



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: J Wilding, S Mount and K Beaton as Counsel Assisting
S Moore QC, K Anderson and K Lummis for the New Zealand
Police
K McDonald QC, C Mander, T Smith and A Boadita-Cormican
for the Department of Labour, Department of Conservation,
Ministry of Economic Development and Ministry for the
Environment
N Davidson QC, R Raymond and J Mills for the Families of
the Deceased
S Shortall, I Rosic and D MacKenzie for certain managers,
directors and officers of Pike River Coal Limited (in
receivership)
C Stevens and A Holloway for Solid Energy New Zealand
N Hampton QC, R Anderson and A Little for Amalgamated
Engineering, Printing and Manufacturing Union Inc
G Gallaway and J Forsey for Mines Rescue Service
G Nicholson and S Gilmour for McConnell Dowell
Constructors
P Jagose for Valley Longwall International Pty Ltd
F Tregonning for Pike River Coal Limited (in receivership)

**TRANSCRIPT OF PHASE 1 HEARING
HELD ON 22 JULY 2011 AT GREYMOUTH**

COMMISSION RESUMES ON FRIDAY 22 JULY 2011 AT 9.00 AM

WITNESS PETER WILLIAM WHITTALL ON FORMER OATH

5 CROSS-EXAMINATION: MR RAYMOND

Q. Mr Whittall, we have seen several times over the last couple of days the chart, and I don't think we need to put it up, showing the managers throughout the periods from 2005 to the date of the explosion. You know the chart I'm referring to with your?

10 A. The bar chart that I created.

Q. The bar chart?

A. Yes.

Q. Yes. And the second one down I think it is, is the long green one, which is you as general manager from about 2005 to 2010?

15 A. That's what the bar says and I clarified it was as a mine manager for the first 12 months and then as the general manager after that, yes.

Q. So is it correct to say that more than anyone else in the mine's development stages, you were the senior manager who, in effect, lasted the distance until the date of the explosion?

20 A. Certainly the longest bar, one week of Ivan Liddell. The two of us were there from February '05 through till November, yes.

Q. And you were senior to Mr Liddell?

A. After the first 12 months, yes.

25 Q. So is it fair to say that you were well versed in all aspects of the mine's development up to the commencement of extraction?

A. Certainly well versed in the construction of the mine, yes.

- Q. If a document could be put up please, DAO002.03151. We'll just wait for that document to come up Mr Whittall, but it's a Pike River Coal management plan document which outlines the roles and responsibilities of the various managers in the mine. Can you recall the document I'm referring to?
- 5 A. I do recall we had a document like that several years ago, yes.
- Q. Okay.
- A. I can't remember it specifically until you put it up.
- Q. Okay. Well I can tell you that it outlines the various roles and responsibilities which will be considered in more detail, I'm sure, in another phase.
- 10 A. Sure.
- Q. But for current purposes, in the development phase, it outlines the role of the general manager throughout that period?
- 15 A. Yes.
- Q. Which you were?
- A. Correct.
- Q. And as part of that, it was to ensure legislative, compliance with legislation?
- 20 A. Yeah, all different sorts of legislation yes.
- Q. That's right. Again I think Ms Basher's still trying to find it, but amongst that legislation obviously is the requirement to ensure that the site and the environment is a safe working place for workers, part of your responsibilities?
- 25 A. Well it's one of the responsibilities –
- Q. Amongst many other –
- A. I need, I need
- Q. I'm not going to go –
- A. No I was going to say I need to qualify that by saying that a number of people have that responsibility so yes that is one of my responsibilities, but not to the exclusion of others if that's what you're implying.
- 30 Q. No, no I wasn't implying that at all. Just pause because the document's come up on the screen now. You'll see the Pike River Coal document

there, “management plan, roles and responsibilities,” are you familiar with that?

A. Yes. As I said, it was several years old so that’s – although he issue date at the bottom had an auto date put on it, which shows it was printed out on, in 2010. The originator was Kobus Louw who left the company back in February 2009 so it would predate that time.

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Q. And you're noted as authoriser?

A. Correct.

10 Q. If you turn to page 7 of that document please. It includes what you conceded a moment ago, the second to last bullet point includes legislative compliance requirement.

A. Yes, that's correct.

Q. Whereby the general manager has overall responsibility for that?

15 A. That's correct.

Q. And then turning to page 8, and if we could zoom in on the top left box and again you've just confirmed this that, “Amongst the responsibilities is ensuring a site work environment and systems are in place,” third bullet point, “To ensure plant and equipment is designed and maintained for safe use and to ensure employees are not exposed to hazards, amongst other things,” correct?

20

A. Yes.

Q. And I take it that you would say that in order to comply with that obligation you'd say that you did so by appointing a safety and training manager?

25

A. No, not specifically I did so by appointing a safety and training manager and also by appointing a mine manager because ultimately under the legislation the mine manager has responsibility for health and safety of a site.

30 Q. Having a safe, health and safety team led by a manager?

A. No, they're two different things. Having a health and safety team, health and safety in my view since you asked how I do it, the health and safety manager's role is to provide support and provide systems to develop

systems, health and management systems and to provide advice and be there as part of the safety management of the site but safety is a line management function so line managers, in this case deputies, underwriters, mine manager, are responsible for the safe working practices of their people working with them, so I see the safety manager as being a support to that process. I didn't manage safety on site –

5

Q. No.

A. – by appointing a safety manager.

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Q. If the right-hand side of the box be reduced back to its original size, you'll see that there's an action box at the right alongside each responsibility which sets out what you would have to ensure is in place in order to meet that responsibility. Is that correct?

A. That's the way the document is set out, yes.

15

Q. And amongst those requirements would be to ensure that risk assessments are carried out for identifiable risks and you've mentioned over the last couple of days where risk assessments were done on various aspects of the development?

A. That's correct.

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20

Q. Which is why for something important you'd be part of any expert team to assess risk associated with for example, escape route or refuge in the event of an emergency?

25

A. Not necessarily, if I was comfortable that the people who are employed and delegated to that activity were competent and adequately trained then I wouldn't need to personally be involved in that, no. Would I understand that those activities were occurring, yes, then I could choose or otherwise to be involved in those things.

30

Q. If we could put up on the screen please Ms Basher, the next document DAO.002.04414. You'll see here a document entitled, "The emergency evacuation of all persons from the underground mine at Pike River Coal risk assessment, final document." You would've seen that before?

A. Yes, I'm not sure what vintage the document is, again it's probably got an auto.

Q. Well, you'll see down the bottom in the box V4, so that stands for version 4, doesn't it?

A. It would do, yes. I note that both the documents you've shown me are both unsigned so I don't know if they're the final versions of these documents.

5

Q. Working from now that this is, for the purposes of these questions, the final version of this document, if you could turn to page 3 please, there it sets out the purpose of the document, "If there's an underground explosion, there's an imperative requirement to achieve escape or find refuge within the operating life of a self rescuer and to offer immediate assistance to the workforce on a safe way out of the mine." Correct?

10

A. Can you please point out where the section is you're reading from?

Q. The very first sentence of the executive summary.

A. Thank you, yes I understand the statement.

15

Q. And if you turn to page 8, given your comment before that you weren't sure whether you were a part of such teams, for this assessment at 3.2.2 you are at the top of the names of those on the expert team for the assessment?

A. Yes, and just looking at the other people involved would indicate that this was done early in 2009.

20

Q. Yes, so confirming as I said, that you were part of that team?

A. Yes.

Q. And then if you could turn please to page 6 and the second bullet point under the heading of, "Basic assumptions." "As part of the training undertaken above people will know that in the event of an underground emergency they will know that they should be moving away from danger and heading towards the second means of egress?"

25

A. Correct.

Q. Now, as general manager throughout that period can you explain to the Commission please how often you would have gone down the mine?

30

A. It varied greatly across the number of years when the tunnel first started in late 2006, as a tunnel manager I was up on site almost every day or several times a week at least with the office still based in Greymouth at

that stage and we'd appointed the McConnell Dowell acting tunnel manager so I'd probably go up there two or three times a week and go underground, that was the only purpose to get up to the mine site.

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5 A. Once the tunnel was further in and Kobus Louw was appointed I would probably still get underground once a week, it was only a tunnel, it didn't change very much, and it was only a single entry face. There wasn't a lot of difference to see except a change in geology. So if there was a particular geological feature that I wanted to look at or it was brought to
10 my attention I would go underground. Once it got into the coalmining phase and I had a statutory manager on site still, which was Mr Louw at that stage, and then replaced afterwards with Mick Bevan and Nigel, while I had those guys on site I probably still got underground once a fortnight. I was there every day so I was in and about the offices or travelling so I could probably get underground maybe two, three, maybe
15 sometimes it would go four weeks in the latter phases. I then increased my attendance underground for the short period that I was relieving again and then –

20 Q. Sorry, just to be clear. When you say, "Relieving," that means the period that you were the statutory mine manager?

A. That's correct. So when I became –

Q. Can you remind us of that period of time?

A. It was in 2009 for several months at the end of the year.

Q. So during that period how often were you going underground?

25 A. Probably several times a week. It was a quite a short trip.

Q. Several times, four or five a week?

A. No, not four or five, that's more than several, probably two or three.

Q. Just to be clear, two or three times a week during that period and then –

30 A. Sometimes only once a week, again it was a small mine, there wasn't a lot of complexity to it.

Q. And when you were down there during that period what sort of things were you going down there to keep an eye on, what were you doing, what was the purpose of your visit?

A. When a mine manager goes underground they go underground for a variety of reasons. Sometimes it'll just be to talk to the crews, see what's going on. Usually you'll have a look at the working faces, look at the conditions that the machines are working in. In that case we were
5 having difficulty with the machines. I recall about that time sill mining downhill in the pit bottom south area and we were just starting to go through the, or just starting to build up to go through the graben so we're building the roadways closest to the start of the stone drives and we were changing some of our strata support requirements. So one of the
10 areas of my main interest was the suitability of the roof-bolting system we were in so the technical services manager and I were working with the strata consultant out of Australia to modify our bolting patterns. So I'd often go underground and look at those particular face areas at what bolting patterns we were using, whether the monitoring was going in,
15 talking to the crews about the installation of the bolts. I would look at just general standards, always check flameproof enclosures, not from an electrical point of view but just go and check that they're not covered in dirt and dust and make sure that standards. I think the main thing that I would do as a mine manager would be looking at housekeeping
20 standards and just the general feel of the underground environment.

Q. And when you became CEO did you continue to go down the mine?

A. Well it was a very short period and it was only in early October 2010, I think I attended the mine on several occasions in that period and as – we haven't spent a lot on, but we've alluded to other parts of the brief, it was quite an intensive period financially as far as Mr Ward leaving,
25 myself assuming control of the company and doing a lot of capital raising, so underground in that period, probably twice maybe.

Q. Okay.

A. Maybe once.

30 Q. And can you put a date as to when you would've been last down the mine before the first explosion?

Q. It wasn't – I was at the mine that week, but I believe I was underground the week before. So, if the mine explosion was on Friday the 19th, so

the week before that would've been the Friday the 12th, I think it was in that week that ended Friday the 12th. I can't be exact, but I'm pretty sure. To my recollection we had a group of trainees finishing and I went underground on the day that they were, we had their barbecue so it might've been on Friday the 12th.

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0915

Q. Turning to the next topic which is the submission that Pike River Coal Limited made to the Department of Labour in respect of the proposed changes to the regime. You recall my friend, Mr Mount, putting a series of propositions to you from that document yesterday?

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A. Yes, I do.

Q. You went through and you confirmed that notwithstanding your emphasis on being a company document you nonetheless now still agreed with some of the comments that were made that were put to you?

15

A. In allowing the document to be submitted with those statements in the first place, in other words in even in being the contact and being the general manager I agreed at the time with the statements whether they originated from me or not and, yes, I still hold those statements to be a reflection.

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Q. If I could ask you please to look at page 11 of that document. That's the passage which wasn't put to you yesterday by Mr Mount and the question at the bottom of that page Ms Basher, number 1, you'll see there under the general additional questions after document number 1, "What do you think are the main health and safety issues facing the underground mining industry today that need addressing?" and the response was, "Levels of competence and the experience of workers and contractors working underground is of concern," that's the first proposition. "The inspectorate is seriously undermanned and under resourced," that's the second proposition, and you've already confirmed yesterday in relation to the second sentence that you still agreed with or you agreed with that statement.

25

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A. Yes, I do.

Q. Turning then to the first part of that sentence, "Levels of competence and experience of workers and contractors working underground is of concern." Do you agree with that?

5 A. It's actually not just an issue for New Zealand but for Australia as well. There's a large boom in the industry and we're continuing to draw more people into the industry so it's an ongoing concern for the whole industry, yes.

Q. So this document was prepared, as we can see from the front page, on Friday 6th June 2008, correct?

10 A. Yes, I haven't got the front page in front of me but I have no reason to not believe.

Q. Well take it from me that's what it says, and that was therefore before the breakthrough into coal which I think was on or about 17 October 2008?

15 A. That's correct.

Q. Did you have the concerns about the levels of competence and experience of workers working underground at Pike that you expressed in this document at the time you broke through under coal in Pike River?

20 A. When the document was made we were pretty much on contract so we had all of the workers were McConnell Workers and they were also similarly struggling to get good competent tunnelling people so this was written at a time that we were in hard rock still so the comments at the time reflected not only my observation of the difficulties of contractors. In this stage we were talking about construction contractors not the sort
25 of contractors that were underground at the time of the explosion but the major construction contractors like McConnell Dowell so it reflected that but it also reflected a knowledge of the industry in observing what was happening at Spring Creek and also my own knowledge having not long come out of the Australian industry and understanding that recruitment
30 was going to be difficult and we were in a recruitment phase at that stage, albeit reasonably early so we were still building up our workforce at the very early stages but reflecting that we knew that there would be

a difficulty in attracting large volumes of highly experienced and competent employees.

5 Q. So let's narrow the field down to the pool that was available to you for the New Zealand industry and specifically around Greymouth and therefore Pike River. I'm not talking about Australasia, I'm not talking about –

A. Well I don't think you can do that.

Q. Well at the time that you recruited men therefore for Pike River.

A. Yes.

10 Q. Is the concern which you have said that you had generally apply to the workforce that you were recruiting for Pike River?

A. Yes, it does but you're asking me to restrict it to Greymouth and we wouldn't be able to start a mine in Greymouth if we were only relying on the labour pool in Greymouth.

15 Q. Okay I understand, I apologise. The pool then that you are drawing from, the wider pool Australasia you're including –

A. Worldwide.

Q. – South Africa, England, yes.

A. Yes.

20 0920

Q. From that pool then and at Pike River at the time that you were entering coal in October 2008 did you still have the concern which you've just outlined in that document?

25 A. Well, it's an overriding consideration to developing a mine, a concern, it was a concern that we were going to be able to continue to recruit so the earlier phases are a lot easier because you can cherry-pick out of a larger group the most experienced people, so we'd managed to get on some very good, very experienced people early on and as we went in through the first groups, your first phase of people, if you get 100
30 applicants and you only need 10 then it's a lot easier to pick 10 out that have got good relevant experience, so the early phases of recruitment were more relevant, more competent, more experienced and better trained people but as you've built the workforce larger and larger and

you need to increase that then the numbers of people you need and therefore the percentage of experienced people applying is less.

Q. So Mr Whittall, faced with all of these concerns for safety it must have been uppermost in your mind as you began the extraction phase?

5 A. Sorry, what were all my concerns about safety?

Q. As we've outlined them in the submission that you made to the Department of Labour and about the competence generally of the workforce?

A. That it would be a concern for safety in the mine, yes.

10 Q. So one of the issues which the Commission has granted leave for me to ask you about yesterday was whether or not Pike River Coal encountered any impediments in implementing safety measures and I want to turn to that issue now and take you first to exhibit 9 which is the trial panel document that we've seen before. So, just to recap the light
15 yellow sort of green trial panel at the top left was where you originally intended to extract first as a trial panel?

A. It was where the company negotiated a position with the Department of Conservation through the resource consent process pre August 2004.

20 Q. Is that another way of confirming that yes, that was the area that you intended to extract first from?

A. Yes. You're using the word, "You," I'm –

Q. The company.

A. Thank you, the company, it did intend to mine that area first in the original plans, yes.

25 Q. That was the plan and then through a series of, and you've acknowledged this yourself, basically just renaming areas that moved closer to what we now know to be the main mine workings and firstly the commissioning panel and then to the smaller bridging panel. Is that right?

30 A. No, that's not correct. You're inferring that what we did was rename, what was actually redefined and redesigned the mining area and its impacts on the surface, the trial mining areas and commissioning and bridging are all determined by their impacts on the surface and the

Department of Conservation in subsidence impacts so they just weren't renamed, they were actually redesigned.

Q. Redesigned and given names, I think you said yesterday that you gave names for them but for no particular reason, commissioning panel?

5 A. Yes, the terms, yes, we could've called them area A and B if we wanted to, they're just words.

Q. And was the bridging panel called the bridging panel because it effectively enabled bridging finance because it was going to allow you to extract coal quicker?

10 A. No, it was called bridging panel because it was a way of bridging between not mining and the commissioning panel, it was a creative word, it could've been called dog panel, it wouldn't have mattered, it's just a word.

Q. Because at that time when that decision was made the cash flow was in a poor state, wasn't it?

15 A. To the mine site? No, not at all. I think there seems to be some confusion between the financing of a company, which is the capital raising and bank finance, whatever, and the implication or otherwise that there's some cash flow issue at the mine site. The mine was spending all the money it needed to spend, it was buying all the equipment it needed to buy and it was doing everything it needed to do at the operation so the funding of the company to allow finances to be spent at the mine site was a separate issue from the actual spending of finances at the mine site.

25 Q. Okay, the funding was being used of course because there was so much to do.

A. Correct.

Q. But the revenue that was being generated by the mine at that stage was down in what had been budgeted or forecast for earlier?

30 A. The original forecast had allowed for a period of time between the completion of the tunnel and the commencement of extraction on the trial area and so therefore the earlier mining of the smaller areas,

variously called "bridging" and "commissioning," was intended to commence extraction earlier, correct.

0925

5 Q. It's obvious isn't it that the sooner you were able to get coal out of the mine and generate revenue from that source, the better it was overall for the company?

A. That would be a standard business assumption yes. Money coming in is a much better thing than just money going out.

10 Q. That's right. So you said yesterday that a risk assessment was done in relation to bringing forward the extraction from the initial trial panel area to the bridging panel area?

15 A. No, no I didn't say that. What I said was that we did a risk assessment around the commencement of hydro operations in the bridging panel. The only consideration of doing the difference between the trial area and the bridging area or the commissioning area was its impact on substance in the surface and that was done as an exercise with the Department of Conservation from an environment effects point of view. The risk assessment that was done to commence hydro operations and consider all the safety and operational things that needed to be done, would have been done whether it was for the commencement of hydro in the commissioning panel, the trial panel or any other panel.

20 Q. So the wider risk issues which might arise as a consequence of starting work on that bridging panel, were they not considered?

A. The wider risk issues?

25 Q. Wider possible risk issues?

A. Such as?

Q. Well, such as a consequence of your decision to extract coal from the bridging panel was that you moved away from the plan that would have seen you move towards the plan's second means of egress?

30 A. No. The roadway is going to the west, which went towards that second means of egress was still progressing.

Q. Mr Whittall, you were concentrating work on building works towards the bridging panel and devoting men and resources to extracting coal and

not building roads out to the west to the escarpment and where the second means of egress would have been?

A. No that's not true. If you look –

Q. Did you continue to build roads to the west?

5 **MS SHORTALL:**

Your Honour, I think the witness was about to further answer that question before he was interrupted. I think we're right on the verge of phase one versus phase three, so I just like to note that for the record as well, thank you.

10 **MR RAYMOND:**

Your Honour, I'm talking about the sequence of development, which is clearly within phase one, and whether or not the impact of concentrating on the bridging panel had an impact on going to the west?

15 **THE COMMISSION:**

You may proceed Mr Raymond, but do allow Mr Whittall to answer please.

CROSS-EXAMINATION CONTINUES: MR RAYMOND

A. The plan PW28, which has been put up on a number of occasions, showed where there was a drill rig drilling to the west to cover those
20 roadways. It showed that there was a continuous miner in that roadway parked, facing in that road to go to the west, and it shows that there was a roadheader mining in the bottom roadway which is a heading of the mains to connect that roadway up to give us a third heading which is part of the roads going to the west, and you'll also –

25 Q. Could you just pause so we can go through PW28, thank you.

A. Certainly. So using that plan for illustration, you'll see in the left-hand side roadway the stub, Valley Longwall drill rig D1001 is actually there to drill the area immediately in front of the roadways heading to the west. You can see the Waratah continuous miner in the heading directly
30 above it, which is the roadway heading to the west, and you can see the Waratah roadheader, which is back down to the right-hand side heading back down to make the connection in that set of mains that are the main

western headings heading to the west. The continuous miner, only one continuous miner which is the ABM20, is scheduled in the next small commissioning panel. You can't put three continuous miners in two headings and it's really even hard to have three continuous miners in three headings. It's a very inefficient and very difficult situation so that the continuous miners were heading to the west. If you were to go back to the mine schedule in 2005 or any other time, you'll also see that the continuous miners there were mining out to the west, but at the same time were continuing to mine to the north. So there was always an intention in the original mine plan to mine both to the west and to the north. So the fact that one of the resources was being used to develop the bridging panel and the commissioning panel, that resource would have otherwise been allocated to driving roadways out to the north which had nothing to do with going to the west anyway.

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15 0930

A. It was always intended to have multiple faces going in multiple directions. And in this case we were still going to the west. And I think Mr Mount yesterday put a document that showed that one of the priorities for the immediate development of the mine was to develop to the west where the egress panel was, or the egress exits were.

20

Q. Isn't it correct that the Waratah continuous miner, which we can see at the A heading which isn't complete, is one of your less effective pieces of machinery and in fact at that time was not operative in that area?

A. No, I'm not aware that it wasn't operative. I knew there was a fault that had run through that face area and that continuous miner had developed that roadway to that point. We had two machines, one of which was in worse condition than the other. One was down at Grey Brothers in town and this one was still operational, it wasn't as effective on the flat ground but this was quite steep difficult territory.

25

Q. To your knowledge was that Waratah continuous miner working in November on road development?

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A. Yes it was to my knowledge.

Q. And the more effective road header was the ABM continuous miner, which we can see in the heading towards north, top of the picture?

5 A. Yes, well it was being more effective in those conditions because we'd put it into a road that was long and straight and was slightly flatter than where the other miner was. It wouldn't have been as effective had it been down in the other roadway.

10 Q. Do you accept Mr Whittall that when you look at the PW28 diagram you can see the two quite significant roads when compared to the rest of the mine developed at that stage up towards where the goaf is, that resources were directed to getting to that goaf for the purposes of the company extracting coal where those resources could've otherwise been directed in further developing the roads to the west and therefore closer to the point of the second egress?

15 A. No, that's not as simple as that. You're making as if you can only, if you allocate, if you've got a hundred men you can't put a hundred men in a mine at the one coalface and make it go 10 times faster than if you had 10 men there. You can only allocate machinery and men to a working faces to allow air efficiently to be sent there, to allow coal to be efficiently hauled from there, and while that panel was extending to the
20 north those other roads, which you can see there's more of them and in more difficult conditions, the better conditions are turning to the right and going up because the slope is better and the structures weren't going across the face and the gas holes weren't going across the face like that, the PRDH8 we talked about, so we were continuing, there was
25 mining being scheduled to the west almost all the time where it could be efficiently done so. But it wasn't, yes it was an imperative to go in all those directions.

30 Q. And just finally, the simple proposition that I'm asking about, do you consider that as a consequence of having to build those roads to the north towards the goaf had any impact on, or delayed the development of the roads to the west?

- A. I'd have to go back and do an analysis of it or have maybe someone like the tech services team who do the modelling of that make that comment in more detail.
- Q. Okay.
- 5 A. My understanding was all those roads were being progressed with the resources we had available to us.
- Q. No doubt we will come back to that. Turning then to the final topic, which is matters relating to egress and the fresh air base in the context of trying to get a better understanding of what was in the mine and how
- 10 it was developed as at the time of the first explosion. Be grateful if you could help us further understand the company's position on the vent shaft and the Alimak rise as a second means of egress. Firstly, can you confirm that the Alimak and the vent shaft contains a ladder, both through the Alimak and through the vent shaft right to the surface?
- 15 A. That's correct.
- Q. And the total climb if one was to do it would be in the order of 150 metres?
- A. No, about 108 to my knowledge. The shaft depth is only about 100 metres deep.
- 20 Q. My understanding that the Alimak alone is a 50 metre vertical climb?
- A. That's correct. And it comes into the shaft at a bit less than 60 metres.
- Q. Let's just take it one step at a time.
- A. Okay.
- 0935
- 25 Q. The 50 metres for the, first 50 metres or so for the first Alimak climb and then there's an incline of about 15 metres which then –
- A. It's pretty flat to walk. It's, you go sideways so you go to the top of the Alimak and then you walk sideways so it's not a ladder or a climb, it's a walk.
- 30 Q. On a slight incline?
- A. Oh of one or two degrees maybe. It's like flat.
- Q. And then when you get to the main vent shaft ladder what distance do you say it is from that point to the surface?

A. I'm not exactly sure but my recollection is it would be 60, 61 metres, 60 metres something like that.

Q. And in the Alimak part of the climb are there platforms at intervals where the –

5 A. Not to my knowledge, no.

Q. - men can rest.

A. No, there's not.

Q. And in the Alimak near the top at one point the ladder ascends at an angle so effectively you're leaning, you're climbing and leaning back on an angle. Did you know that?
10

A. I wasn't aware of that actually. I thought it was actually leaning in, not out.

Q. I take it from that comment you haven't then been up the ladder yourself?

15 A. No, I haven't climbed the ladder since it was installed.

Q. You said yesterday that an exercise hadn't taken place, to your knowledge, whereby all of the men in the mine might have had some sort of emergency drill to go up the ladder but you then, in the same sentence, said that men do go up and down it?

20 A. Correct.

Q. Are you saying that as part of the sort of general operation or requirements of the mine from time to time men are required to go from the bottom of the ladder from the Alimak right to the top, to the surface?

A. Yes, they do, engineers, tradesmen climbed up it. We've had an occasion where I know the fan on the surface has either tripped or they've had some communication problem with it but we couldn't fly in so one of the engineers climbed up and did the repairs and climbed back down again.
25

Q. Is that the only occasion that you're aware of?

30 A. No, I'm aware of other ones. That was an example I was giving you. I know other engineers and tradesmen have had to climb up it anecdotally and I've spoken to them.

Q. Are you able to identify them?

A. I'm sure Matt Coll has climbed the shaft. I'm sure Mike Scott has climbed the shaft. I can't recall any other individuals.

Q. Matt Coll was one of the men who helped build the ladder, wasn't he?

A. Correct.

5 Q. And so he climbed it as part of that process?

A. And since then -

Q. And since.

A. - as far as I know.

Q. It wasn't a regular thing though, was it?

10 A. I can't really say. I'm not sure whether it was or not.

Q. You are aware of the New Zealand Mine Service audit about self escape capabilities in August 2009?

A. Yes, I am.

15 Q. MRS005 just coming up at page 3 on paragraph 4, it was described that in a fire situation using the vent shaft and the Alimak as a means of egress would be virtually impossible, second paragraph.

A. Yes, I've read this report before.

Q. As a result of that report did it continue to be the company's position that this was nonetheless a second means of egress?

20 A. I think we established yesterday that it was a second exit from the mine. The definition or the determination to be a second means of egress means you have it as your second response from your primary egress and the alternative to our primary egress was determined to be preferable to being a refuge bay while maintaining this as an escapeway or a second exit from the mine but not a determine, not a deemed
25 second means of egress was the way it was viewed while we worked towards the western side to put the permanent second egress in.

Q. To your knowledge had the egress or escape route, whatever you like to call it, been tested with men going up it with BG4s on or sometimes
30 called GB174s the larger breathing apparatus?

A. Yeah, the BG174s. I'm not aware of one way or the other. I have no knowledge.

Q. Do you know, miners down the mine wouldn't have those big apparatus anyway, would they.

A. No, only the rescue team would wear those.

0940

5 Q. So they'd have a self rescue?

A. A Draeger self rescuer, yes.

Q. And that's the one which allows some 30 minutes of oxygen?

A. Yes, thereabouts.

10 Q. And it's a chemical reaction, isn't it, when it's activated to allow some sort of –

A. – it generates oxygen and, yes, has a chemical in the device.

15 Q. Is one of the features, that might be a misnomer to describe it as that, but one of the things about these Draeger units is that when you're using them in order to ensure that that chemical reaction continues to work properly is that you don't overexert yourself, you can't put yourself under pressure?

20 A. They just get used up quicker, they work best at rest but they're designed for walking out of a mine so if you're walking out, you're climbing, you're exerting yourself, that's how they're designed. They're designed to be a self escape, they're not designed just to sit, the idea of having 30 minutes is that you're supposed to walk from one place to another so I don't accept that they're not designed for exertion, they are designed for whatever needs to be done when you're escaping but they will last longer at rest, so a 30 minute unit is deemed to be 30 minute, 25 like most things there's a factor of safety in them, so they're deemed to be a 30 minute unit because you can wear it for 30 minutes under exertion and under walking, whereas if you just sat down and put it on in the rib and waited you could probably go maybe 60 minutes with the same unit and the same person.

30 Q. To your knowledge was the impact of wearing one of those units in an irrespirable atmosphere, climbing up a 100 metre vertical shaft, under no doubt some stress, ever tested?

A. I'm not sure, I can't answer that.

Q. Well, you were a part of that risk assessment panel which we put up before, can you recall if it was discussed in that context?

A. Sorry, which risk assessment panel was I the part of?

5 Q. The document I showed you before where you were part of the expert group for the risk assessment for the second means of egress?

A. That was done some years earlier, yes.

Q. Can you recall whether as part of that exercise consideration was given as to the impact of using a 30 minute Draeger self rescue?

A. I don't recall.

10 Q. Is it correct to your knowledge that the safe working load for that ladder was at any one time eight men?

A. I don't have any knowledge of the design of the ladder in the Alimak. It was to my knowledge designed for its purpose for escape and I don't know what number of people it was designed for.

15 Q. The acting mine manager at one stage, Mick Bevan, did some calculations which were advised to you about the number of men on the ladder at any one time being eight. Do you recall that?

A. I don't recall it but if you say that I was advised that at the time, that was some two and a bit years ago, two and a half years ago.

20 Q. You mentioned harnesses yesterday, which you said could be used in conjunction with the ladder. What sort of harnesses were you referring to?

25 A. They're a fall arrest harness, I've not put one on or seen the ones that Neville ended up buying but my understanding is they're a harness to be worn over the top of your overalls and attached to a fall arrest lanyard that's attached to a catenary wire in the shaft, only used for the Alimak section.

Q. So that's fall, F-A-L-L, fall arrest harness?

A. Yes, fall arrest.

30 Q. And how many of those were available?

A. I don't know.

Q. Would it surprise you to learn there was only four?

A. No, it wouldn't, well, I don't know, I didn't expect there to be hundreds of them and your comment on eight people on the ladder, given that people are typically a couple of metres all and the ladder's 50 metres high then that doesn't particularly surprise me, but the number of four,
5 no, I have no knowledge whether there was four or 10.

Q. And as the ladder is attached to the shaft by some metal strut or something of that nature, and there is a cable which goes up which is what the harness is to be attached to, correct?

A. That's how I understand it works, yes.

10 Q. But because of the struts you can't have a clean run with your harness going up the cable so it at some point has to be disconnected and then reconnected?

A. As I understand it, yes.

15 Q. So there's another type of harness which caters for that called a Type 1 fall arrest device, which is an inertia type device, a bit like a seatbelt in a car. Are you familiar with that?

A. No.

Q. You don't know what I'm talking about?

20 A. No, I'm not aware, it's not an area of my, either my expertise or an area that I've particularly studied.

0945

Q. So you can't help us with how many of those then there might have been at the bottom of the Alimak for use?

A. No.

25 Q. Now you mentioned yesterday in relation to the ladder in particular, whether you were aware of any safety assessments being done by men trying to go up it, and you've confirmed again today that you were not aware of all of the men in the mine having such an exercise, but you yourself, Mr Whittall, were part of an assessment whereby you agreed
30 with Neville Rockhouse, Nick Gribble, the engineering manager, Adrian Couchman, the training and safety coordinator, and Matt Coll, an experience mining engineer whom you've mentioned, to do a test run of going up the Alimak and the vent shaft weren't you?

A. Who would do the test run?

Q. All of you?

A. Possibly, if you have a document that says that.

5 Q. There's several emails reminding you of that, which I don't have access to at the moment, but you recall it was a bit of a joke amongst the four or five of you to see who amongst you would be able to get up it?

A. I don't recall that, but if you're saying you have emails to that effect. Can you remind me of a period that this –

Q. It was about four months before the explosion?

10 A. Four months before the explosion. I don't recall it but I have no reason to believe that that wouldn't be the case.

Q. And when the time came for this exercise to take place you didn't turn up for it?

15 A. Oh, I do recall the event now, yes, and what's going to happen and I was otherwise on the road doing a shareholder briefing or something. So there was a ribbing about the fact that they had planned for this to happen and that I wasn't available.

Q. Yes. So planned to be there, didn't make it, but was it reported back to you by those that did do this exercise of how it was for them?

20 A. I recall a discussion with Matt Coll on the event. I can't remember who else I spoke to about it. I may well have spoken to Neville. I don't recall if it came up at a management meeting or whether it was done just informally, I don't recall that.

25 Q. Do you accept in the circumstances, given the arrangement and the ribbing that you got, that it's likely that there was a discussion post the exercise, bringing things to your attention?

A. Yeah. I said I did remember talking to Matt Coll about it after the event. I don't remember who else I spoke to.

30 Q. Turning finally to the fresh air base issue. Again, helpful if you can explain to the Commission a little bit more about what you understand to be the case with that as at November 2010. During the driving of the drift through the stone Macdow had a shipping container and a stub at about 1600 metres didn't they?

A. Possibly. I can't remember whether it was a shipping container or not, but yes there was a container, yes.

Q. And that was, effectively, what you were referring to yesterday as one of the bases?

5 A. No, the one that was there as the changeover station you're talking about?

Q. It may have been?

A. Yeah, so there was a changeover station in the tunnel, which wasn't a shipping container. It was a purpose-built changeover station with doors and racks and rescuers and fresh air, so no that's why I'm confused. It's
10 not – I don't recall a shipping container being there.

Q. Okay. That might be correct. So it was nonetheless a container that was at about 1600 metres –

A. That's right, that was a changeover station for –

15 Q. For use by Macdow?

A. It was originally identified by the company with Mr Firmin who was here the other day, and through discussions with Mr Firmin, and directly between Mr Firmin and the McConnell Dowell management that was the solution they came up to for the use in the tunnel.

20 Q. And because they weren't in coal at that stage and the drift was being naturally ventilated, it was never connected to a fresh air supply was it?

A. The drift was never naturally ventilated. It was ventilated with forcing ventilation from fans on the surface.

Q. Yes, okay. But there was no compressed airline going into this
25 container or this purpose-built –

A. It wasn't a fresh air base, it was a changeover station. A changeover station is used in the event that the rescuer – well there was a concern by the inspector that if they were up the end of the tunnel that their self-rescuer may not last till the end of the tunnel so they should have a
30 changeover station.

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Q. The reason I ask, and I'm not going to go into it now at all because it's for another phase, but there was a suggestion that it was a place that

the two men who were able to get out of the mine should go to as a refuge on their way out, so it wasn't for that purpose?

5 A. When it was originally installed it was installed as a changeover station, not a refuge station. And to my understanding on the 19th of November, I could be wrong, but my understanding on the 19th of November was that the changeover station had been decommissioned and it was no longer functioning as a changeover station. I don't recall that there was anything in it and the fact that it hadn't been taken away was probably more logistics than anything else.

10 Q. You have worked in underground mines previously I think you said yesterday in Australia?

A. Yes, all my career, yes.

Q. All your career have been based in underground mines?

15 A. Yes, either in the underground mine or in the offices associated with it, yes.

Q. So you'd be well familiar with what some refuge bases can be like?

A. No actually, not at all. It's not something in any of the mines I've ever worked at they've ever had a refuge station.

Q. Really.

20 A. Mmm.

Q. Have you been in the Spring Creek Mine?

A. I've been underground to visit the hydro-face, well probably on four occasions and saw it working once, but yes I've been there probably three or four times.

25 Q. And have you been into the refuge base which is in the Spring Creek Mine?

A. No, I only went underground with Spring Creek's permission to have a look at their hydro, they're fairly tight about what they take you to.

30 Q. You will nonetheless though, given your experience in the mining industry, be familiar with what they are and can assist us with what sometimes they might be given you a reading?

A. Not really. Given my background is, I've said I've never used one and the only time I've ever seen a refuge station, commercial refuge station

has been when I've been to AMEX conference in Australia or something where they sell them. That's about the only time I've ever seen one.

Q. And the Australian mines that you referred to, what were the lengths of the drifts that you were working in or were dealing with?

5 A. The different mines I've worked at, two were adit mines, so they basically went straight in from the escarpment and went in – well the first mine I worked at went in 10 kilometres before you got the closest working face. The second mine I worked at had been operating since 1854 and we went in about 13 kilometres to get to the working face and
10 there was a big mine behind that as well. The other two mines I worked at were both shaft mines and they're 500 metres deep with a shaft down and a shaft up and no drifts at all, well there was no walking egress from those mines, they were both, there wasn't even ladderways, they were just cable wound skips, one cage down and then the egress from the
15 mine was standing on top of the, excuse me, I think my eyes are getting tired. The Tower and Cordeaux Collieries both had haulage skips for their coal, 15 tonne skips that went up and down, and the egress from the mine was standing on top of those skips. So with a guard rail around you but there was no ladderways in either of those mines. Appin
20 Colliery I managed for a while and it had two drifts, incline drifts, and parallel to each other, and the shaft wasn't used as an egress so they were drift mines. And that drift was probably more than two kilometres long. I can't remember exactly how long. I think it's the mine that Mr Hughes referred to having visited in Australia the other day as well,
25 be well over two kilometres and that was a walk uphill, not downhill, it was a decline drift. And sorry, and Westcliff colliery I worked at and that was also a decline drift down at least a kilometre and a half, if not two kilometres.

Q. Now just returning to a refuge and taking account of what you've said
30 about a lack of too much knowledge about how they might be. If I can describe to you the refuge base, for example, which is at Spring Creek and I just want to ask whether or not there's anything like that at Pike. So there there's a refuge base where you go through a door into a

vestibule-type area, you close the first door, you go through a second door into a large chamber which has emergency lighting, food and water supply and compressed air going into it as a means of refuge for men in an emergency. Is that how you understand them to be?

5 A. That's one way of setting up a refuge chamber.

Q. So just so that we're clear on this. At Pike the fresh air base is the stub at the bottom of the Slimline shaft?

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10 A. You're using two different terms, one's a refuge chamber and the other one's a fresh airbase. A refuge chamber is not necessarily a fresh airbase. They're not the same thing.

Q. Well let's put it another way.

A. They can be, but they're not necessarily.

15 Q. There's no, just be absolutely clear, there's no refuge chamber of the sort I just described in the mine at Pike River?

A. No, there's not.

Q. So turning then to what is there which is not a refuge chamber but a fresh airbase, it's correct isn't it that the fresh airbase which you refer to is a stub at the bottom of a Slimline shaft?

20 A. That's correct.

Q. And there's no door to it, is there?

A. My understanding from discussions with Mr White is that it's got a door that's capable of being put down which would act as a barrier to smoke so it's basically a roller door on the –

25 Q. It's a brattice, isn't it?

A. That's how I understand it to be, yes.

Q. And by reference to the glossary a brattice is an impervious plastic or fabric cloth used in the construction of ventilation control devices or usually in stockings?

30 A. That's correct.

Q. And you say in your discussion with Mr White you defer to him, you've told us how many times you were in the mine, and even only a week or

so before the explosion, so you would've gone past the stub many times?

A. Yes.

5 Q. So rather than deferring to Mr White about what was there, you can tell us yourself that you know that there was a brattice as the doorway to that stub?

10 A. I know that there was a brattice roller door rolled up to the roof when I've been past there but whether there was any other device that could be used in that stub I'm not aware but as far as I know that was the intended use of that brattice door, yes.

Q. And it has a rope system so that you pull it and the brattice drops down when you need to close it off?

15 A. I would imagine that's how, when you do a roller door there's a fairly standard way of doing brattice roller doors and I'd imagine it's been built in a fairly standard way.

Q. And at this fresh airbase there are two self rescuer boxes and a fire rescue equipment box?

A. As I understand it, yes.

Q. And a first aid pod on the wall?

20 A. As I understand it. I've seen photos of it now.

Q. Did you ever go into it?

A. No, I never went into it.

Q. In all those visits to the mine you never went into what was this significant piece of infrastructure, fresh airbase?

25 A. Well in your words it's a significant piece of infrastructure. Are you saying it's a stub below a Slimline shaft with safety equipment in it and I have every confidence in the safety management of the mine to know that they'd have it adequately assessed so it's not something that I would've needed to audit.

30 Q. Now the oxygen source then for the fresh airbase is the Slimline shaft itself?

A. Correct.

Q. Would you agree that at most you would get 20 men in that stub behind the brattice?

5 A. I really can't comment on the exact number of people. It goes in about 15 metres deep so possibly that would be a reasonable number. It could take more. I really can't attest to how many could get in there. I'm not sure where you got your 20 from.

Q. And adjacent to the shaft is a bore hole with a four inch pipe gas drainage line running up it?

10 A. That's correct. The gas riser that we've spoken of on a number of occasions.

Q. So if that gas drainage line was damaged potentially in some sort of explosion or event you could be introducing methane into the fresh airbase?

15 A. The gas wouldn't come back down the riser but the pipeline would be isolated going into the fresh airbase.

Q. And what if it was damaged as it goes into the fresh airbase and before it goes up?

A. Well you'd turn it off at the next valve.

20 Q. So you don't accept that there's potential for methane to enter the fresh airbase?

A. Oh no it certainly is but it would be able to be isolated.

Q. Just on a normal day, if we can understand how the system works, on a normal day no problems. The mine ventilation is circulating as intended, oxygen is coming in down the main shaft?

25 A. No.

Q. Sorry coming down the Slimline shaft given the draw of the vent shaft. The main vent shaft is acting as a draw and bringing air down the Slimline shaft?

A. That's correct.

30 Q. If the fans at the bottom of the vent shaft stop in some sort of catastrophic event, the drift through this, you know the main drive, the drift will draw oxygen into the mine.

1000

A. If all fans are off there is a lag in natural ventilation, different mines go for longer periods of time because air has a weight so the fans would be moving air through the mine, so air would continue to move for some period and then after that there's a natural heating of the air
5 underground and so you would end up with a natural buoyancy and different mines, they're called breathing, so different mines will breathe differently. In our case our experience has been that the mine will typically breathe in as is experienced after the 19th of November explosion where the air was reset so it would naturally breathe in.

10 Q. So that being the case the situation at the Slimline is reversed isn't it, instead of air being drawn down the Slimline because of the force of the fan causing that draught, with the air going down the drift oxygen or air is actually going up the Slimline, not down it?

A. I don't know about that actually. I wouldn't say that that's categorically
15 true, given that the rest of the mine is warm and the air is being warmed through the mine and then being drawn up the main shaft, which has got the least restriction, it's more than likely that the Slimline would continue to draw air down it, but I can't qualify that.

Q. You can see though it's a potential possibility, isn't it?

20 A. I haven't done that exercise myself to understand that.

Q. If that was the case and if that's what the evidence –

THE COMMISSION:

Mr Raymond, are we not straying beyond this phase? You've established
25 what was in the base.

MR RAYMOND:

Sir, trying to establish with the witness how he understands in the event of a fan not working, how the fresh air base at the bottom of the vent shaft, how
30 the fresh air base would actually get air.

THE COMMISSION:

The Commission accepts of course these are crucial issues but you have established what is in the base and that there are issues with it, they will no doubt be explored.

5 **MR RAYMOND:**

They will be sir, one last question as to the infrastructure at that point, if I may, it's the last question?

THE COMMISSION:

10 Yes.

CROSS-EXAMINATION CONTINUES: MR RAYMOND

Q. Mr Whittall, the compressed airline which we've heard about going into the mine?

A. Yes.

15 Q. In relation to where the stub is for the fresh air base is on the opposite side of the drift going past the stub?

A. I can't exactly recall, it does change sides in the tunnel but most likely on that side, yes.

20 Q. So when the brattice was down and if men were in the stub in order to get compressed air into the stub the compressed airline would have to be broken and somehow pulled across to that area?

25 A. You wouldn't just break a main pipeline like that and bring it across as you say, there would have to be – there's outlets all along the pipeline and then there would be a hose brought across to anywhere so compressed airlines have outlets on them, you don't break the pipe and bring it across, so where the nearest outlet was, I can't say one way or the other.

RE-EXAMINATION: MS SHORTALL

30 Q. Mr Whittall, I just want to cover several matters that have come up in the last couple of days during your evidence, but let me just start with several questions that were asked by counsel for the family. You were shown two documents and I wonder if we could actually bring those up

side by side, the front page of both. The other one is DAO.002.03151 and just for the record, these are the front pages of the two documents that were shown to you by counsel for the family, do you recognise them Mr Whittall?

5 A. Yes I do.

Q. And I believe you noted that neither of them had been signed and in fact the document headed, "Roles and responsibilities," says draft document on it. Is that right?

10 A. Yes that's right, it was done as an exercise to put something in place, Kobus – what normally happens with these sort of documents is that the originator is a person who perceives the need for the document or ends up owning the document but someone that can take accountability for those things ends up being the authoriser. So in this case Kobus generated this document and it was for me to authorise, but I don't know
15 whether it was ever signed or not or whether it even became a formal document.

1005

20 Q. And just so I clearly understand this. On the front page of both of these documents there is an identification of a department and then under that there's an originator title, authoriser title, is that right on both documents?

A. Yes that's correct.

Q. And is the department designation the department within the company that had responsibility for the subject matter of this particular document?

25 A. That's correct.

Q. So if we take the first document that was shown to you. Just for the record, DAO.002.03151. The responsible department there is identified as the general manager, mines, right?

A. Correct.

30 Q. And you're identified as the general manager of mines on this particular document, Mr Whittall?

A. That's correct.

Q. But it's not signed is it sir?

A. No it was – I don't recall if it was ever finalised, it was just written by Kobus for clarification of people's roles.

Q. And then if we come to the risk assessment, which is DAO.004.04414, which department is identified as responsible?

5

THE COMMISSION:

Well we can see Ms Shortall what department is there, it's obvious. The document speaks for itself.

10 **MS SHORTALL:**

I'll move on then sir.

RE-EXAMINATION CONTINUES: MS SHORTALL

Q. We focus on the risk assessment. You were shown one section of that. I believe it was 3.2. If we could just bring that up on the screen. It's page 6 of the document – page 8. And if we could just bring you back to the section you were asked about by counsel for the families, 3.2 is a reference to a risk assessment by the expert team, and your name was identified as the first name in that list for the expert team, Mr Whittall. Do you recall that?

15
A. Yes.

Q. And just so I'm clear, can you identify the other members of that expert team?

A. Yes. Trevor Watts is the general manager of Mines Rescue Service. He's based in Greymouth or the Arapahoe Station. Terry Moynihan was our projects manager, had been brought on board originally as our tech services manager but was a consulting mining engineer that was working on the hydro panel and all the other – he took over the shaft Alimak project as one of his projects and other things like that. Michael Bevan was a probably 30, 32, 33 year experienced mine manager, underground coal miner, and degree engineer out of New South Wales that was brought over to fill a gap between Kobus Louw leaving and Nigel Slonker starting. So that would put this

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document in about the first few months of 2009. Nick Gribble was the engineering manager for Pike River Coal and in the absence of Kobus he'd taken over the role of production manager, and Allan Dixon is an experienced miner that worked at Pike River Coal. At the time he was
5 doing some surface duties and working in the safety training department and therefore was brought on to the expert team as an experienced miner. And Matt Coll had previously been the engineering manager at Spring Creek and he'd left that and was working as a consulting engineer. He's not a mining engineer. Although it says a mining
10 engineer there, he's actually a mechanic or a trades engineer but works at the mine, so he's an engineer in the mining industry rather than a mining engineer. So it's not rightly written in that area.

Q. And Mr Whittall, counsel asked you to accept for today's purpose that the version of the risk assessment that you've been shown is final. If
15 the document was still a draft in 2010, who would have been responsible for finalising it?

A. Usually it's the owner of the document, which is the originator or the responsible person. Some documents have responsible person and authoriser, others have originator and authoriser, but in this case I think
20 the term on the front was originator. So usually the originator or person owning the document drives them through.

1010

Q. Let me turn to several questions that you were asked yesterday about Mr Whittall. You were asked about certain reviews, in fact it may have
25 been on Wednesday, certain reviews conducted for NZOG by BDA in around May 2010. Do you recall those questions?

A. Yes, there was two in May and a follow-up in June I think.

Q. And you gave evidence that you never saw a copy of the management report until it went to NZOG and then you thought you received it from
30 John Dow the chairman of Pike River Coal. Do you recall that?

A. That's correct.

Q. And have you spoken with Mr Dowell about BDAs management report prepared for NZOG?

A. Yes, I spoke to him when we received it and discussed the findings in both the technical and the management report.

Q. And what do you recall of that discussion?

5 A. Well at the time I dealt with it with Mr Dow because Gordon Ward was in Bali at a conference that week that we received it so because he was sort of on a different zone and out of the country I helped Mr Dow make responses to New Zealand Oil and Gas on the comments that were made in there and we prepared, in some cases clarification statement, in other cases we didn't agree with what was made in the BDA report
10 and so we made rebuttal statements, if you like, and made clarifications for a New Zealand Oil and Gas at their request to make comment.

15 Q. Well let me show you a brief of evidence that's been submitted to the Royal Commission by Mr Dow. I don't believe it has a reference number yet but we are still able to bring it up. And if I could turn your attention to paragraph 9 of Mr Dow's brief. And if we could just highlight that please. And in his brief Mr Whittall, Mr Dow states, and I'm reading directly, "Shortly after I received BDAs 2010 review in May 2010 I met with John McIntyre. Mr McIntyre advised me that he was disappointed about not making his report available to Mr Whittall for comment prior to
20 submitting it to the NZOG Board. He explained that he was under pressure by the NZOG Board to produce the report urgently and this prevented him from obtaining Mr Whittall's comment on the report. Mr McIntyre also expressed to me the utmost respect and admiration he had for Mr Whittall." Is that statement from Mr Dow's brief Mr Whittall
25 consistent with your discussion with Mr Dow?

A. Yes it is at the time because I was the one to highlight Mr Dow that I was concerned that Mr McIntyre's comments about the senior management team somehow reflected on me at the time and also on some other members of the staff and I was concerned that that wasn't
30 my knowledge of my staff or of BDAs opinion of my staff, or myself.

Q. Now you were shown certain statements contained in the 2010 reviews prepared by BDA for NZOG and I'd like to ask you about three in particular. There's no need to put them back up, but you were shown a

comment that the Pike River project had been severely delayed on its planned programme of construction development and ramp up to the target mining rate. Do you remember being shown that comment?

A. Yes, yes.

5 Q. Putting aside whether or not you agree with BDAs comment, do you have a view on whether any such matter impacted safety at Pike's mine?

A. No it didn't. And as I was making the point earlier there's a very big difference between production delays from one side, production delays, 10 also the raising of capital to the company et cetera on what men do and what supervisors do and what management do and what standards they allow in the mine, there's absolutely no culture that I've ever promoted, or any of my management team to my knowledge have ever promoted which put operational needs ahead of the safe working practices of the mine. The delays in production were lamentable and delays in the 15 company achieving cashflow, positive cashflow is also lamentable but they're business issues and to my knowledge at board level, or at senior operational level, or at operation level, to my knowledge there's never been any indication or any insinuation that that should impact on the safe operating of mining.

20 Q. You were also shown a comment, and it may be addressed by your last answer Mr Whittall, it's a comment from BDAs report that development was well behind schedule. And my question to you is whether this matter had impacted on safety at Pike's mine?

25 1015

A. I can't say whether it actually impacted on the ways and means of men's mines or what they did on their job but it had no, it had no impact on the desires or the instructions of the company of the senior management or of my direct reports of management and certainly not of any of the 30 mining officials I'm aware of. I've never seen any evidence that they put the needs of the company's cashflow ahead of the need to mine, to operate the mine safely.

Q. And Mr Whittall you were also shown a statement that there had been, and I'm just reading back the comment from BDA's report, "A suite of unexpected technical and operational difficulties in the completion of initial mine development." Do you recall being shown that statement,
5 sir?

A. Yes.

Q. And putting aside whether or not you agree with BDA's comment to NZOG do you have a view on whether any such matter impacted safety at Pike's mine?

10 A. I'd say. I've never worked at a coal mine that didn't have a suite of unexpected technical or other issues to deal with. That's the nature of mining. You're dealing with nature and then quite complex mining equipment but I'd also reinforce that that had never led to the company, the board the management or the senior manager or the operational
15 manager of the mine needing to make operational decisions that would impact adversely on safety because of unexpected technical difficulties or business pressures if you like.

Q. Now you've been asked, Mr Whittall, some questions about an audit conducted almost two years ago in August 2009 by Mines Rescue concerning use of the shaft's ladderway as an exit from the mine. Do
20 you recall those questions?

A. Yes, I do.

Q. How did the August 2009 audit come about?

A. To my knowledge and recollection it came about at Pike's request
25 through general discussions in the management meetings and I, to the best of my knowledge, Mr Rockhouse proactively organised for the rescue service to come and to the audit for us.

Q. And you answered yesterday in response to a question from counsel assisting the Commission that a consequence of the audit was, and
30 these are your words, sir, "Discussions with both the inspectorate and a risk assessment was established with a whole bunch of other people." Can you elaborate any further on that answer?

5 A. Well when the Alimak had first been put in and the ladderway was first put in that was done with the full knowledge and discussions with the inspectorate at the time. There was a need to review our, given that it quite rightly has been pointed out, that the upper portion of the shaft had a staged ladderway and the bottom section had a straight ladderway and that other things needed to be given consideration so as a consequence of that review and other internal discussions both with site management and with the inspectors, a risk assessment was done in January 2010 with the newly appointed mine manager who had been at 10 the mine for several months at that stage but, or a couple of months, but had just been ticketed so he was then responsible for the underground environment if you like and the statutory manager, so I opted not to attend that risk assessment and left it for the new mine manager and the operational team and to my recollection, I don't have that document in 15 front of me, but the Mines Rescue Service, the site safety management and the site mine management plus engineering staff attended that risk assessment.

20 Q. Now you've been asked a series of questions, Mr Whittall, about topics like ventilation, gas drainage, locations of gas detectors, just to give some examples and in response you've referred to the mine manager. Can you elaborate a little more on your role as the general manager of mines at Pike and later as the CEO in relation to the mine manager's role?

25 A. Yeah, the mine manager's role which I have been on a number of occasions myself and fully conversant with what that role is, is a statutory role in New South Wales, in Queensland and in New Zealand whereby the person responsible and appointed usually by the company as the mine manager is responsible for, at the top of the tree if you like as far as the law goes, to manage safety and manage the operations. 30 They have control of all operations on site, so there's a fine line often between the mine manager and who they report to as to who can give instructions if you like.

1020

A. Typically in my operational past – where I've been the mine manager on site you are the only person, you're the sort of senior person on site and the person you report to might be in the head office in town somewhere, but the mine manager runs the mine, they have all departments reporting to them and they are the top of the organisational chart. In New Zealand that's the same, so the mine manager is the only person that's identified, there's no such thing as an operations manager or a general manager under legislation in New Zealand, so it's very – it's always a fine line and one I'm very acutely aware of in roles I've had in the past, where there's often overlap between an operations or a general manager and what they want and what they think should happen compared to what the statutory manager ultimately has legal responsibility, wants to do, so I'm acutely aware because I've been in that position myself on a number of occasions, that the mine manager at the end of the day has the final say in the safe operations of the mine. So, at Pike it was no different. We actually had, probably more difficult for the mine manager in such that it was a single mine operation so the mine manager for example, Mick Lerch at the time, the first half of 2010 when some of these issues were arising, he was legally responsible for all of the safe operations of the mine, but he also had a 30 plus year experienced mine manager sitting in the office near him as his boss and then had another 30 year plus mining person in myself above that again, so there's quite a lot of resource and oversight but ultimately, especially in my role, both as a general manager, we'll come to the CEO later, it was always one of utmost respect for the mine manager's role, it's a position of legal responsibility, it's a position no manager takes lightly, they would do to their peril because ultimately they will be held responsible and accountable and that's something we all take on when we take on those roles at law and understand that fully. So, the mine manager's case at Pike, they had full legal responsibility for the operation of mine and both, mostly from a safety, the legislation is written around safety, it's not written around productivity or getting coal out, it's written about doing those things safely, so just to finish the

question you asked me in my role as CEO, the role of CEO, I was appointed to the role and one of the justifications given was my mining background as compared to my previous incumbent's financial background, Mr Ward, however the role of CEO had no operational responsibilities as far as that was concerned, it was an oversight, like a chief executive of any company, and below me was a mine manager and in the case of Doug, was carrying both roles at the time until Steve Ellis was appointed but in theory there was a mine manager and then an operations manager or general manager below that, in that role so we had several layers of management above the mine manager.

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10 Q. Now, you were also asked about certain evidence given by Don Elder last week that Solid Energy believed Pike River's coal was likely at best to qualify only as a semi hard coking coal. Do you recall those questions?

15 A. Yes I do.

Q. Do you have any further comment on that matter sir?

A. No, the only comment I'd make is that while Mr Elder has said that the coal was only semi hard, as I said, our coal was already presold for the next three years at 70% capacity to customers as a hard coking coal, and they had determined that and we had agreed that it would be sold as a hard coking coal. We had contracts with two shareholders for 55% of the production from the mine for the life of mine, for the next 20 years as a hard coking coal. There was no suggestion by any customer ever that the coal was anything other than a hard coking coal so, again, I'm not sure of what Mr Elder was basing his knowledge or why he would make those conclusions publicly.

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25 Q. Now, you were also shown a prefeasibility study by counsel assisting the Commission that was done in 1995 by a company called CMS. Do you recall being shown that document?

30 A. Yes I do.

Q. And just for the record I'll note that is NZOG0002, and without showing it to you again Mr Whittall, you were asked about a statement in that study estimating the capital required for the project in 1995 at just under 30

million and when asked to comment you responded, I believe with a smile, that it was going to be cheap. Can you provide any further comment regarding that matter?

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5 A. Yes, I'm conscious that that doesn't really fully answer what I was trying to imply by saying that would be cheap. The reality is that was a very high level first phase feasibility study from the way I read it, and they wouldn't have taken into account a great deal of detail with the development of the mine, but probably the major thing to consider in
10 that is that since 1995 the whole resources industry around the world has been in constant boom. Inflation rates for Pike have been in the order of 25 to 30% a year in costs going up. Steel, concrete, labour costs have all gone up exponentially not just incrementally and costs have soared for the same item year in-year out. Mining equipment and
15 mining expertise. Our consultants cost a phenomenal amount of money per year to bring in, ventilation, gas. All those guys their earning capacity has probably tripled in the last number of years and all of those costs have gone to an exponential increase not just in Pike but in every mining project pretty much around the world.

20 Q. When you were asked yesterday if Pike had employed a ventilation engineer you noted that, and I'm reading back from the transcript Mr Whittall, that although there was no specific role at Pike River entitled ventilation engineer the company had, and these were your words, "a full-time on-call ventilation or a designated on-call ventilation
25 consultant". Do you recall that response Mr Whittall?

A. Yes I do.

Q. Can you provide any further detail about these consultants and their expertise?

A. Yeah, look I don't have their CVs with me or in front of me, but I do
30 know the individuals that we've used at Pike River. As I said yesterday, the ventilation responsibility on site is vested in the mine manager's role. However, to supplement that as we were building the mine especially but also in steady state I've used, every mine I've worked at we have a

ventilation consultant available to the mine, but in this case these guys took a fairly active role, probably more so than typical. Our first ventilation consultant was used just through Minarco which was Phil Mitchell and his report was tabled the other day. Phil's well-known to me. He was deputy manager at a mine that I was working at when I was younger. He, at the time he wrote his report, probably had 35, 37 years' underground coalmining experience, had a degree in engineering, mine manager's qualifications, and had spent his whole career in underground coalmining until the last few years where he worked for Minarco in Sydney, but before that he was always an operational manager. The next one after him was and peer reviewed his work, was Andrew Self, who works for Australian or he owns Australian Coal Mining Consultants. Andrew's a pre-eminent ventilation consultant around the world, mostly working out of Australia and Brisbane. Helped design the ventilation officers' course that runs in Queensland and has had a long and illustrious career in mine ventilation consultancy and is a very well regarded person. The next one we used, some of these guys we had to stop using just because of their own workload management, so we didn't change by choice, we changed by their availability. Next we used Jim Rennie who is also not as well known to me but I know him reasonably well. Jim was an ex-ventilation engineer for underground mines in New South Wales and worked through his career I understand through at least undermanager level, if not mine manager level. I'm not sure if he attained those qualifications, but he's a qualified ventilation engineer and works as a ventilation consultant, Jim Rennie. Ventilation. That's what he does, that's all he does. So he was involved with us right through the design of the first and placing the underground fans, et cetera. Subsequent to him was John Rowlands. I've also worked with John, it's a small industry. I've also worked with John from when he was a deputy and I was a surveyor, actually a mining trainee and John was a mine surveyor and then he got his deputy's ticket and he's worked his way up through undermanager and went into concern consulting, so he's probably now

had 35 years' underground coalmining experience. All he's ever done, worked in gassy mines in New South Wales and Queensland and even more so now that he's consulting full-time and he also, I understand, lectures in ventilation at the University of New South Wales as well, so again a very well qualified ventilation person.

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Q. Now Mr Whittall, you've been asked several questions about funding issues at the company going into the 19th of November 2010. Do you recall generally those questions sir?

A. Yes I do.

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Q. And can you provide any further context to the Commission regarding that issue?

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A. Yes, I've said on a number of occasions that the funding of the company and the funding of the mine site while logically are inextricably linked are two different concepts operationally. The funding of the company was one that ebbed and flowed as we raised more capital through a number of ways, whether it was through an IPO or whether it was through placement to institutional investors, and whether we do a rights issue, which is a issue of additional shares to existing shareholders, or whether we went out and sought new capital through separate capital raising. So there's a number of different ways, or a bank debt. Or in the case of short term loans or a place with New Zealand Oil and Gas late in 2010 and also a convertible note that the company had raised. So there's a whole raft of financial instruments available to any company to investigate. In the case of Pike River in November 2009 one of the first tasks I'd been given as chief executive was to do another capital raising, which was originally challenging –

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Q. Sorry sir, was it 2009 or 2010?

A. No, 2010 sorry.

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Q. Thank you.

A. Yes, sorry. 2010 was to do another capital raising as cashflows were going down and we were actually burning through cash quite quickly at the mine site. We were buying a lot of equipment and also because

taking longer to get the first hydro-panel up and running. So the issue for the mine site is to continue to spend whatever they need to spend and it costs whatever it costs. We weren't in a phase yet of going back and reflectively reviewing budgets and seeing how we could do better than we did last year, we're still in construction phase. We had an army of consultants and contractors and workforce on site so it was costing a lot to – I think our monthly spend was about eight million dollars, six to eight million dollars a month, which is quite a lot of cash. So we were going through capital raising but on Friday the 19th a number of things were coming together. We had agreed a deal with UBS as a breaking company for a fully underwritten 70 million dollar capital raising. We were doing a book build the following Monday, which is effectively a placement of shares to institutional investors which was being expected to be about the 45 million dollar mark and then there was to be a fully underwritten 25 million dollar share raising. And that was intended to be announced to the market the following Wednesday, the 23rd or 24th, whatever it was going to be to be announced to the market that we had achieved a fully underwritten 70 million dollar raising which would've obviously changed the corporate cashflow path that was put to me that we were going to be down by, you know, 54 million by whatever, those things were well understood and those capital raisers were well in place. But the impact of that at the mine site was nil, given that the mine was continuing to do what it did and the activity of raising capital was the activity of the board and the chief executive, not of the operational management.

Q. If I change topic Mr Whittall. You were asked about three reports written in May, July and September 2010 by Miles Brown of Drive Mining regarding gas drainage. Do you recall those questions yesterday sir?

A. Yes I do.

Q. And I actually just want to bring you to one of those reports, it's the September report at DAO.012.02524, and specifically paragraph 3 on page 6. So we'll just bring that up Mr Whittall and I've just got a couple of questions for you. And if we look at paragraph 3, you were asked

yesterday about Mr Brown's specific recommendations regarding data collection in relation to gas drainage. Do you recall that?

A. Yes I do.

5 Q. I just want to draw your attention to two aspects of this document just so it's clear on the record. If I can ask you to take a look at the section that's now being highlighted where it's recorded that, "Weekly gas drainage measurements have now commenced." And the compilation, I'm reading from the document, the compilation of this data is essential for understanding how the Brunner seam coal operations with regards to
10 gas, the spreadsheets have been all set up for each hole and are with the Pike River Coal Tech Services Department. This data can also be used for future gas emission reporting." And in the next paragraph, "Mr Brown also notes that the weekly gas emission data is also planned to be taken, this data will provide important information for where gas
15 has been emitted and how it related to production." And in fact the author references that there's just been a survey completed with an underwriter and the suggestion is –

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A. Sorry, "survey with an underviewer."

20 Q. Underviewer, sorry sir, perhaps I should read it instead of paraphrase, "Positions where readings were taken for the upcast shaft, panel one and development panels should be used each week. Suggestion is that Dean and Jimmy conduct their weekly surveys together," and my question to you, Mr Whittall, is just whether this section from Mr Brown's
25 September report is consistent with your understanding as to what was happening in response to his recommendation regarding data collection?

A. As I said yesterday I'm not aware that it was as a response to Miles' recommendation but I'm aware that the activity was happening because
30 it was reported on weekly management meetings and also the operations report meeting to the board had started to collate weekly gas submission data, sorry weekly gas drainage data and was starting to review the gas emission data as well based on the SCADA system so I

was aware of the outcome. I didn't realise it was one of Miles' recommendations though.

5 Q. I just have a couple more questions for you, Mr Whittall. Specifically you were shown a statement I think on Wednesday afternoon by counsel assisting the Commission in a brief of evidence submitted by David Salisbury of NZOG. Do you recall being shown that statement?

A. Yes, I do.

10 Q. And in his brief Mr Salisbury said that in August 2010 he had told John Dow that NZOG had lost confidence and Mr Ward and you. Do you recall that?

A. Yes, I do.

Q. And have you discussed Mr Salisbury's statement with Mr Dow?

A. Yes, I have.

Q. And can you explain to the Commission the nature of that discussion?

15 A. Yes, I first saw that or first became aware of Mr Salisbury's view when I read it in his submission to the Royal Commission and I let Mr Dow know that I'd read that and asked him his opinion because I was quite taken aback given that he said that he had the opinion, not only had that opinion of me but that he'd discussed it with my chairman before I was
20 appointed, and I was concerned that that was the case and that I'd consequently still been appointed and why hadn't I been told that there was some concern about my appointment. I also told Mr Dow that I'd had several conversations with Mr Salisbury in confidence, as I say in
25 confidence where he had it just with me privately, where he expressed exactly the opposite view of that and expressed a similar view about the previous chief executive of the company but not about me interestingly. However, Mr Dow was able to confirm to me that he had never had that conversation with Mr Salisbury. Mr Salisbury, according to Mr Dow, had never told him that and he didn't know what that was coming from at all
30 and that there was no such conversation had ever occurred and that wasn't the view that NZOG ever put to Mr Dow or the Pike Board about me.

Q. And if I can just show you a section from a brief of evidence that's been submitted by Mr Dow to the Royal Commission, specifically paragraphs 5 and 6 of Mr Dow's statement, and you'll see it on the screen there now, Mr Whittall, and I'll just read so as to save your voice perhaps. These are Mr Dow's words, "I do not recall Mr Salisbury or any other member of the NZOG Board advising me that they had lost confidence in Mr Whittall. I met with Mr Radford and Mr Salisbury on 26th May 2010 following my receipt of the BDA2010 review. At that meeting neither Mr Radford nor Mr Salisbury told me that the NZOG Board had lost confidence in Mr Whittall. I subsequently met with the members of the NZOG Board on a number of occasions including on 23 August 2010 which was shortly before Mr Whittall was appointed CEO of the company and have no recollection of being told by any member of the NZOG Board that he had lost confidence in Mr Whittall. Contrary to Mr Salisbury's allegations, the NZOG representatives on the company's board, Mr Meyer and Mr Radford, did not oppose and in fact supported the appointment of Mr Whittall as CEO of the company in October 2010. Likewise the company's board unanimously supported the appointment of Mr Whittall as CEO of the company," and my question to you Mr Whittall is just whether what Mr Dow has now submitted to the Royal Commission is consistent with what he previously said to you, concerning Mr Salisbury's statement?

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A. Yes it is, but it's also consistent where the conversation I had with Mr Dow at the time of having the job discussed with me and being offered the position, because I was concerned that I'd been with the company for five years and that there'd been underperformance by the operations if you like, as far as delivering on those targets, and that the company wasn't advertising the position but the board had unanimously agreed that I was the best candidate for the role and they didn't seek to look elsewhere, and that I was concerned that I would have the full support of the board. I didn't want to take the job unless I had the full support of the board, I would rather have not, because I needed that to

5 be able to go forward to do what I needed to do and make whatever changes I needed to do, change the forecasts and come out quite publicly after my appointment and be able to say what I needed to say about where the company was going to, and I couldn't do that unless I was sure that I had the full support of the board, and I was assured before I took the position that that was the case. So, his comments there are consistent.

10 Q. Just my last couple of questions Mr Whittall. You were asked by counsel assisting the Commission on Wednesday afternoon whether you could shed any light on Gordon Ward's resignation. Do you recall those questions?

A. Yes I do.

Q. And in response you said that you couldn't and I just wondered if you could clarify for the Commission why you're unable to do so?

15 A. I'm unable to do so for a couple of reasons. Firstly, Mr Ward didn't report to me. He was my boss so he was the Chief executive and therefore he reported to the board, so he didn't resign to me, he resigned to the board. That's the first reason. The second reason is Mr Ward has never discussed it with me, he resigned to my recollection, 20 I haven't looked up the date, but I recall it was a Friday morning, so to my knowledge it was a Friday the 4th of September, from best of recollection, submitted his notice and after some discussion with him about some outstanding matters he left the office about two hours later and I've never spoken with him since. He worked from home and made 25 submissions too about the quarterly report via the computer to our relationships manager but not directly to me and I don't recall having any – I know I haven't had a conversation with him, I don't recall ever having correspondence with him since that date. The third one is, to the best of my knowledge, in discussions with Mr Dow is that there's a 30 confidentiality clause in Mr Ward's exit agreement which precludes discussion of the matter anyway.

QUESTIONS FROM COMMISSIONER HENRY:

Q. My questions, I'll try and keep them as short as possible, relate really to management aspects. When you started this job as general manager in 2005, from what I've seen and heard it must have been a fairly formidable undertaking that you were about to engage in?

5 A. Yes it was, there was no roads, no nothing, it was just a mountainside and a, you know, feasibility study.

Q. And the New Zealand Oil and Gas, the main – the owner and then later the 30% shareholder, didn't have any background, as I understand it, in underground coalmining?

10 A. No.

Q. And you were brought in to develop this mine and its development and the position as at 19 November, that we're talking about in this phase, did you find that prospect a daunting prospect personally?

15 A. I did, I'd had – and I didn't quite realise, often after you take these jobs on, you don't know what you've had until you've lost it and having been within BHP for 24 years with the largest mining company in the world and access to any system you want and any person you need, I was a member of a number of email forums where I could just send an email, it would go out to 800-900 people and they would give me their views on things around the world. When I joined Pike I had literally no one, I had no systems, we didn't even have a payroll system, NZOG paid us but we had nothing.

20 Q. I was going to ask you really in regard to management information did you have to construct the management information systems yourself?

25 A. Yes. We had – I got paid by New Zealand Oil and Gas and that was the only system, New Zealand Oil and Gas ended up using Pike River Coal's health and safety management plan after we developed it and we gave it back to them, but we had nothing. We had no HR systems, had no forms. I got my own IRD number when I started and that was, and we went from there.

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Q. So, the situation you were faced with was to develop the management information systems. Who was your performance agreement with at the time?

A. Sorry, who was I employed by if you like?

5 Q. Yes.

A. So, I was employed by New Zealand Oil and Gas. Myself and then Ivan were the only direct employees of the company of Pike River Coal.

Q. Did you have a performance agreement with the chief executive officer?

10 A. No. I had a fairly rudimentary job description that was given to me as part of their recruitment. So it gave some dot point descriptions as to what my job was that I was being employed to do, but that changed. As I said, the first role I came onto was as a direct report to the general manager of their and I was a peer to the other employees and then –

Q. When you became the general manager, mines?

15 A. Yep.

Q. And took the senior position onsite?

A. Yes.

Q. Did you have a performance agreement with the chief executive?

20 A. Not as such. I had a performance bonus component of my salary, which loosely talked about budgets but at the time budgets were a very malleable and growing thing, so it was much more subjective my performance and especially in the first few years was a very subjective thing.

25 Q. So did you have specific measures that you were required to achieve in order to get your bonus?

A. Not in the early phases of the mine, no.

Q. Did that change as time went on?

30 A. It did. In the last couple of years I had more specific tonnes and, pretty much tonnage, targets. We also had a medically treated injury target that was set. We were trying to set some safety lag indicators to try and be able to measure ourselves on performance year in and year out, but I'd had the same issue at Dendrobium where we started the mine from scratch. Setting performance targets in a greenfield project is extremely

difficult because so much changes, it's very hard. And I had the same issue with my own staff. I tried to set hard measure KPIs, which would be the best way. People understand what their job is if you've got a hard measure KPI and recently failed miserably in the attempt year in and year out, so our performance bonuses for our staff were also quite subjective because it was very difficult to measure in a project phase, especially with so many unexpected delays like a shaft collapse, delays to the tunnel, which were outside of the direct control of the staff. How to take those into account when you're trying to get hard measures is very difficult.

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Q. So in relation to such things as bonuses, there was a, as you told me it was subjective. Even as at the 19th of November was that the same situation?

A. It did vary for a couple of different staff. For the general workforce the bonuses –

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Q. I was meaning in relation to yourself?

A. In relation to myself, in the years up until June 2009 the bonuses were reasonably subjective so that there was a lot of leeway for the board to be able to say, "Look, we expected to be here in the year and we expected to have got this much done, but we didn't, but we are now taking into account these other factors," so it was quite subjective. In the 2009/2010 year where it was expected that we would achieve performance targets and we were to get certain tonnages out by those years, then my targets were much more hard and much more firm, much more set if you like.

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Q. In relation to designing the management information system, the formal reporting you've told us about. You did management, you attended meetings as you could, and you had email and telephone discussions and you prepared, as I understand it, a monthly operational report which wended its way through to the board?

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A. To the board, correct.

Q. What were the key measures that you concentrated on given the width of the tasks that you were faced with as GM?

A. Yes. As a general manager both, as is good practice, all of our meetings started with safety issues.

Q. I'm talking about the formal report as it worked through?

5 A. So with the formal report, the operations report, the first item it dealt with was safety, both safety incidents and safety initiatives. So the whole first chapter was on safety. So we measured both lagging indicators but also talked about lead indicator issues such as health and safety programmes, drug and alcohol testing, all those sorts of things.

Q. Right.

10 1050

A. The other areas we focused on were production. More and more recently we were actually able to get some production that was measurable and definable. In other words getting repetitive cycles so you could start comparing one week or one month with the other. So
15 looking at development meters against budget was an important KPI, or a report and measure metric that we used. In the other areas they're much more soft targets as far as – ideally where we would get to, not ideally but where we would plan to get, we'd be on a measure from an engineering point of view downtime periods, being able to measure. We
20 did report on downtime but given that the machine, such as the load haul dumps were being used completely outside of their design capacity or scope, it was quite a moot point what their downtime was.

Q. As the general manager how did you keep an overview of the risks that you were facing? Did you have a formal risk assessment system of
25 consequence and probability and so on?

A. So the risks that were on site we did. As a general manager we had annual URS risk from an environment, so insurances et cetera, so that was one area that I had. Each year we placed insurance and placing the insurance was actually one of my roles both as general manager
30 and would've stayed that way as CEO. So we had an independent report done each year. We actually had two, one by Zurich, who was our principal insurer in Australia and I used – and a Horcroft report as well, so I used those as a measure of risk, they actually looked at the

insurance risk of health and safety and also business risk through the whole mine each year, in about July.

Q. At the corporate level, at the board level, was there a health and safety subcommittee of the board?

5 A. There was. There was a health and safety subcommittee of the board.

Q. What did they do?

A. They came on site between once and twice a year and they interviewed myself, they interviewed the senior management. They usually had a presentation from Neville Rockhouse and Ivan Liddell, as the two main
10 areas. They had a health, safety and environment subcommittee so they looked at the environment as well.

Q. Was there ever any external independent audit of health and safety by the subcommittee of the board?

A. The subcommittee never engaged an independent auditor to audit the
15 mine, no.

Q. Right. Now you mentioned that as you came into 2010 you were increasingly engaged in raising money?

A. Yes.

Q. One way or other?

20 A. Yes.

Q. In doing that I presume that the lenders were vitally interested in how production was going and how the revenue flows were –

A. Yes.

Q. – going to go?

25 A. That's correct.

Q. In order for you, even when you became chief executive, in order for you to answer those questions you mentioned due diligence I think at one stage?

A. Yes.

30 Q. I'm assuming, am I right in assuming, that you had to have an intimate knowledge of development and production?

A. Yes.

Q. And any impediments to that development and production -

A. Yes.

Q. – you would know about?

A. Correct.

5 Q. And if some of the technical issues that have mentioned here, if those issues were serious enough to affect development and production then you would know about those?

A. Correct.

Q. Yes, good, thank you.

QUESTIONS FROM COMMISSIONER BELL:

10 Q. Mr Whittall, good morning. I've just got a few questions. I'll start off with explosives. Explosives were used at Pike in varying ways, could you just explain to me how they were used and what was the background to their use?

15 A. Certainly. Originally when we start to shot fire and use explosives because the whole tunnel was drill and blast and so Pike River allowed, if you like, the installation of a magazine on the surface but the magazine, registered magazine keeper was McConnell Dowell. McConnell Dowell had responsibility for buying and storing explosives and also their system was used for distribution of those explosives, so
20 booking out and returning the explosives. The company kept an audit position on that. So in other words the mine manager, or the tunnel manager initially, myself and then Kobus still had overall responsibility for safety of the tunnel.

1055

25 A. Therefore we had an interest and an audit responsibility for the explosives but the actual management of explosives on site was McConnell Dowell's. That stayed that way all the time. No one else did explosive work except McConnell Dowell, so even after we became a coal mine the only person – sorry, generally the only people doing drill
30 and blast operations were McConnell Dowell. Pike River also did some. A couple of the places down to the south side of the mine required advancement through some of the faults with drill and blast but it was

not worth our while setting up a separate magazine so we actually had our explosives for those few occasions from the McConnell Dowell magazine.

Q. And was the shot firer your person or a McConnell Dowell person?

5 A. No, McConnell Dowell in the tunnel were, they had all the A grade tunnel managers so they did all our own shot firing. Once we got into coal we did the shot firing in coal but we used a deputy to do the inspections, yes, so McConnell Dowell would do the loading. They did the design. They'd load the face. Whether the deputy was present or
10 not at that level of detail I'm not sure but the deputy would certainly check for gas and be present for the firing.

Q. And were the explosives activities ever inspected by an inspector by -

A. Were the explosives?

Q. Activities ever -

15 A. Activities.

Q. - inspected by -

A. Yeah, the explosives were a significant point of conversation. You may well be aware in the industry that the accessibility of P5 explosives is a very difficult thing but P5 explosives being able to be used in coal so the
20 availability of it in New Zealand is even worse. There's only one airport in the country that can receive them and they have to come by train and by boat across from the North Island so getting explosives to the South Island we did consider chartering fishing boats at one stage to bring it across because it was becoming quite an issue for us, so there
25 was a lot of discussion in the New Zealand inspectorate on whether we could use P1 for certain events because, and it wasn't, some of these were quite challenging for the inspectors because they weren't areas that they'd had to deal with very much so there was, the inspectors were quite actually intimately aware, probably more so than they would
30 normally be, of the shot firing operations at Pike because of those a number of factors. One, was the P1, P5 issue, the other one was where from, where in the mine we could fire shots. When we did the tunnel we used to have to fire from the surface which meant everyone evacuate

the tunnel. Once we got up into the graben area where we had a whole bunch of coalmining operations going on, our default position was still to have to evacuate the whole mine every time we fired a shot and so through getting some expert advice out of Queensland and also through negotiation and discussion with the inspectors we got to a point where we could evacuate back to a point of safety at pit bottom in stone and fire shots from there and I think the New Zealand inspectorate adopted the British standard for firing shots underground as their guideline be in the absence of New Zealand relevant legislation.

5

10 Q. And that was the mine, we're talking about the mines inspectorate, we're talking about Mr Firmin or Mr Poynter?

A. Yes, yeah we didn't have any HAZNO inspectors come which is the, HAZNO Act is one, they are I think I understand warranted to inspect for the HAZNO Act as well.

15 Q. On another topic if the main fan trips underground for whatever reason, the surface fan starts automatically. Is that correct?

A. That's correct. Yes, there's power source and generators on the surface for that.

20 Q. And is there gas monitoring around the main fan to ensure that when it's restarted that the mine's comfortable with it. There's no flammable gas there?

A. The underground fan?

Q. Yep.

25 A. To my understanding there would be. Where it's placed and how that was placed as part of that commissioning I can't say. I don't know.

Q. And so the underground gas monitoring system, is it on a separate power supply to the mine? So it would still be operating even if the power tripped to the main fan?

30 A. That's my understanding. Yeah, we have uninterruptable power supplies, UPSs in the control room and to my understanding those, not only do we have UPSs but we also have a back up generator on the surface that supplies that system as well. The back up generators are located near the mine offices at the amenities area.

Q. Just one question on PW28 which is the mine plan we discussed in detail. I just noticed on that there's only one carbon monoxide sensor and it's in the return from the goaf.

A. Yes.

5 Q. Is that a bit unusual to have just one CO sensor in an operation, I accept it's not a big operation but –

A. No.

Q. – just to have one CO sensor, especially place there –

A. Yeah, I –

10 Q. – to cover the whole mine?

A. Yes, I did question yesterday that I thought we were also installing CO sensors in association with the substations at pit bottom in stone but they're either off the plan or they're not shown on that corner of that plan.

15 1100

A. I also understand we've got a CO sensor at the entrance to the tunnel, but I probably don't wish to comment on your comment about whether that's appropriate or not. I'm not sure where else they were, whether they are there but not shown on the plan, I just don't know, I can't answer that.

20

Q. It would be nice to know where the other ones were, if they are there.

A. I'm sure we could find that out and supply that information to you.

25

Q. And just finally, talking about training and talking about EXITO, I'm just interested, did the Pike Australian managers that you brought over undergo a professional conversation before they got their first class New Zealand tickets?

30

A. Yes, thank you for asking that question because that was I think a bit confusing. Mr Bell the other day intimated that we had some sort of choice, whether we chose to go through a professional conversation or not. The situation is that there is a Trans-Tasman agreement between Australia and New Zealand so theoretically the Australian, people with first class mine manager's tickets in either Queensland or New Zealand should be able to come here and get their tickets ratified as happens

going the other direction, for New Zealand tickets. The EXITO have defined the fact that they can question or they have to be satisfied so it's quite a grey area and led to quite a long and frustrating negotiation between Neville and myself with EXITO over about a year or so period because they were never very clear as to what they deemed to be them being satisfied. So, the position, we then developed this professional conversation, we in conjunction with the Polytech, Polytech won a national award for it, it's a very good system, I was very happy with it. It was developed mostly for people who weren't from Australia so there was no recognition for South African or English tickets, so the professional conversation was essentially put in place to cover other than Australian qualifications because the Trans-Tasman agreement should've covered the Australian ones, but once the professional conversation was put in place EXITO wanted all officials to go through it, even if there was agreement in place so we had a modified version, I think it was a negotiated position towards the end, that Mick Lerch, rather than going through several days or a long one, they still went through the professional conversation. Some of these things were easier to comply with and capitulate and just say, okay, we'll do that because the guys needed to get their tickets so they could get on with their jobs, so Mr Lerch, when he came with an Australian ticket, he went through that system and Doug wasn't intended to be the mine manager so it wasn't, and that would be one of the reasons Mr Bell didn't know he was here in that regard, but he then over a period of months went and got his tickets and I think he went through that professional conversation because EXITO required him to do so.

Q. And did Mr Ellis go through it as well?

A. Yes and he's since received his ticket as well. I didn't do that. I actually went through the old system when I first came here and it took me several months and many, many papers of actually sitting the New Zealand Mine Manager's qualifications to get them ratified because they wouldn't honour the Trans-Tasman agreement at that stage.

QUESTIONS FROM THE COMMISSION:

5 Q. Mr Whittall, I've only got three short matters. Just following up from what Mr Bell has asked you, the development work that was being undertaken in the final week, did that necessitate the use of explosives, do you know?

A. Not for roadway development Your Honour, McConnell Dowell were still working on site and they were doing some, they were starting to excavate for a dirty water sump and that would've required the use of explosives.

10 Q. But they would know the full details of that rather than you?

A. Yes, I was aware after the event that that's what they were doing, yes, but it doesn't surprise me they were doing it, that's what McConnell Dowell were still kept on for, for doing shot firing work, it was a daily event.

15 Q. Secondly, the diagrams, mine diagrams which were shown on screen yesterday in relation to Miles Brown's methane reports designed the roadway system by reference to numbers or letters rather, A and B and so on. Was that the method that you used at Pike to identify the roadway systems, the components of it or is that something that he just did?

20 A. No, that's typically – it's actually quite, unfortunately, a complex question with hopefully short answer, but the short answer is that you would typically class roads going up or going, the long roads with some number or letter depending on which mine you're out. In our case letters usually starting from the left is "A". So if there was three roads they'd be A, B and C.

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30 Q. I wonder if we can shortcut this, and I'm not interrupting you. My interest is that we have a mine plan which uses those symbols whatever they are, for future hearings so that we're all on the same wavelength.

A. Certainly.

Q. Such a plan – Ms Shortall is nodding – so such a plan exists does it where you do have a designated roadway number or letter system?

A. Yes.

Q. And we could have that made available to the Commission?

A. Yes. I think even on PW28 there was letters and numbers on that plan.

5 Q. I didn't think so but you may be right. But anyway we can do that and we'll all have the same system before us?

A. Yes.

10 Q. Thank you. Lastly, Dr Elder described a system whereas the chief executive, he received incident reports immediately they were generated onsite. Did you have a similar arrangement when you became the chief executive office for Pike?

A. No I didn't.

QUESTIONS ARISING - NIL

WITNESS EXCUSED

COMMISSION ADJOURNS: 11.07AM

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