, that that had been eliminated.
- Q. Yes. Do you remember when that was eliminated?
- A. Sorry, sir, without reference I don’t.

Q. Was that a matter that you took into account when you were looking at the question of survivability?

5 A. When it was first raised it was something, it was of concern when it was first raised at the IMT meeting that a phone call had been made but then didn't take any other consideration after the police came back and eliminated it from occurring.

Q. The fact is that slim as it may have been, you did believe, right up until the second explosion, that someone may have survived inside that mine didn't you?

10 A. My belief, no sir.

Q. None at all?

A. None at all.

1633

15 Q. What about someone injured, I mean did it occur to you that someone may have been up in that mine unable to self-rescue because they were injured?

20 A. If they were injured they had a 30-minute self-rescuer on their belt. They wouldn't have been able to reach the changeover station if the compressed airline was fractured. If they were injured in the top portion of the main drift the air from the mine reversed on a number of occasions they would've been inundated with a toxic atmosphere on numerous occasions.

25 Q. So from your perspective you were sure, at least by say the Tuesday or the Wednesday that there was no one left in that mine alive. Is that your evidence?

A. That was my own personal feeling sir, I could not comprehend how people could've survived for that period of time knowing all those factors that we've discussed a couple of times today and the time that had elapsed. That's a personal feeling, a personal belief sir.

30 Q. Now you were giving interviews on the 23rd and the 24th of November weren't you to the media?

A. 21st and 23rd sir. The Sunday was the first time that I completed a media interview and then again on the 23rd.

Q. You were reported I think in the Christchurch press on the 23rd of November saying that Trevor Watts said, "Operation readiness was stepped up yesterday, that's the 22nd, and they, MRS, could go in at a moment's notice. Rescuers were chafing to get down the mine.

5 Stepped up operational readiness." Would that have been what you would have said either to the press or in a media statement at that time?

A. Yeah, obviously it's been reported that way sir. And if I can just keep that in context, stepping up the operational readiness. It just meant that we had more resources available to us at that time and that we were, you know, further preparing to enter the mine should we have got data that had determined it was safe to do so.

10

Q. Well you certainly weren't saying to the media, "Look the chances of survival here in my view are next to nothing," were you?

A. Absolutely not, and there was no way that I was going to stand up in front of national TV and give my personal belief. And certainly on the Sunday I couldn't have done that because we were still coming to grips, you know, if we bear in mind that, you know, I was there till, whatever time it was on the Saturday morning, 11 o'clock, home to bed at 3.00 pm, three hours sleep, back to the mine site for a few hours, trying to get a grasp of what was happening at the mine, certainly couldn't have made that statement on the Sunday. But I wasn't part of any media strategy either around what was being released and certainly what was being released to families.

15

20

Q. Certainly, and I don't wish to sound critical Mr Watts at all, but there was nothing in what you said to the media which conveyed your personal pessimism on the question of survivability was there?

25

A. My personal realistic belief, not pessimism. I've been accused of being a pessimist, I've been a realist, yeah. And no, there wasn't sir. And if I was put in a position like this again I would certainly be knocking on Mr Knowles' door and making sure that my feelings were known a lot stronger.

30

Q. And certainly you would've been aware that those comments filtering out into the public arena, including the families obviously, and the impression conveyed, you'd agree from your comments was that

Mines Rescue were ready, set to go and commence a rescue operation.
Is that a fair comment?

A. That's correct.

5 Q. I just wonder if you look at a document, madam registrar I just want to give this document to the witness. Just looking at that document before I ask anyone to produce it, can you just help us with its provenance, do you recognise this document at all?

1638

A. It looks like a transcript of the media brief that I have given, yeah.

10 Q. Do you think it might've been something that you gave Commissioner Broad on the 23rd of November when you were talking about the operational position and the status of where Mines Rescue were?

A. Commissioner Broad?

15 Q. Yes.

A. I don't recall meeting with Commissioner Broad on the 23rd. I know that after the media brief on the 23rd of November I had a handwritten note that Mr Knowles asked if he could photocopy and that maybe it here, sir.

20 Q. All right, well perhaps before we go into that, it's dated the 23rd of November and it does record, "Still in rescue phase." Is that a correct statement of the position that Mines Rescue were in at that time, that is the 23rd of November?

A. Yes, it does sir, and as I stated, certainly weren't involved in any strategies around what information was being released. It was my understanding that I was providing information on what our status was, and it does read that we are in rescue, and I'd made those comments that we were in rescue mode.

25 Q. And it does record that you've stepped up your operational readiness, doesn't it?

30 A. Yes, on the 23rd of course, we had another 18 members of Mines Rescue arrive from New South Wales, so – stepping up our operational readiness is probably not quite the right term, but we'd certainly stepped up our resources that were available to us at that time.

Q. I want to ask you about your dealings with the families and you heard the evidence of Superintendent Knowles – I'm referring here Your Honour to pages 1893 to 1894, and 1919 to 1920 of his evidence-in-chief. You'll remember him telling us about why it was that he really needed some help from someone who knew something about what was actually happening so that he could convey that to the families. Do you remember him saying that?

A. Yes, I do, sir, yes.

Q. And that was a real concern because he was being criticised, as we know, from Mr Whittall for not knowing enough about mining and conveying that sort of information to those who needed to know. Are you aware of that?

A. I am aware of that, sir.

Q. And whilst accepting that you were very concerned to make sure that you maintained your objectivity in this process, you do understand, don't you, the frustration that the superintendent had, having to confront in a very emotionally charged environment, questions about what Mines Rescue were doing. You understand that?

A. Yes, absolutely.

Q. Now, you also indicated that you were also just too busy, is that right?

A. Too busy? I was focussed on the operation and as I stated earlier on, that was when borehole 43 was due for break through. That was when the first data was meant to be coming from the mine and we had to be absolutely focussed on the availability of that data and for me to have direct links with Mr Brady, Mr Singer and the people that were interpreting the information that was coming from the mine.

THE COMMISSION ADDRESSES MR MOORE – DIRECTION

1643

30 CROSS-EXAMINATION CONTINUES: MR MOORE

Q. With the wonderful benefit of hindsight, where could Superintendent Knowles have gone for that information?

A. With a robust incident management team and a structure, the information that came away from the incident management team could have been sufficient to supply up-to-date and accurate information to the families.

5 Q. And if they wanted someone from Mines Rescue?

A. I've had a discussion with Mr Raymond around this and it's something that going forward I believe that there is room to have a discussion when we're looking at the incident management structure for the future of mining on the release of information to families and if there was a requirement for expert information if you like, from specialist fields, how that would be addressed, and I think that there is – it's never been Mines Rescue's role to front families and to be honest we've never been put into this horrible situation sir, with these families.

10

Q. In the institutional report of Mines Rescue Service, and I'm referring to paragraph 408. In the interests of time, I won't go back to it, but you said that, "from MRS' perspective the objective of getting in control of the underground atmosphere, getting underground to recover the miners and determine the cause of the explosion was never the main focus." This is what you were talking about in relation to the IMTs. "Instead, a process trying to find out if anyone was alive and then a series of risk assessments, review of risk assessments and approvals by external committees not on site had taken over." But we know as at that time the inflatable seal was in order don't we?

15

20

A. Inflatable seal as ordered on the Sunday, correct.

25

Q. We know the tube-bundling was being facilitated by the police to get tube-bundling up to the site?

A. Correct.

Q. We know that robots had been deployed don't we?

A. Yes we know robots –

30

Q. So there were a lot of things that were happening at that time in terms of advancing this matter, not just a question of risk assessments and more risk assessments?

A. To be fair sir, the institutional brief does make reference to that. That's the way it appeared in the early stages. That's the collective brief of a

number of individuals. But certainly by the time that we'd got into the Monday 22nd there was a more structured approach to some of the aspects of the operation at Pike River and some of that was down to police officers as well with Sergeant Aaron Nicholson, for example, that was working closely with us and it started to take on more of a structure from that time.

5

Q. You said that one risk assessment was rejected for a spelling mistake. Who rejected that?

A. I'm sorry sir, I don't know. I don't know the reference to that particular risk assessment and...

10

Q. Would you know what the spelling mistake was?

A. No sorry sir I don't.

Q. Do you know which risk assessment it was?

A. No I don't know what risk assessment that was and yeah I don't know which particular risk assessment it relates to at all sir.

15

1647

CROSS-EXAMINATION: MR HAIGH

Q. Mr Watts, I think you'd worked with Doug White prior to the 19th of November?

20

A. I had met with Mr White on two occasions from memory, sir, I do you recall one meeting in particular with him, yes.

Q. Was that in relation to your training of Pike River miners?

A. That's correct. The trainee mine worker programme.

Q. And then you spent some time working with him after the explosion on the 19th?

25

A. I spent a lot of time working closely with Mr White.

Q. And I think you've already indicated this from your evidence, but you were impressed by his focus on health and safety?

A. Absolutely sir and that was prior to the 19th of November. The very first meeting, yes.

30

Q. And I think you're aware that his reputation in Australia was of a mine manager strongly focused on those two issues, health and safety?

A. Yes I was aware of Mr White and I had met him once in 2007 at a seminar in Emerald, in Australia. Yes, I was aware of that.

Q. Now, I want to take you to the institutional brief if I may, please, just to clarify a number of issues. Do you have that in front of you?

5 **WITNESS REFERRED TO INSTITUTIONAL BRIEF – PARAGRAPH 354**

A. Institutional brief?

Q. Yes please.

A. Yes.

10 Q. Do I take it that this was made up from contributions from a number of Mines Rescue personnel?

A. Correct, sir, this is made up of about 10 individual briefs of evidence.

Q. So, whilst you read the brief, clearly there are matters in the brief which you can't personally attest to?

A. Correct sir.

15 Q. Well, let's see if we can identify some of those. Can I ask you please to turn to paragraph 354?

A. Yes.

Q. Now that's the one where a statement is made in effect that reference is made to the statutory mine manager's statutory powers?

20 A. Correct.

Q. And how he must assume responsibility of the situation, become the incident controller, however, this is what the brief says, "This did not occur and the police assumed this position at 3.00 am on the 20th of November 2010."

25 A. Yes, sir, and when I read this earlier I did add to it by saying that what we clearly know now is that Mr White did take on the role as incident controller and when he left, he actually handed it over to Mr Neville Rockhouse, I think, when he flew up in the helicopter to actually view the vent shaft.

30 Q. And were you aware that Mr Knowles, I think it was, or maybe Mr Nicholls, said that at 5.20, Sergeant Judd in fact assumed lead control, or lead agency when he was up at the mine, were you aware of that?

A. Yes we're aware of that now, sir, yes.

Q. So that's one of the paragraphs which is inaccurate. Is that fair to say?

A. Yes, sir, it is.

5 Q. Now, can I take you to paragraph 378 please? This describes what the institutional brief identifies as some eight or so defects in the organisation when Mine Services personnel arrived. I want to just briefly take you through those. It starts off by saying, "There is very little information available from Pike, or MRS, upon arrival at the mine in particular there was; one, no confirmation of the number of men underground." Now, are we talking here about the arrival of who? Was that Mr Smith who arrived in the first instance?

10 A. Yes, Mr Smith and the first Mines Rescue team that flew in by helicopter.

Q. Now, we can temper that bold statement, can't we, by saying that at the time Pike were doing all they could to confirm the number of men underground?

15 A. That's correct sir.

Q. "Secondly, no information of whether there were any survivors underground." Again, that's precisely what Pike staff were endeavouring to do when Mines Services personnel arrived, to establish?

20 A. That's correct, and the phone calls were making on a regular basis.

1652

Q. So, although there may not have been finally resolved at that point, people were making endeavours with phone calls, looking at the tag system to determine who was there and so forth?

25 A. That's correct.

Q. And they were clearly working very hard as this tragedy unfolded?

A. Yes, under very difficult circumstances.

Q. No information of where the men had been working prior to the explosion. Again, that was being worked on at the time. Is that your understanding?

30 A. I'm not sure if it was being worked on at that time. I know that after the Mines Rescue personnel arrived that soon after, one of our members

met with Mr McNaughton and he assisted in that process of determining where men were.

5 Q. Right. No information of the atmosphere underground, well, again that's pretty harsh, isn't it, because they were working through monitoring right from the outset, acknowledge that they had an explosion on their hands?

10 A. We knew there was an explosion sir, but yes, there was definitely no information on the atmosphere underground, apart from the air vent that did leak. We heard about the real time monitoring system being lost and –

Q. Well that's because they didn't have a tube-bundling system, which would've helped?

A. That's correct, sir, yes.

15 Q. And the other monitors had been damaged or disappeared in the explosion?

A. That's right.

20 Q. So, again when we've got no information of the atmosphere underground and, indeed, the next one, no information of what gases were present in the mine, the staff were all working on that weren't they? Monitoring systems to get a monitoring device organised for the Slimline shaft or wherever, ventilation shaft -

A. Yes, early on in the piece, discussions I think between Mr White and the officer in charge was to look at how we can get gas sampling from the vent shaft, and it was enacted after that time.

25 Q. No tube-bundling system, well, you would know of course that – or now, anyhow, that Mr White had been pressing for the introduction of a tube-bundling system from early on?

A. I'm aware of that now, sir, yes.

30 Q. June of that year, or earlier. No established boreholes from which gas sampling could be begin – could be begin it reads, to be taken and monitored. Does that include the Slimline shaft?

A. I think this is referring more to knowing where the boreholes were that sampling could be taken from. I think it took some time to try and establish where all the boreholes were and if any were available.

Q. From the time that the mine was initially developed?

A. Yes, sir.

1655

5 Q. No possible explanation for what may have occurred underground to cause the explosion, well that's still a question mark today isn't it?

A. That is right sir.

Q. So all in all you'd agree that description there in general is somewhat harsh isn't it?

10 A. It does appear somewhat harsh and there is obviously work that was going on from the time that this event occurred?

Q. Exactly. Paragraph 384, "The mine was not set up to provide accurate information. There was no tube-bundling system, no remote sensing, no automatic airflow monitors and there were access constraints." Well I suppose that in itself is not untoward. Could turn then please to
15 paragraph 387, "A statutory mine manager gave incorrect information about location of the self-rescuer caches. This was critical information relating to possible survival within the mine which MRS specifically asked for." Now who do you say Mr Watts he gave this information to?

20 A. I wasn't present during this conversation sir but I believe that he had a conversation with Mr Dave Stewart and that Mr Stewart asked him where the self-rescuers were and it's my understanding that Mr White had said in the location of the crib areas, or smoko areas, at the working faces of the mine. But, yeah, I can't add to that at all sir.

Q. Have you any idea why he would say that, which is patently wrong?

25 A. No I don't sir.

Q. No. Not like Mr White is it?

A. No, no, certainly not.

30 Q. Well can I just draw your attention to a piece of evidence that took place earlier when you were being examined in chief by Mr Gallaway. And there was an exchange between the two of you about a discussion between Rob Smith and Doug White on the 19th of November last year in relation to lowering the phone and other equipment down in a bucket down the Slimline shaft?

A. Yes, correct sir.

Q. And you're recorded as saying, this is thanks to Ms Smith recording it, not me, that you said, "What was known was the self-rescuer cache was at the bottom of the Slimline shaft?"

5 A. Yes sir, we're aware that there was a cache there so we didn't know at that time if that was the only self-rescue cache in the mine and whether there were any further into the working Slimline.

Q. Well the chronology, that is Mines Rescue Service, demonstrates that the bucket was lowered at about 8.00 pm?

A. Yeah.

10 Q. So that sound about right?

A. Yes it does sir.

Q. I'm just curious as to how it is that we can have recorded in here that the statutory mine manager gave incorrect information about location of the self-rescuer caches when prior to 8.00 o'clock he was telling you precisely where they were?

15 A. I'm not sure if he actually stated that's where they were at that time sir, it was a known piece of information by the Mines Rescue officer in charge at the time because he had seen the self-rescuer cache himself only a few weeks prior. And as I said sir, we didn't know at that time if that was the only location of self-rescuers in the mine.

20 Q. It doesn't seem accurate does it, what's recorded at 387 really?

A. Yeah, look I can't comment any further sir because I wasn't part of the conversation.

25 Q. Right, I understand that. Can I refer you to paragraph 390, where you indicate that, and maybe this is one of those paragraphs you've amended already, where you tried to, significant amount of time tried to gather the information required, little assistance from Pike, MRS also tried to establish an IMT and regular ICMS which was the responsibility of Pike to establish. This is a difficult task. By default Rob Smith was responsible for getting the IMT and IMC process established?

30

1700

A. Yes I think I did try to cover myself slightly before, sir, but I think it's fair to say when you strip a lot of this away and actually look at what

occurred at that time with the small number of people at Pike River how difficult this task would've been for them and I'm not trying to just ...

Q. Well, that's not accurate though is it?

5 A. It's quite harsh but that was the way that it appeared to the first people that arrived onsite.

Q. Well, I think it's important that we get across what Steve Ellis said. When he gave evidence he said that he and Callum McNaughton, the surveyor, set up the boardroom, copied plans, et cetera, and he said that Doug White led the IMT, discussed strategy, et cetera. The need for gas sampling and that he was the one that set it up and Mr White also says that, that is, Ellis says White set it up and White says that as well.

10 A. Yes, it's obvious that Pike River set the room up and may not have been apparent to our members when they arrived onsite and I think it was trying to get that first IMT running where the difficulties were encountered from my understanding but once they had established the first IMT then they continued in a regular interval.

Q. Well, again I suggest to you, you may not be able to comment, but that's actually inaccurate but you can't comment because someone else has contributed to this very lengthy brief.

20 A. Yes, that's correct. If the incident management room was set up, yes, we'll have to acknowledge that but our guys weren't aware of that at the time of their arrival sir.

Q. No, you see the problem is when you make allegations of this nature it can often be picked up by an unbalanced member of the media so that we only get one view of it, do you see the problem?

25 A. Yes and getting that first IMT did appear to be an issue for our members and that's why.

Q. Paragraph 397, and we've only got one more question, one more topic, expresses the MRS' surprise that the police had taken the role of lead agency and it says that, the last penultimate sentence, "The police, however, assumed this position," that is of the lead agency, "And made it clear that it was not open to debate. It was not challenged by the statutory mine manager at the time." Now, you've said in your own

30

evidence, very fairly Mr Watts, that should such a tragedy occur again anywhere in New Zealand that the police should be the lead agency, right?

A. Correct sir.

5 Q. What did you expect the statutory mine manager to say or do when the police say, "We're lead agency. This is a massive issue here, we're taking control."

10 A. Yeah, it's difficult to answer, sir. They have said it was clear it wasn't open to debate but at that time we weren't in a position to debate in such a dynamic and challenged event, but I don't know what we would've expected the mine manager to say, sir, but too many, I guess, made an assumption that the mine manager may have filled the role that's an assumption on my part, may have filled the role of the incident controller but it became clear after that time that the police had filled the
15 role of the incident controller, yeah.

Q. Well, again it's a bit harsh, isn't it, to say that it was not challenged by the statutory mine manager?

A. Correct.

20 Q. And do you agree with me, I'm not sure if you're aware of this before, but Mr White at all times made a decision that no one was to enter the mine and that was without his consent, putting to one side what other agencies said?

A. That Mr White said no one was to enter the mine?

Q. Yes.

25 A. That's correct sir.

Q. And, indeed, he said in his evidence to this Commission that on the Wednesday the 24th of November, that he was rung by Steve Ellis, around 1.00 pm, and said that the Mines Rescue team were preparing to go underground and could he, that is Mr White, give the final
30 clearance of the rescue team to be deployed, and he then prepared to go to the mine, so no one was going to enter it anyway without him, the statutory mine manager, giving the okay. Did you know that?

A. Yes, correct, well, I understand now that Mr Ellis can't recall making that phone call to Mr White but that, yeah, Mr White was being contacted in

that instance to, where that has all come from I'm not really sure because we were never in a position we were going to enter at that time.

1705

5 Q. No.

A. Yeah.

Q. Well that's as may be.

THE COMMISSION ADDRESSES MR STEVENS

CROSS-EXAMINATION CONTINUES: MR STEVENS

10 Q. Mr Watts, I just want to ask you about the reason for placing the SMV vehicle inside the portal on the Friday evening?

A. Yes sir.

Q. And my question sir, and I'll put a full scenario in for just for haste, is that is it your understanding that Solid Energy was asked to urgently provide a drift runner and get it transported to Pike on the Friday night?

15

A. Yes, I believe so sir.

Q. And that there was a suggestion that there would be an auxiliary fan placed at the entrance to the portal?

A. I've learnt of this in the last few months sir, yes.

20 Q. And therefore the SMV was parked inside the portal on the Friday evening because there was a concern that if Mines Rescue needed to enter the mine the fan might block a vehicle entering the mine?

A. I have heard that sir, yes.

THE COMMISSION ADDRESSES MR MANDER

25 CROSS-EXAMINATION CONTINUES: MR MANDER

Q. Mr Watts, in your evidence you referred to the review of risk assessments and you acknowledged that at times valid questions were asked as a result of that review process?

A. Correct.

30 Q. In those instances the review process was constructed and positive?

A. I would take it at that sir, yes.

Q. As an example, at the other end of the spectrum you have provided an example which has been referred to by my learned friend already whereby a risk assessment was rejected because of a spelling mistake
5 in an accompanying document?

A. Yeah, and as I said earlier sir I don't know the circumstances surrounding this.

Q. Do you have any knowledge of any evidence upon which such a proposition can be based?

10 A. No sir.

Q. Myth and gossip, you agree?

A. No, I have heard that it occurred many months ago when we're actually at the mine site but I don't recall the particular instance of this?

Q. From who did hear?

15 A. I'm not sure, it was someone on site.

Q. You don't know who you heard it from?

A. No sir, no.

Q. But it ends up in an institutional brief?

A. Mhm.

20 Q. Just one other topic. The issue relating to partial sealing has been discussed and indeed discussions that were held at various briefing sessions. Were you present at a briefing session at the mine on the evening of the 20th of November, the Saturday evening around 9.00 pm?

25 A. Not at 9.00 pm I don't think sir, I don't think I arrive there till later that evening, at about midnight with Mr Devlin.

Q. There's evidence from a Department of Labour representative Mr Bellett which has been filed, and he's recorded in his notebook discussion at that meeting about this concept of partial sealing. And he has recorded
30 that he sought clarification from Mines Rescue about the partial seal option. And indeed asked for reassurance that life would be maintained as a result of undertaking this particular option and Mines Rescue confirmed that they thought it would?

A. Yes I believe so sir, yes.

1710

Q. But there was – there might be an elevated risk that the partial seal may increase the fire or expand the risk of fire, but equally it might decrease the fire. Does that accord with your recollection of that type of discussion?

5

A. I wasn't at the discussion sir, so I can't quantify that, but I don't know if they would've said it would've increased the fire. They may have had a general discussion around what may have occurred with potential sealing.

10 Q. Mr Bellett records in his notebook that the decision was made as a result of that discussion, to try the partial seal option and try to obtain more gas samples. And we've heard evidence about the enquiries made and arrangements made for the inflatable seal?

A. Yes.

15 Q. That all accords with your recollection or understanding of how events unfolded?

A. Reading the brief of evidence of Mr Bellett, I've seen that he looked at the partially seal option being explored.

20 Q. There was no cutting off at the knees of looking at these type of options were there?

A. I don't believe that it was taken over to a proper forum to have the appropriate people discuss and explore these options or strategies.

25 Q. Well certainly what I've put to you, which accords as I understand it with your recollection of events, there was no prevention of this, of positive discussion about the various options available including partial sealing?

A. With the partial sealing one sir, yes, I believe earlier on there is evidence that the Department of Labour had said that sealing wouldn't occur while there was greater than a zero chance of survival.

Q. But that was total sealing, wasn't it?

30 A. That's correct.

Q. Total sealing?

A. No the total sealing would've still left the compressor running. So if that was going to be an option – these things were being put up as contingencies and all of those factors would've been taken into great

consideration and if there was any sealing at all the compressor would've been left running.

Q. What do you say would be the result of total sealing?

5 A. Its hypothetical, I don't know what the answer will be sir, as I said before it may have induced a second explosion, it may not have.

Q. What would it have done in terms of survivability?

A. For anyone to still be alive at that time sir, sealing wasn't going to alter that fact because the compressed air was the only thing that could've been keeping them alive.

10 1713

CROSS-EXAMINATION: MR HAMPTON

15 Q. Three areas, Mr Watts, you heard some discussion between myself as counsel and Ms Haines from the Department of Labour earlier on today about statutory mine manager's role and what she seemed to have a, from herself and her advisors, a clear demarcation between, as it were, the operational role of a statutory mine manager in ordinary working and the role, non-existent in her mind, of the statutory mine manager post an explosion such as we had in Pike. I take it from what you have in your statements and indeed where you put the statutory mine manager as
20 incident controller in your latest diagram, that historically in your understanding of a statutory mine manager's role, there isn't that division?

A. No, sir, there's not.

25 Q. The statutory mine manager is there to control, not just the underground workings day to day, but has the responsibility as well to manage incidents such as happened at Pike?

A. That's correct.

Q. That's always been the understanding in the industry hasn't it?

A. As long as Mines Rescue's been in existence, I believe sir.

30 Q. Yes. Second issue. Assuming a properly resourced and empowered system of health and safety employees representatives to quote the common parlance in Australia are known check inspectors, do you think they might've had a role in preventing some of the difficulties that have

been seen by you in Pike both before the explosion and looking retrospectively in terms of safety issues?

5 A. I don't want to comment about Pike pre-explosion because had very limited contact in the previous 12 months, my change in role, however, a robust system of inspection is certainly going to assist with health and safety in a mine site and it would be coupled with some powers that would go with inspection regimes.

Q. And when talking about inspection you're talking about employees inspection aren't you, Mr Watts?

10 A. I do understand the role of check inspectors and do believe that there is a tripartite approach to health and safety in coal mines, yes, and I understand that even areas of compliance officers would fall into that category as well, sir.

15 Q. So, check inspectors would be helpful without issues underground, such as adequacy or otherwise of smoke lines, adequacy or otherwise of egresses, adequacy or otherwise of fresh air bases, all those sorts of issues wouldn't they?

20 A. Yes I guess they're the sort of things that a check inspector would be looking at but also they are areas that could be covered with independent audits, sir, that can identify those issues.

Q. Just on second egress here in Pike for a moment though, you made a comment, I think it was in your evidence that you were, "Gobsmacked," when you knew that the vent shaft had been signed-off as second egress?

25 A. Yes sir.

Q. Did you feel there was anything you could do, anybody you could go to?

A. I only learnt of it sir when I seen the evidence produced here in Court in a document.

Q. So you didn't know prior to the explosion?

30 A. No sir, no I didn't sir.

1718

Q. If you had known prior to explosion what do you think your avenues would've been, I know you've got no statutory powers?

A. I guess I would've, hindsight's a marvellous thing isn't it?

Q. Yes.

A. Had a discussion with Mr Poynter on my views of the second means of egress.

Q. Gone to the mines inspector?

5 A. Yes sir.

Q. Right. Well third area, I imagine given the occurrences that happened with Pike would you agree that there's a need for prescriptive regulations in your area covering such things as fit for purpose seals, that they're there ready to close if needs be on a mine with a man-door in it, that would've solved all these problems that we've been so exercised about in the last three weeks wouldn't they?

10

A. They were certainly under regulations, not specific to Mines Rescue but certainly in regulations sir, yes.

Q. So if we had regulations covering that sort of thing, covering docking stations, for GAGs covering adequacy of ready to use gas sample points, covering accuracy of plans, covering ability to monitor gases post-explosion with a tube-bundling system, that would drag us into the 21st century wouldn't it Mr Watts?

15

A. Yes sir.

20 **THE COMMISSION ADDRESSES COUNSEL**

CROSS-EXAMINATION: MR RAYMOND

Q. Mr Watts, I just want to touch briefly on communication, and other counsel have already discussed this with you. We have the background of Mr Stewart advising Mr Whittall on the Wednesday morning, 24 November, that the MRS would not be attending family meetings, I just want to briefly address this issue.

25

1723

Q. You've clearly articulated the reason, your personal position and thank you for that evidence which you've so sensitively given on that, but also the need to be focussed on preparation and re-entry and of course the families' also well accept that and for those reasons you considered you

30

should not be involved. You will recognise, however, the families entirely understand or need for timely and accurate information?

A. Yes sir.

5 Q. And you have been referred to by a number of witnesses in very favourable terms as one of the experts in Mines Rescue clearly, you would've heard that evidence?

A. Yes sir, I don't know if the term, "expert," sits with me comfortably, but yes I have heard that.

10 Q. And this is not intended as a criticism or any disrespect to Mr Whittall, but he was the CEO of the company but at that time owned the mine which had exploded and clearly not in himself a Mines Rescue expert?

A. Well no he wasn't a Mines Rescue expert, but you know, Mr Whittall has vast experience in the industry and fully understands, you know, Mines Rescue, if you like.

15 Q. Looking at it from the families' perspective as to that role and we've heard frankly, acknowledged by Superintendent Knowles, his lack of expertise in this area and you would've been aware that many of the families were from a mining background?

A. Yes sir.

20 Q. And clearly knew you or of your expertise?

A. I know now sir that a lot of them are from mining backgrounds, I should add to that, that I didn't know at the time, but yes many of them would know me. Yes sir.

25 Q. Now again I reiterate, that the families well accept where the focus must be and also accept, of course, your evidence earlier today about your emotional detachment and that necessity to remain professional and that's well understood. But, can I put to you what you acknowledged earlier we've discussed that for the future there should be scope, there must be scope within your organisation, which is of a reasonable size, to have a senior representative tasked with family liaison and communication to ensure accurate and full information is provided in a
30 timely way. Do you accept that that should be looked at as a possibility for the future by your organisation?

A. I'd like to give two answers to that sir, one is that we're actually quite a small organisation, but yes I do acknowledge and want to discuss this further. As I indicated earlier that in the future how information is released from incident management team, but particularly how that information is portrayed to families and I understand the need for clear information on what is going on in an incident and it may be something that we can certainly explore further.

5

1726

Q. And that's not asking for a commitment now, an indication that that's something that will be considered I think would be useful, and you'd agree with that?

10

A. It's not something you're just going to say no to like that, it needs to be thoughtfully considered, yes, acknowledge.

Q. In Mr Stephen Bell's brief, MRS0021 at paragraph 31, he refers to the fact that when one is buried in an emergency response situation with no external communication it was sometimes difficult to understand decisions which were being made on site. And to that he's referring to whether to seal or not, and some of the directives which were being received about that issue, and he said it wasn't until the full impact of the story being told away from the mine through the media was very much different from MRS understanding of the situation and that hope was being given where very little existed. Would you agree with that observation?

15

20

A. With the media, yes sir, yes.

25

Q. And with the families?

A. The families would've been seeing all that too sir, yes.

Q. Hence I think as you've already acknowledged the need for credible and reliable information?

A. Yes.

30

Q. Now you've covered sealing and my friend Mr Moore has put to you issues in relation to communication of MRS views on sealing, and I don't need to go into that in too much detail. Other than, I suppose to observe or acknowledge the families share what I think was evident from the line of cross-examination from Mr Moore, the frustration that

what is now being put forward is sealing, or partial sealing, as being real options does not appear at the time to have been very forcefully put across to those in the incident management team meetings, or the incident controller. You would have understood that that was the thrust of where Mr Moore was coming from?

5

A. Yes I did understand that that was where he was coming from. There were numerous times on the Saturday/Sunday/Monday that it was discussed.

10

Q. I just want to put to you briefly, it doesn't need to be put up Ms Basher, the witness will be familiar with this, paragraph 82 of your evidence where Mr Moore referred to this, you said you'd quietly start to investigate the sealing option. Remember that evidence?

A. Yes sir.

15

Q. And then at paragraph 87 you said, "MRS was completing a risk assessment and a basic plan to seal the portal and main vent shaft was being worked on (unbeknown to the IMT)." You remember that evidence, it's in the institutional brief?

A. Yes, I think this was going on from -

20

Q. Pause. The question is, why at that time, on the Saturday, would you want to be progressing something as important as the parallel planning on partial sealing and not sharing that with the IMT at that time?

A. What time on that Saturday was that sir?

Q. 10.00 pm on the Saturday 20 November?

25

A. 10.00 pm, already Mr Hughes had reported to two IMTs his views on a potential fire underground. And we've had this discussion about it may or may not be a fire obviously. But part of that contingency planning needed to look at options and the option of sealing was starting to be worked on by the Mines Rescue teams that were down in the Mines Rescue room.

30 1730

Q. I understand that and that's been clear from your evidence, Mr Watts, but the point is, and I'm sure you understand it, is that this reference, "Unbeknown to the IMT," it reiterates what appears to be evident in your

evidence that you were keeping this side of the equation relatively quiet and not beating your chest about what was an important issue, sealing.

5 A. Earlier on, on the Saturday the sealing had been discussed at IMT level and it was in Mr Stuart-Black's evidence and some of the documents that have been put up about the discussions around sealing early on, so I'm a little unclear as to what involvement MRS had in that earlier discussions on the Saturday as I wasn't onsite myself, but clearly it had been raised in the IMT because it's already been produced as evidence.

10 Q. Paragraph 194 of your evidence post the second explosion, and you said in your evidence that at the IMT you said, "You have got to seal this portal now, bulldoze it now because this mine is going to blow up again." Was that the extent of your advice on that issue?

15 A. I do recall at the incident management meeting, which was a very emotional time, making a statement that the portal, the mine has to be sealed quickly to prevent further explosions but I think, I don't recall using the word bulldoze, but I do recall saying that there's a lot of gravel down in the corner there, there's pipes there that can be used. There's shipping containers that can be used to provide access for the GAG, et cetera, but I guess I was trying to get the point across that there's got to be some real urgency into sealing the mine, because I fully understood that it had already had a second explosion and other explosions can follow, but like I say, it was a very emotional time in that particular IMT. Everybody that was in there from police to ourselves, everybody was in a state of shock.

20 Q. Understand that, Mr Watts, and that is of course understandable, but it was an important issue, as you said, required urgency, you considered it necessary to stop a third or fourth explosion?

A. Correct.

30 Q. What did you do after that meeting, because there's no further reference to it in your evidence, to ensure that that view was well and truly heard and acted upon?

A. There was a discussion with two members of the Department of Labour and I'm not sure who that was with, with Mines Rescue but there were Mines Rescue members that had that discussion to reinforce the issue,

we really need to be looking at sealing quite quickly, urgently. And then on the Thursday, reiterated it again in our inertisation meeting that we've got to move quickly on that. The Department of Labour were present in there with us at that time. On the Friday the 26th I sat down with
5 Inspector Mark Paynter and myself and member of New South Wales Mines Rescue management team discussing the urgency to either seal the mine. Third explosion had occurred then and tried to reiterate the absolute urgency because the mine was going to keep exploding. Explosions would get closer together because the ignition source would
10 grow and there was a distinct possibility that the mine would catch on fire at that time.

Q. Do you think that your concerns, as you've just expressed them, were getting through to the incident controller in the forceful way that you've just described?

15 A. In the early stages we thought we were talking to the incident controller to be honest, in the first few days.

Q. I'm talking at this stage, of course, post second explosion to stop the third and fourth explosion, were you making your views known to the contacts which my friend Mr Moore has referred us to or to Mr Knowles
20 himself directly to ensure that this happened?

1735

A. We thought the processes that was in place at the time was filtering the – well providing Mr Knowles with the clear information from what was occurring at the mine site. I didn't have any direct meetings with
25 Mr Knowles.

Q. I think you acknowledged to my friend that with the benefit of hindsight, you would in a similar situation, be beating a path to the door of Superintendent Knowles and making it more clear what MRS views were on these issues. Is that fair?

30 A. That's correct sir.

Q. Turning briefly to the fire, you've heard the evidence about this, you'll be familiar with the fire log which has been in evidence frequently now, the police briefings and we've heard that Mr Hughes said there was a strong likelihood, paragraph 79 of his evidence, of a fire in the mine.

Ms Haines has said she cannot be 100% certain, but was I think she said, "Pretty damn sure," that there was debate on the 20th of November around whether there was a fire or not. Did you participate in a debate on that issue fire or not fire on that day?

5 A. No sorry, I wasn't at the mine site when Mr Hughes attended those two IMTs. I'd returned home to sleep.

Q. Well the evidence is that indications were of a fire. That was MRS obviously, given that it was from Mr Hughes' position?

10 A. That's correct and Mr Hughes is held in high regard by us in Mines Rescue as he is in the mining industry.

Q. And Mr Brady's evidence has now been referred to and if I could quote from his evidence at SIM0001/5 at paragraph 4.1 in response to the questions from the gas readings taken each day after the explosion was there evidence that a subsequent explosion was likely to occur and he said, second sentence in that paragraph, "There was evidence of sufficient methane, enough oxygen and indications that a fire might exist." Do you recall that evidence?

15

A. Yes.

Q. Can you remember there being significant or any debate that you were involved with about whether it was a fire or the results, the left over gas if you like, of an explosion?

20

A. I don't know if you'd term it, "Debate," but certainly discussion around what are we looking at here. Are we looking at an afterdamp atmosphere or are we looking at combustion.

25 Q. Do you agree with the very fair concession made by Assistant Commissioner Nicholls, that with that information which the police were in discussion, the fire service were discussing and the MRS were discussing that it was the sort of information which should have been passed on that Saturday, the latest to Sunday to the families?

30 A. Yes sir.

1738

Q. Again, reasonably briefly on the question of survivability which you've been closely questioned on, the view which you've now clearly

articulated in your evidence, was it one that you shared from the early stages with the incident management team?

5 A. Not with the entire team I didn't stand up or sit in front of that team, I didn't think it was an appropriate forum because of the size of the IMT and the makeup of the IMT at that time. Was a personal belief, never been faced with this situation before when you're looking at 29 lives lost. And I know it was a discussion I had outside of the IMT with police Inspector Mark Harrison I believe, and that was probably after the Monday, you know, the gut feeling was there that this is bad.

10 Q. Mr Watts, I think that your personal view as you've now described it was one that was shared by other senior members of the Mines Rescue Service?

A. Correct.

15 Q. So for all intents and purposes it was the view of the Mines Rescue Service wasn't it?

A. Correct.

Q. And the incident management team meeting is the meeting where all relevant agencies and important decisions are made isn't it?

20 A. Where decisions are made sir, I don't think the structure that was there for this particular incident was the right forum to be discussing.

Q. Well there was no better structure available was there?

A. No, there was no planning, you know, in the early stages, a real clear planning structure in place where this could be explored, the whole issue of survivability.

25 Q. So given your very clear views, now articulated and as you've just acknowledged held by MRS, was it really effective for you just pass those to Inspector Harrison as you've just said as opposed to in a more forthright and direct manner dealing with that issue in an open and frank way in an incident management team meeting?

30 A. In a structured incident management team meeting, yes, when we had the right people in the room. And as I said earlier on in my brief, in the benefit of hindsight we certainly would've been going and talking directly with Inspector Knowles, who was the incident controller in Greymouth here, superintendent.

Q. Mr Ellis in his evidence yesterday appeared to be unsure if a compressed airline ran into the so-called fresh air base. Did it?

A. My understanding was it didn't sir.

Q. You say your understanding, how?

5 A. From my colleagues.

Q. Sorry?

A. From my colleagues, Mines Rescue colleagues that the compressed airline didn't run into the changeover station.

10 Q. Now the reconnaissance walk which you've heard some evidence about, MRS has done a risk assessment on this and is willing and able, as I understand it, to complete a reconnaissance walk subject to a further risk assessment being done now that the atmosphere's methane as opposed to nitrogen. Is that right?

15 A. Correct sir. We completed a risk assessment and determined that there was an acceptable level of risk to undertake a reconnaissance. And as we clearly discussed previously that we don't know how far that we'd be able to get up that main drift.

20 Q. Had you understood that Mr Ellis had on or about 30 August of this year presented that with his tunnel regulation plan to the receivers expert panel?

25 A. My understanding from the meeting was that Mr Ellis was sending the risk assessment to the expert panel at that time but I may have been absolutely mistaken in that because I knew that in the reclamation plan there was mention of Mines Rescue doing something at the 1800 metre mark and I just naturally assumed that the risk assessment that we'd completed was going with that. But I thought that there was going away then.

30 Q. And the objectives of the plan, or the risk assessment, have been noted in the evidence already, but in addition the exercise would allow MRS to gather information on a suitable remote seal site, correct?

A. That's correct, and the way I articulated that to Mr Ellis was that if we could assist in that process of getting that remote seal in quicker that's why we wanted to go ahead with an attempted reconnaissance operation, it's to try and assist the company to get that in. We know

how important it is to get that seal in at the top of the drift so that the, well it's top of the tunnel, so that that can be re-ventilated for the purposes of a thorough search. A thorough search we can't do in an irrespirable atmosphere due to the time constraints.

5 1743

Q. And a further objective would be to unearth potential further evidence for this Commission and for the investigating authorities?

A. Once the tunnel is re-ventilated, yes sir, and it would be very difficult to try and do that in irrespirable atmosphere and breathing apparatus but certainly, the quicker the tunnel is reclaimed the better.

10

Q. And Mr Ellis has said in his evidence that he is against the MRS proposal because, amongst other things, someone may fall over and damage his mask, intake methane and suffer some sort of brain damage, or worse, die and it would be possibly too far to walk. Just in response to that, is it correct that MRS men are trained in what's called a fallen brigades men type situation and would be able to respond to that sort of situation?

15

A. It's one of the controls that we do have in place is collapsed team member procedure, yes, there are a number of other controls that we implement on an operation such as reconnaissance like that.

20

Q. And we've heard that the methane level, as it is at the moment, is the safest atmosphere since the 19th for entry?

A. Certainly better when it was nitrogen, but, yes, the oxygen was always the enemy at Pike and the oxygen content is very low and it's remained low for a number of months now.

25

Q. And MRS built the seal at 170 metres and when building that seal it went in 320 metres, returned and then went back and built the seal at 180 metres didn't it?

30

A. Yes the original reconnaissance was to the 300 metre or 320 mark that you just stated and the second team that went in started the process of construction at the 170 metre mark, that's correct.

Q. And so there would've been times when MRS personnel would've been under oxygen for up to three hours?

A. Yes I think we had two teams work for a period of three hours. We extended the working time out to three hours on two occasions I believe and one of the factors that we did take into that was that they were only 170 metres into the mine when that was considered.

5 Q. And the MRS teams were carrying equipment, tools for the job and then when building the seal obviously doing hard work in an irrespirable atmosphere?

A. Correct.

10 Q. And that would, I suggest, be a greater risk, would it not, than simply a walk as contemplated?

A. There were certainly more risks involved in working with that equipment, working off scaffolding than just walking up the drift, correct.

Q. And obviously Mr Ellis, as statutory mine manager on that occasion, allowed MRS entry for that purpose?

15 A. That's correct sir.

Q. And it's correct, isn't it Mr Watts, that you have teams of brigades men literally itching to get on with the job and assist in this way and complete a reconnaissance walk, there's no shortage of volunteers is there?

20 A. They had teams of brigades men from the 19th of November ready to do any work that's safe to do in the mine sir.

Q. And it's perhaps a rhetorical question, in the circumstances, but MRS as an organisation wouldn't sanction such an operation if it posed any sort of unacceptable risk to its brigades men would it?

A. No sir.

25 Q. And if you were able to do it, what sort of timeframe would you be able to commence?

A. Another two weeks, three weeks, there's a little bit of planning. There's a number of things that would have to occur for us to be able to undertake that, that operation sir.

MR RAYMOND ADDRESSES THE COMMISSION – EXTRA TIME**CROSS-EXAMINATION CONTINUES: MR RAYMOND**

5 Q. Mr Watts, finally, and its again been touched on by Mr Moore, in effect, and it really relates to Mines Rescue's inability to act effectively once you arrived onsite. I just want to put to you a couple of propositions and ask for your response. You personally and MRS as an organisation knew the mine well, yes, reasonably well?

A. I would say me personally, reasonably well, yes.

1748

10 Q. The organisation was a reasonably regular visitor to Pike River?

A. Yes sir, yes.

Q. You audited it?

A. No.

Q. No?

15 A. No the only audits that we conducted were medical. Equipment audits so if you've heard from Mr Stiles.

Q. Mr Stiles was it?

A. That's correct.

20 Q. And you participated on the 13th of October 2009 in an emergency evacuation?

A. Correct.

Q. And as we've already heard and you've expressed your view on the second means of egress, and the difficulties with that?

A. Correct.

25 Q. And you knew it had an electronic monitoring system for gas and that it would fail in the event of an explosion, didn't you?

A. I wouldn't say that we knew that it would fail in the event of an explosion, there's always –

Q. Likely to in a significant explosion?

30 A. There's always that risk with a electronic system.

Q. You knew and had expressed views as I understand it on the inadequate nature of the smoke lines which were in place?

A. It may have been in that audit that I completed in August 2009.

- Q. With that in mind, can I suggest to you and this is no disrespect or criticism, but your briefs, the briefs from MRS are characterised in effect with some sort of indignation and if that's the wrong word at least dissatisfaction that Pike River Coal was unable to respond in any effective or meaningful way on substantive matters in relation to the things you wanted to hear about or know about when you got to site. Certainly strong frustration expressed in your briefs on that, yet I suggest to you Mr Watts that it should not really have been too much of a surprise to you, because you knew there was only one way out, you knew there was no tube-bundling, you knew of the limitations of the fresh air base, you knew there was no refuge. So do you accept then that the limitations imposed on rescue should not have been a surprise or such a source of frustration to you?
- 5
- 10
- A. On rescue or self-rescue?
- 15 Q. On rescue, you as an organisation.
- A. On rescue. For rescue to occur we needed information and we've already heard about the lack of information from within the mine. That's correct. My understanding around the fresh air base, for example, was that a fit for purpose wall was being constructed in the – for an FAB with an airlock on it. I only become aware that that didn't occur after the explosion. But, as far as the tube-bundle system went, we did know that – from discussions with, it probably wasn't Mr White, but an earlier mine manager that there was a time when a tube-bundle system would be installed.
- 20
- 25 1751
- A. We did not audit the mine and we've got no statutory powers to audit a mine.
- Q. That comes to my next question to you and I reiterate again all of those things which you knew or perhaps should have known were extant in existence at the time of the explosion on the 19th of November and it comes back I think to what Mr Hampton was asking you about and that is the desirability or otherwise of MRS really having a bit more teeth to be able to effect change in circumstances where in particular it involves health and safety, but more in particular again, rescue to ensure that
- 30

mines, because mines are effectively your clients, are in a position to provide the best opportunity for rescue, self-rescue, for those underground and so that when you turn up on site as an organisation you have the best chance of affecting a rescue or a recovery?

5 A. Two parts to my answer on that sir. All health and safety matters need to be covered by the mines inspector on regular visits and audits. With regard to emergency escape and all things affecting emergencies underground in a mine, I personally like to see independent audits conducted, such as what we already do for Spring Creek Mine, at a
10 managerial, on regular basis by an independent, and someone like Mines Rescue I believe that could sit in under our umbrella nicely because we do have an inherent interest in this because along with those audits you're also looking at the preventative side of things as well when you're making people aware of these things, but certainly I think
15 there's a strong case to ensure that independent audits are done.

Q. Under an MRS umbrella?

A. Certainly with those emergency things that you're looking at, that's my personal view. And I firmly believe that we have a role in that area. We have been doing it for a number of years at Spring Creek.

20 Q. And with teeth to sanction the mine in the event your audits are not complied with?

A. I believe that a way to deal with that, because, you know, there'll be legislation changes obviously, that if MRS was the agency that were completing an external independent audit I would assist them in a mine,
25 but that audit would be sent to the mines inspector as well as the safety manager or the mine manager at the mine for transparency. Because the mines inspector is the man or the person that can enact change.

THE COMMISSION ADDRESSES COUNSEL – TIMING

COMMISSION ADJOURNS: 5.55 PM

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