

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 FRIDAY, 22 SEPTEMBER 1995

6

7 RESUMING 10.25 P.M.

8 MR LOVELL: Before Mr Abbott rises, there is a
9 matter I wish to raise which occurred yesterday. You
10 made some comments yesterday about lawyers complaining
11 about the press reporting, and we respect that, and I
12 have got nothing to say about the reporting. But
13 yesterday, as Mr Kenny and I were leaving the building,
14 Mr Kenny was jumped by journalists from the 7.30 Report.
15 There were no other journalists around, just a camera
16 and a journalist from the 7.30 Report. Peter Lewis was
17 the journalist.

18 He was pressured on a public footpath to offer
19 comments about questions by Mr Lewis, who, I might add,
20 has hardly ever appeared down at this commission and
21 wouldn't know about the issues involved. Mr Kenny's
22 first response was 'That is improper, I'm giving
23 evidence in the commission'. He was then hounded down
24 the street for a comment by the 7.30 Report, and
25 eventually what went to air was a selective reporting of
26 Mr Kenny's remarks.

27 We complain most bitterly about a witness who has
28 come forward and is giving evidence before the
29 commission and is the middle or towards the end of their
30 evidence being questioned on a public footpath by a
31 journalist, any journalist. The fact that it is the 7.30
32 Report is a matter of comment in due course.

33 In our submission, it is something that you, as the
34 commissioner, should attempt to stop, this pressure,
35 attempting to be brought on witnesses who are giving
36 their evidence before the commission. It is a
37 deplorable and despicable thing for a journalist to do.
38 It is unethical and almost a contempt, if not a

1 contempt, of this commission, to attempt to pressure a
2 witness who is giving their evidence.

3 COMSR: I certainly think it is inappropriate to
4 do so. Whether I can prevent any witness being
5 approached by some member of the media -

6 MR LOVELL: It is only whilst they are giving their
7 evidence.

8 COMSR: Yes, during the course of giving their
9 evidence, particularly where a witness is under
10 cross-examination and quite obviously doesn't wish to
11 place himself in a position where he might say something
12 that could be in contempt of the proceedings, I consider
13 it inappropriate that he should be pressured to give a
14 response under those conditions.

15 I had understood that initially there had been some
16 discussion about these matters, and that the press would
17 respect the position of witnesses who are in the
18 situation of giving evidence before the commission.
19 Clearly, I think it is inappropriate where a witness is
20 under cross-examination that he should be pressured,
21 where clearly he is reluctant to do so, to make a
22 response, particularly as there is always the risk that
23 he might say something which could be considered to
24 amount to a contempt of the proceedings. I do not think
25 there is more that I can do by way of any order or
26 anything of that sort. Clearly that is beyond my
27 capacity.

28 MR LOVELL: I am grateful for the comments that you
29 have made. We will take the matter further in other
30 ways. It will be dealt with in due course, but I
31 thought we should raise it.

32 COMSR: I think I have indicated that it really
33 is not a matter for this commission to become involved
34 in the question of journalistic ethics of any sort.

35 MR LOVELL: We are not complaining about what they
36 report. That wasn't the purpose of the complaint. You
37 made that quite clear, you didn't want to enter into
38 that argument.

1 COMSR: It is beyond the Terms of Reference. If
2 something arises during the course of the proceedings
3 which make it appropriate for me to consider a
4 particular aspect of it, well and good, but clearly it
5 is not within my Terms of Reference.

6 MR LOVELL: But this was pressuring a witness who is
7 giving evidence. It has gone one step further.

8 COMSR: I understand what you are putting to me.

9 MR ABBOTT: This is perhaps the occasion I should
10 tell you that, in our view, the time is fast approaching
11 or indeed has approached when we should make submissions
12 to you on the issue of the ALRM and their spokesperson
13 Sandra Saunders, and Doreen Kartinyeri, aided and
14 abetted by the ABC and the 7.30 Report, as to whether or
15 not their behaviour constitutes a contempt of this
16 commission.

17 I don't want to make submissions today because we
18 have a witness waiting, but if your Honour would fix a
19 time later next week, I would like to make submissions
20 on the law to you that the behaviour of Sandra Saunders
21 and Doreen Kartinyeri, having announced their boycott of
22 this commission, and indeed their antagonism towards it,
23 then to have conducted the campaign that they are
24 obviously conducting via the media, in direct opposition
25 to your search for the answers to the Terms of
26 Reference, in my submission, amounts to a contempt, and
27 I would like the opportunity of making submissions to
28 you.

29 In my submission, what is going on is nothing more
30 than the ALRM and Doreen Kartinyeri, and others, with
31 the assistance of some sections of the media, attempting
32 to undermine the role of this commission. In my
33 submission, that amounts fairly and squarely to a
34 contempt, not in the face of the commission, but a
35 contempt without the commission. In my submission, you
36 ought to hear submissions from all interested parties,
37 including Mr Tilmouth, if he is so minded, perhaps
38 towards the end of next week.

1 MR LOVELL: We support the application by Mr Abbott.
2 If you are going to fix a time, I am unavailable next
3 week. Could we make it a little bit later?

4 COMSR: I will have to give some consideration
5 to what the nature of your application is.

6 MR ABBOTT: I am happy to write a letter to counsel
7 assisting. If you think that the appropriate course, I
8 will do so. You can then consider it in view of what I
9 express in the letter, which will only be to counsel
10 assisting. I can tell you that my clients are not
11 giving interviews or statements to the press, having
12 given their evidence. I will set it out in the letter
13 to counsel assisting, for transmission to you, and seek
14 a time.

15 COMSR: Yes, of course anyone is free to
16 approach the press.

17 MR ABBOTT: Of course.

18 COMSR: And make statements to them. I do not
19 want you to go into the detail -

20 MR ABBOTT: I say this at law, not the detail.
21 There are two types of contempt. There is a contempt in
22 the face of the commission, which is say a member of the
23 audience here saying something, and you have the power
24 then to deal with that contempt, and if it is
25 contumacious then you have further powers.

26 There are, however, a large range of activities
27 which constitute contempt of the activities of the Royal
28 Commission, if they can be shown to be directly carried
29 out with the intention of undermining the role of a
30 validly appointed Royal Commission acting on letters
31 patent from the government. In the same way that no-one
32 can go along denigrating, in Victoria Square or anywhere
33 else, the role of the Supreme Court.

34 This society tolerates all manner of speech, and
35 appropriately so. It is appropriate that the point of
36 view of those who are opposed to the Royal Commission be
37 heard. It is one thing that their views be heard. It
38 is another thing that they conduct a campaign that has

1 the direct intention, we would submit, of undermining
2 and preventing the effective functioning of the Royal
3 Commission. That is the contempt.

4 We would want to address you on what we see to be
5 the actions and activities of the ALRM, Sandra Saunders,
6 Doreen Kartinyeri, and Betty Fisher, et cetera, who we
7 say have carried on in this fashion.

8 COMSR: I think it is appropriate that you make
9 any such submission, as you have indicated, by reducing
10 it to writing and submitting it to counsel assisting.

11 MR ABBOTT: I will indeed.

C.K. KENNY XXN (MR ABBOTT)

1 WITNESS C.K. KENNY, CROSS-EXAMINATION BY MR ABBOTT
CONTINUING

2 Q. You told us of the occasion of the investiture of Doreen
3 Kartinyeri with her Doctorate, when you spoke to Dr
4 Fergie. We have seen the on-camera discussions. Were
5 there any off-camera, either then or later on.

6 A. Immediately after the interview, Deane Fergie approached
7 me again in a very agitated manner, and accused me of
8 behaving badly by surprising her with the camera and
9 asking her the questions. She was very agitated and an
10 argument broke out between us, I suppose. I was
11 expressing to her the fact that I had tried long and
12 hard to obtain an interview with her in more civilised
13 circumstances, and felt I was obliged to try and get her
14 comment when the opportunity presented itself. As I
15 say, the conversation became quite animated. I was a
16 bit embarrassed by it because it was a function
17 recognising Doreen Kartinyeri. Katrina Power from the
18 Tandanya organisation joined our conversation, and
19 things quietened down and we parted company.

20 Q. Did you know Katrina Power.

21 A. I knew who she was. I probably would have met her
22 previously, but I don't know her too well.

23 Q. That concluded your discussions with Dr Fergie on that
24 occasion.

25 A. It did.

26 Q. Did you have any further discussions that you haven't
27 already mentioned to us.

28 A. With Dr Fergie?

29 Q. Yes.

30 A. Nothing that hasn't been mentioned already.

31 Q. You mentioned in the course of evidence in relation to
32 the Murray Nicholl report, that Sarah Milera, you
33 understood, had had Victor Wilson standing next to her
34 when she conducted the interview over the radio. Where
35 did you learn that from.

36 A. I have learned that from a number of sources. I think,
37 from memory, that Dorothy Wilson relayed that to me. I
38 believe Johnny Campbell told me the same story. Another

1 person very close to the Mileras also confirmed that
2 story to me. The version of events was that Victor
3 Wilson was standing next to Sarah Milera, ensuring that
4 she said the right things and that the threat was that
5 unless she did so, that Alan Clarke, the Mileras adopted
6 son, would lose his job at Kalparran in the employ of
7 Victor Wilson.

8 Q. In your article in the Adelaide Review of August 1995,
9 in dealing with your interview with Mr Milera, you say
10 'In the weeks after he spoke out, Mr Milera benefited
11 from someone's generosity. He was put up at a city
12 motel and had enough money to indulge his gambling habit
13 at the casino. He was given legal advice by the ALRM,
14 who subsequently arranged another lawyer for him'.
15 Where did you learn those matters from.

16 A. All that information came directly from Doug Milera and
17 was supported by other people who knew him at the time.

18 Q. Did he give you any idea who was paying for the city
19 motel.

20 A. I couldn't pin it down from him. I knew he had had
21 dealings with the ALRM, but he wouldn't say directly who
22 was paying for the hotel. He did tell me that he had
23 managed to get some money from Tim Wooley on one
24 occasion, that's in the transcript of the tape recording
25 with Doug Milera.

26 CROSS-EXAMINATION BY MR LOVELL

27 Q. I want to take you back quite a few days to when you
28 first started giving your evidence, and Mr Smith was
29 asking you a few questions. You mentioned, in answer to
30 a question from Mr Smith, that Mr McLachlan had sought
31 you out. What did you mean by that.

32 A. I meant that Mr McLachlan approached me rather than me
33 approaching Mr McLachlan. It was very much an informal
34 encounter at this political function at the Hilton
35 Hotel. There were many journalists and many politicians
36 there. We virtually bumped into each other at the top
37 of the stairwell, and he began a discussion with me
38 about some of my articles and the Hindmarsh Island issue.

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1 Q. Had there been any suggestion of a pre-arranged meeting
2 at Mr McLachlan's request.

3 A. No. We began discussing the issues there, and he was
4 interested in the fact that I had made some
5 investigations of this matter, and asked if I'd be happy
6 to discuss it in more detail at a later date. And we
7 eventually did catch up some weeks later.

8 Q. I want to take you to some statements that were made
9 yesterday by Mr Tilmouth during the course of some
10 arguments, and ask for your comments on them. I direct
11 you to p.2561 of the transcript, and following. I
12 think you actually accused Mr Tilmouth of making some
13 bald assertions. I would like you to comment on them
14 now. Mr Tilmouth said, amongst other things, 'The Royal
15 Commission was called on this basis and you couldn't
16 hang a dead cat on the evidence. If this was a court of
17 law, I would say there was no case to answer, no weight
18 could be attributed', referring to the interview. I
19 can't find the reference to it, but I think he said
20 something like 'it wasn't worth two bobs'. Something
21 along those lines. First of all, what is your response
22 to those assertions.

23 A. Mr Tilmouth and others -

24 OBJECTION Mr Kenny objects.

25 MR KENNY: Mr Tilmouth said some of those things in
26 submissions to you. This witness has now been invited
27 to simply give his opinion on those comments. I don't
28 think it is appropriate.

29 MR LOVELL: He is being asked to respond.

30 MR KENNY: But the comments weren't directed to the
31 witness, as I understand it. Those comments were made
32 in relation to submissions in answer to objections to
33 questions asked by Mr Tilmouth. This is just an
34 opportunity for this witness to provide his opinion in
35 relation to the matter. I say that does not assist the
36 commission, and I object to the question on that basis.

37 MR LOVELL: Mr Tilmouth was not courageous enough to
38 put those matters directly to -

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1 OBJECTION Mr Kenny objects.
2 COMSR: I will hear you too, Mr Kenny. I can
3 only hear one at a time.
4 MR LOVELL: He did not put those statements directly
5 to the witness.
6 COMSR: That's the point Mr Kenny is making.
7 MR LOVELL: Yes, but he was prepared to make the
8 statement. In my submission, Mr Christopher Kenny, the
9 witness, is perfectly entitled to answer what is an
10 allegation about his interview. I don't want him to
11 comment on Mr Tilmouth's submissions. I am asking him
12 to give an answer to the question that his interview,
13 you couldn't hang a dead cat on. If Mr Tilmouth is
14 prepared to make those sort of comments, which were for
15 the benefit of the media in this commission, then Mr
16 Kenny ought to be entitled to respond to them.
17 CONTINUED
18

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- 1 COMSR: It is very difficult for me to say what
2 comments are made for the benefit of the media and what
3 comments are made to me, Mr Lovell, as you will
4 appreciate. And I am not about to enter into the arena,
5 if I can put it that way. If what you are putting to me
6 is that the witness should be entitled to deal with an
7 inference that he conducted the interview in a way that
8 or the interview in the final analysis was worthless for
9 some reason -
- 10 MR LOVELL: That is the point of the question. I
11 had to draw his attention to how it arose in the
12 Commission.
- 13 MR KENNY: I do ask that Mr Lovell withdraw his
14 suggestion that Mr Tilmouth was not courageous enough.
15 It is a slur on Mr Tilmouth's character and it is
16 inappropriate and I ask that it be withdrawn.
- 17 MR LOVELL: I don't intend to withdraw that. I am
18 sure Mr Tilmouth handed enough out in this Commission to
19 take it.
- 20 MR KENNY: I ask that you direct him to withdraw it
21 and I ask that it be struck from the record. I think it
22 is an inappropriate comment to make and I think it is
23 offensive.
- 24 COMSR: I certainly think it is inappropriate,
25 because it places me in a position of having to make
26 some sort of a judgment. I mean, Mr Tilmouth, from what
27 you have said, is well-able to handle himself.
- 28 MR LOVELL: Quite.
- 29 COMSR: So, being lacking in courage I think is
30 not something one would readily attribute to him.
- 31 MR LOVELL: If Mr Kenny wants to be precious about
32 it, I will withdraw it.
- 33 MR KENNY: I object to that. This is making a
34 mockery of this Royal Commission. It is inappropriate
35 to conduct oneself by making suggestions about other
36 counsel's braveness or being precious.
- 37 COMSR: There is a question which properly
38 arises in the issues before me. If Mr Lovell wishes to

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- 1 examine the witness in respect of his interview and
2 whether or not it could be criticised on certain scores,
3 I think he should be given that opportunity, without
4 attributing it to any particular cause, perhaps, Mr
5 Kenny, or without the introductory comments.
- 6 MR LOVELL: I am happy to withdraw all those
7 remarks. Let's just go on with the answer.
- 8 COMSR: I think they should be withdrawn, in the
9 circumstances.
- 10 XXN
- 11 Q. Do you remember the question -
- 12 COMSR: I shouldn't think so.
- 13 XXN
- 14 Q. Do you remember the -
- 15 A. I recall the broad thrust of what you were putting to me
16 and it has been played.
- 17 COMSR: Perhaps we could - most of it has been
18 withdrawn now, Mr Kenny. I would like it to be
19 reframed.
- 20 MR LOVELL: I don't want to go through the
21 assertions that were made. I think Mr Kenny made the
22 statement yesterday in evidence that they were bald
23 assertions he would like to comment on. I would like to
24 give him the opportunity. I think Mr Kenny understands.
- 25 WITNESS: In essence, what Mr Tilmouth and others
26 have been attempting to do I suppose is, as he said, I
27 think in his own words yesterday, discredit the
28 interview. And I think he has left out many of the
29 pertinent facts with regards this interview, for the
30 purposes of trying to discredit it. And, most
31 importantly, he takes it completely out of context.
- 32 XXN
- 33 Q. When you say 'out of context', your conversations with
34 Mr Milera were more extensive than just that one taped
35 interview.
- 36 A. Precisely, but there were also other factors that make
37 it out of context. And one of the most important
38 factors is that Doug Milera approached me. Doug Milera

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- 1 wanted to tell me about his role in the fabrication.
2 And he sat down and talked to me in detail for two hours
3 and asked me to write it down. And I have given
4 extensive evidence to this Commission about those
5 conversations and provided those notes to the
6 Commission. And they provide a very important
7 background to the interview. Then it is obvious, on any
8 fair-minded viewing of the video tape, that, in the
9 initial stages of the video taped interview, Doug Milera
10 Is reticent about coming forward and repeating what he
11 had said to me previously off camera. And there are
12 occasions which arise there which are first alluded to,
13 in any public sense, by me, in my writing in the
14 Adelaide Review some months ago. I say in full those
15 tapes show Mr Milera as a difficult witness who is
16 sometimes contradictory, but he agreed emphatically,
17 firstly reinforcing the central theme of his role and
18 his role in the fabrication and the key role in the
19 fabrication of Victor Wilson. And importantly after the
20 interview Mr Milera was more than happy with the report
21 that went to air the following night, endorsed it,
22 before it went to air. I had supporting evidence from
23 his wife, Sarah Milera, over the phone. Two days later,
24 Doug Milera repeated the allegations and stood by them
25 on video tape. Over the ensuing weeks he confirmed them
26 again to other witnesses who have been before this
27 economics. He reaffirmed them to me and Kym Denver in
28 phone conversations that were recorded and played before
29 This Commission.
- 30 Q. I take you to Exhibit 146. This was an interview I
31 think on the Wednesday that you tape recorded and I
32 don't think the tape has been played, but the transcript
33 has been tendered.
- 34 A. Yes.
- 35 Q. Was there some reticence, during the course of that
36 interview, this tape, of Mr Milera naming Victor Wilson.
- 37 A. I think early on there was some reticence, but he went
38 on to fully explain Victor Wilson's role in the alleged

1 fabrication.

2 Q. Just to put this in context, this was the day - I don't
3 have the date in front of me, at the moment.

4 A. Wednesday, the 28th of the 6th.

5 Q. I think he had been, Mr Milera had just been speaking to
6 Mr Denver I think and we have heard that tape. Can I
7 direct your attention to p.6 of that transcript.

8 A. Yes.

9 Q. I think at the very top of the page there is a question,
10 it speaks for itself, but is that an indication where Mr
11 Milera volunteered the name 'Victor Wilson', in relation
12 to a meeting at Murray Bridge.

13 A. Indeed, my question is 'Who thought of it? If it came
14 from men, who was it?' And Doug Milera goes on to
15 recount that meeting we have all heard about a number of
16 times now in Murray Bridge at the Calperum Institute
17 where Victor works. And he mentions Victor's name, his
18 position as the Chairman of the Lower Murray Aboriginal
19 Heritage Committee, the fact that he is like a brother
20 to Doug Milera, which is critical in all this. The two
21 men are extremely close. And recounting again the story
22 of being shown the map by Victor Wilson.

23 Q. I direct your attention to p.7 of the transcript of that
24 particular interview in relation to this question of Mr
25 Milera's reticence about naming Mr Wilson. And I think
26 we see that actually appeared in the transcript, at
27 about the middle of p.7, where he said, two-thirds of
28 way down, 'I feel a bit bad about telling you this,
29 Chris. You have got it on tape.' That was a reference
30 to Mr Wilson.

31 A. Indeed, Doug Milera feels a great bond with Victor
32 Wilson. They are very close friends and he has often
33 expressed a great deal of distress about implicating his
34 friend, Victor Wilson.

35 Q. And, indeed, once again, it speaks for itself, but there
36 are questions and answers, going from p.7 to 8, which
37 indicate again he, without you mentioning the name
38 Victor Wilson, nominates Victor Wilson as telling him or

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REXN (MR SMITH)

1 indicating to him about the women's business.

2 A. That's correct. If I could complete my answer
3 completing the context of the interview? The other
4 point which Mr Tilmouth and others failed to highlight
5 is that we still have no other version of events from
6 Doug Milera. No-one has ever yet, to my knowledge,
7 questioned or at least publicly revealed another version
8 of events from Douglas Milera. Doug has attempted to
9 dismiss certain things, we don't know which things, that
10 he has said in one particular interview. But we have
11 not heard any detailed version of events of what
12 supposedly did occur at Murray Bridge or at the Mouth
13 House.

14 RE-EXAMINATION BY MR SMITH

15 Q. On behalf of Channel 10, you came to this Commission I
16 think on 7 July 1995 with Channel 10's solicitor, did
17 you not.

18 A. That's correct.

19 Q. On that day, I think you provided to the Commission,
20 apart from some information, a video tape including all
21 the Channel 10 News footage relating to the Hindmarsh
22 Island bridge dispute at least to date, to that date,
23 did you not.

24 A. I provided a tape of all the television news stories
25 which had gone to air as well as the tapes of all the
26 wild footage, the raw footage from all those reports.

27 Q. And, indeed, we have seen both those. That is, the
28 Channel 10 News footage and the wild or camera tapes
29 relating to the Channel 10 News footage, that's right,
30 isn't it.

31 A. Everything that I have submitted to the Commission, both
32 video taped and written from the Adelaide Review has, I
33 believe, been submitted and forwarded over the last few
34 days.

35 Q. More than that, I think you received a request from the
36 Commission, subsequent to 7 July, to provide a copy of
37 raw footage of interviews between you and Doug Milera.
38 That is, raw footage separated from the other raw

1 footage.

2 A. Yes, as I understand it, the request was to provide all
3 the Doug Milera tapes on one separate tape so that they
4 could be forwarded to Doug Milera's solicitors and for
5 backgrounding.

6 Q. That being the camera tapes for the interview on 5 June
7 at the Appollon Motel.

8 A. Yes.

9 Q. And the camera tapes for the interview that took place
10 on camera on 7 June at Wellington.

11 A. That's correct.

12 Q. You supplied those, with the permission of your
13 employers, with the intent that they be forwarded to Mr
14 Bourne, the solicitor acting for Mr Milera, is that
15 correct.

16 A. That's correct.

17 MR SMITH APPLIES TO RELEASE WITNESS

18 MR KENNY: I have an application to make in
19 relation to the tape. I don't know if I should be
20 making it before this witness is released?

21 Mr Lovell is happy for me to make the application
22 now.

23 I wish to make an application that the Channel 10
24 interview that was taken with Doug Milera on 5 June
25 1995, the raw footage of that interview be released to
26 the general public.

27 I have made an application before that it be
28 released to my clients. I have had a look at that tape
29 in some detail. It has only been released to the
30 general public by way of Channel 10's reporting in
31 relation to that interview. I say that that reporting,
32 In my opinion, was selective -

33 MR LOVELL: Here we go. My friend is - I object.

34 My friend is going to do exactly what he criticised
35 me for ten minutes ago. You have ruled on the question
36 of this matter. My friend is flying in the face of your
37 ruling and this is an improper application. And, I
38 might add, on whose instructions is he now acting and

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1 what is the benefit to his client to make this
2 application that it be released to the general public?

3 MR KENNY: Perhaps if Mr Lovell cares to wait, I
4 will continue with my application.

5 My clients have been accused of the fabrication of
6 or of being involved in the fabrication of a particular
7 story. Now, there is on that tape a number of comments
8 made by Mr Milera that could have been picked up by
9 Channel 10 and used and they range from, on p.7, 'I
10 believe the women's story is true', to p.11, "The secret
11 women's business is not my affair", says Mr Milera', to
12 p.13 of the transcript of that where he says 'I am the
13 sole publicator of the whole issue.' I might comment, I
14 thought he said 'fabricator' in the interview, but it
15 may need to be corrected. And then at p.20 he says he
16 was told by Victor Wilson.

17 Now, in my opinion, that looks like there is at
18 least three or four versions of what happened. Now,
19 this tape and the interview that was subsequently played
20 on the News on Channel 10 the next day was obviously an
21 important factor in the calling of this Royal
22 Commission. The Royal Commission was called two days
23 after -

24 MR LOVELL: Here we go again. This is the ALRM
25 line. Is Mr Kenny acting for them, or what?

26 MR KENNY: There is no suggestion here that the
27 ALRM was involved in any fabrication.

28 COMSR: But, Mr Kenny, the reasons for the
29 calling of the Royal Commission are matters for the
30 Government to decide.

31 MR KENNY: I quite agree.

32 COMSR: I am dealing with the consequences of
33 that decision. That is, I have to decide certain
34 issues. Not, as it were, examine the reasons why the
35 Royal Commission was called, but rather to deal with the
36 questions before me. I don't know what the whole of the
37 information might be, what other people might have had
38 in their minds, nor would I ever be in that position, Mr

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1 Kenny.

2 MR KENNY: No, I agree. I take note of those
3 comments and accept them, but the point I wish to make
4 is that my clients are being judged on selective
5 excerpts from that tape and I say it is -

6 COMSR: It is the Commission's -

7 MR KENNY: What I ask is that the whole tape be
8 released, so that the public of South Australia, who do
9 make judgment on my clients and do I say have, at this
10 stage, a biased point of view from these tapes, that -

11 COMSR: I hope I am not -

12 MR KENNY: Can be released so that it is a matter
13 of general comment in the community.

14 MR MEYER: The same goes for mine too. Every other
15 TV station does exactly the same thing about my clients.

16 COMSR: Let Mr Kenny finish.

17 MR KENNY: Yes, I simply ask that, because this
18 tape and that interview has taken such a central role
19 that it be available to the public rather than keeping
20 it within this Commission. There is no reason for this
21 Commission to keep it secret, as it were. There is I
22 say -

23 COMSR: There has been fairly extensively
24 published excerpts from it.

25 MR KENNY: Yes, that's right. But, if the whole
26 thing is available, people can look at it and make their
27 own decision about it. It is a critical interview and
28 an important interview in relation to this issue. I say
29 that it is not a matter of that Channel 10 could lose
30 any royalties or that it has any commercial value. I
31 say that there would be no loss to Channel 10 in
32 relation to that and that a full and complete playing of
33 it and it being available to all of the people of South
34 Australia, who, I might say, are investing a
35 considerable amount of public funds in this Royal
36 Commission, would only be fair and reasonable.

37 COMSR: Mr Kenny, isn't it the responsibility of
38 this Commission to weigh up all the evidence? Now you

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1 are asking me, you are saying that a particular portion
2 of it should be, as it were, made available to the
3 general public.

4 MR KENNY: I have no objection to a large amount of
5 the information being available to the general public.
6 There is only selected parts that relate to Aboriginal
7 tradition that I say that shouldn't be available to the
8 general public because they offend against Aboriginal
9 traditional beliefs.

10 MR ABBOTT: We oppose the application.

11 MR KENNY: Is Mr Abbott now acting for Channel 10?

12 MR ABBOTT: No, I am opposing your application. I
13 don't act for Channel 10. You say your clients -

14 COMSR: Just a minute.

15 Have you finished, Mr Kenny, is that your
16 application?

17 MR KENNY: Yes.

18 MR ABBOTT: I am concerned at comments Mr Kenny has
19 made that it has been kept secret. It is not kept
20 secret in this Royal Commission. There is nothing
21 secret that has been kept in this Royal Commission.
22 And, for Mr Kenny to ask for this tape to be released so
23 his clients can or to invite the public, as he says, to
24 form their own view about it - in the absence of his
25 clients saying to anyone did they or did they not
26 fabricate? - where are Mr Kenny's instructions, or where
27 is his statement? And he is asking to you take part in
28 an exercise where his clients can invite the public to
29 comment on the validity of Milera's claims, without his
30 clients standing up to be counted and saying what Milera
31 says is either correct or incorrect.

32 CONTINUED

C.K. KENNY REXN (MR SMITH)

1 That is the device that he wants to perpetuate and I
2 object to it.

3 MR LOVELL: Further, it is an assumption from Mr
4 Kenny that the public of South Australia cannot read the
5 transcript of that interview. It has been tendered and
6 is available and it has been widely -

7 MR KENNY: That is not correct. The transcript, as
8 I understand it, is not available to be given to the
9 general public. I'm happy for a clarification on that
10 point and I'm happy for it to be released, and I would
11 apply for it to be released.

12 MR SMITH: To correct that, the position is that
13 that video has been viewed repeatedly by members of the
14 media in the past few days. The transcript is available
15 for viewing by the public here at the Commission and
16 that has always been the case. As to the releasing of
17 the video, my submission to you is that you should not -
18 we haven't done that in this Commission. The only thing
19 that has been released has been transcripts of audio
20 tapes released to the media, only on the basis that
21 following the evidence from the playing of the audio
22 tapes, it has been very difficult. A confined release
23 was done for that purpose so the media would not be
24 disadvantaged in bringing this information to the
25 public.

26 The releasing of these tapes, I express a personal
27 concern that that would create mischief. And the way in
28 which the reporting of the affairs of this Commission
29 has been carried out, I'm sure that a limited release of
30 the information about this topic - and that would be a
31 limited release - simply of the video tape, because
32 there is a lot more evidence about Mr Milera's position
33 on the video tape. So, as counsel assisting, I indicate
34 I would be opposed to the release of those video
35 cassettes too.

36 COMSR: Mr Kenny, I think Mr Meyer was about to
37 say something.

38 MR MEYER: I don't wish to say anything as it has

C.K. KENNY REXN (MR SMITH)

1 been said.

2 MR KENNY: I wish to say something new in relation
3 to the transcript and seek a clarification on the
4 position of this particular transcript and whether it
5 can be released.

6 COMSR: I understood that there is no embargo on
7 the transcript. It hasn't been requested for
8 suppression.

9 MR SMITH: The public can come and read the
10 transcript, that is the position. On whose behalf is Mr
11 Kenny making these submissions? What standing does he
12 have to make this application in this inquiry?

13 COMSR: I'm concerned that I'm being asked to
14 make valued judgments of the standard of reporting of
15 various sections of the media, which I am in no position
16 to do and don't propose to so enter into that arena, as
17 I indicated. It's not a matter for this Commission to
18 become involved in the way each person appears to see
19 the standard of reporting in a different light. I don't
20 propose to have to deal with that topic at all.

21 However, when it comes to this particular piece of
22 evidence, I've given my reasons for saying that I don't
23 consider that it should be released. One, is that, as I
24 see it, it was released or brought to the Commission
25 with one or two understandings, one of which was that
26 the copywrite of it belongs to Channel 10, and I based
27 my ruling to a large extent on that circumstance. I may
28 be persuaded at some other time that it is appropriate
29 to release it, but I don't think at this stage that I do
30 consider it appropriate that it be released. As I say,
31 it's been available for any member of the public who
32 chooses to come in and sit in the Commission. I made my
33 ruling and I really can't see any basis of anything new
34 on what you put to me and what you put to me previously
35 in this line of argument.

36 I would ask, if you could, that I don't get these
37 repeated requests that I enter into the arena after what
38 might be the bias of any particular media outlet because

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1 it's not within my Terms of Reference to deal with such
2 questions. The Commission is not equipped to enter into
3 those matters and it's not appropriate that it should do
4 so.

5 MR SMITH: Could I just say, so that perhaps at the
6 bar table end here some discipline can be applied to
7 counsel. It's my submission to you that some of the
8 applications that you have been forced to hear have been
9 applications from people who have no standing to make
10 them at all. I ask my colleagues at the bar table to
11 really address their minds, for the sake of the smooth
12 running of this inquiry, whether they are entitled to
13 make an application such as Mr Kenny's made. He has his
14 clients to look after, not the public, the wider public,
15 and I ask that that because we have got some way to go
16 in this inquiry. If you are going to be continually
17 berated with applications of that sort as a prelude to
18 any such application, you need to be satisfied that the
19 applicant has standing to make it.

20 I've sat now for two months listening to
21 applications, and many of them have been on the basis of
22 absolutely no standing at all to make. I ask, on behalf
23 of the Commission, that people to my left here preclude
24 those before wasting the time of this Commission with
25 such applications.

26 COMSR: I must say there is a great deal of
27 force in what Mr Smith has had to say. I haven't taken
28 the attitude of being unduly restrictive, but there is a
29 limit, I think, to how far one can tolerate applications
30 of this sort. If counsel had got a particular concern,
31 might I suggest that you could speak to counsel
32 assisting concerning the matter and, if it's an
33 appropriate matter to be brought forward, then it can be
34 brought to my attention in that way. But a great deal
35 of time in this Commission seems to be taken up with
36 statements having been made by various counsel, instead
37 of us proceeding and just getting ahead with the inquiry
38 and getting the evidence before this Commission. Are we

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1 in the situation where the witness can be released now?

2 MR SMITH: Yes, we are.

3 MR MEYER: Can I add to that note, it might be
4 appropriate to deal with the matters, which are actually
5 chamber-type matters, in chambers. It will cut out a
6 lot of problems.

7 COMSR: It seems that that might sort out a
8 number of the applications and we will be able to
9 determine the appropriateness of some of them.

10 MR SMITH: We did actually resolve in the hearing
11 that any such applications such as the one made by Mr
12 Kenny would be listed for 9.30 as in chambers. Perhaps
13 we might have to enforce that.

14 COMSR: Perhaps I remind counsel of that fact.
15 That if there are applications of that sort, let counsel
16 assisting know and we can arrange for those matters to
17 be brought before me for a determination.

18 MR ABBOTT: We suggest they should be in writing to
19 counsel assisting and circulated to other counsel so
20 that we can have some notice.

21 MR SMITH: That was the original practice direction
22 in any event.

23 WITNESS RELEASED

S.M. PALYGA XN (MR SMITH)

1 MR SMITH CALLS

2 STEPHEN MICHAEL PALYGA SWORN

3 EXAMINATION BY MR SMITH

4 Q. I think you're a legal practitioner having been admitted
5 to the Supreme Court of South Australia as such in 1980;
6 is that so.

7 A. Yes, I am.

8 Q. I think you began acting for Tom and Wendy Chapman and
9 the Chapmans' interests in about January 1994; is that
10 right.

11 A. That's correct.

12 Q. I want to take you to April 1994, some events which
13 followed April 1994. In that connection, I think you
14 provided to the Commission a statement of your
15 particular involvement in some events leading up to or
16 commencing on 26 April 1994 and extending beyond.

17 A. That's correct.

18 Q. Looking at this statement produced to you, do you
19 recognise that as the statement which you provided to
20 this Commission to assist it in its inquiry.

21 A. Yes, it is.

22 EXHIBIT 155 Statement of Stephen Michael Palyga
23 tendered by Mr Smith. Admitted.

24 Q. Your statement immediately addresses the topic of a
25 meeting on 26 April 1994.

26 A. That's correct.

27 Q. Looking at your statement produced, I want to ask you
28 some questions about the general build-up to that date.
29 I think it was the case that in February 1994, the
30 situation was that the construction of the Hindmarsh
31 Island Bridge was to proceed.

32 A. Yes. The Minister of Transport announced that on 15
33 February 1994, but they held it up for a month to
34 investigate whether or not the bridge could be put on
35 the barrage.

36 Q. Then, the investigations of the placement of the bridge
37 on the barrage were completed and it was inappropriate,
38 I think; is that right.

- 1 A. Yes. In mid-March, the Minister announced that the
2 original proposed and approved bridge would proceed.
- 3 Q. Is it the case that by mid-March it was apparent that
4 Aboriginal interests were the remaining paramount
5 obstacle.
- 6 A. It wasn't immediately apparent to us. It was - it did
7 turn out to be the case, yes.
- 8 Q. So that became obvious, did it, subsequent to 15 March.
- 9 A. That became obvious early in April, yes.
- 10 Q. I think you then entered into not exactly negotiations,
11 but you established regular contact with Mr Tim Wooley
12 of the Aboriginal Legal Rights Movement.
- 13 A. That's correct. That was in the first half of April
14 following a report in the Advertiser that ATSIC was
15 potentially going to withdraw a billion dollars in funds
16 from Westpac unless they dissociated themselves with the
17 marina development.
- 18 Q. As the solicitor for the Chapmans and the Chapmans'
19 interests, you established some contact with Tim Wooley.
- 20 A. Yes.
- 21 Q. To put it broadly, you had a number of discussions with
22 him, did you not, and in particular you set up a
23 meeting.
- 24 A. I didn't set it up with him, I tried to set it up with
25 him. That was inconclusive. I then had discussions
26 with Peter Walsh, the solicitor for ATSIC, the
27 Australian Government solicitor, and eventually after
28 several discussions with Peter Walsh, we managed to set
29 up a meeting.
- 30 Q. The broad purpose of the meeting was what.
- 31 A. Our strategy was to try and negotiated some sort of
32 settlement of the Aboriginal issue and we wanted to meet
33 with the Aboriginal interests to see if we could do
34 that.
- 35 Q. So that you went ahead and arranged a meeting, did you
36 not.
- 37 A. Yes. I arranged with it with Peter Walsh.
- 38 Q. The participants in the meeting were whom.

- 1 A. Peter Walsh, his client Mr Matt Rigney the Chairman of
2 the Adelaide Regional Council of ATSIC, myself and Tom
3 Chapman.
- 4 Q. Indeed, it's the same Matt Rigney who has been
5 identified on the video tapes that we have been viewing
6 in court in the last few days.
- 7 A. Indeed it is.
- 8 Q. That meeting took place on what date.
- 9 A. On 26 April.
- 10 Q. 1994.
- 11 A. Correct.
- 12 Q. Where did it take place.
- 13 A. It took place in a cafe in the North Adelaide Shopping
14 Centre, not far from ATSIC's office which is in the same
15 shopping centre.
- 16 Q. The meeting commenced at what time and finished at about
17 what time.
- 18 A. It started about 2.45 and it finished two and a half
19 hours later at about 5.15.
- 20 Q. Did you make notes of this, or is this in your memory.
- 21 A. I have a one page note of it which just sets out the
22 seven heads of potential compensation, cultural
23 compensation items that we wanted to discuss with them.
24 That is the only note I have of it.
- 25 Q. Do you remember what the seven heads were.
- 26 A. I can remember by reference to that note that we
27 discussed: Extending the interpretative centre at Signal
28 Point; we discussed cultural awareness courses being
29 conducted at the marina; we discussed a register of
30 Aboriginal heritage over the marina site; protection for
31 sacred sites; contributing towards fencing off of burial
32 sites, and so on, on the island; and, we also discussed
33 compensation which was raised without raising any money
34 figure.
- 35 Q. Compensation for the Aboriginal people.
- 36 A. Compensation in terms of money compensation. Our
37 approach to the meeting was to offer what might be
38 called 'cultural compensation', for arguably the

- 1 cultural loss they were claiming they were going to
2 suffer. By 'cultural compensation', I mean all of these
3 various offers, apart from money compensation, in the
4 form of cultural awareness courses, heritage agreements,
5 Aboriginal employment, and so on.
- 6 Q. Employment was another topic.
- 7 A. Yes, it was. Aboriginal, potential Aboriginal
8 employment at the marina.
- 9 Q. The one other item you mentioned in the statement is the
10 repurchase of wetlands.
- 11 A. Yes, that was also discussed.
- 12 Q. Did you mean by that, what, the sale back to the
13 Aboriginal communities of the wetlands.
- 14 A. To some contribution towards the repurchase of wetland
15 areas that were in private ownership at the time.
- 16 Q. I take it that the meeting was informal, in the sense
17 there was no chairperson and no structure to it. It was
18 an open discussion.
- 19 A. Yes, it was quite a cordial and courteous discussion,
20 yes.
- 21 Q. Can you tell us what you remember was said, perhaps on
22 the topic, for instance, of the significance of the
23 island first of all and who said it.
- 24 A. Matt Rigney said at one stage that Hindmarsh Island was
25 significant because it was shaped like a womb and there
26 were women's issues to do with the island associated
27 with birth. He went on to mention that the name for the
28 island 'Kumarangk' had also some connection.
- 29 Q. Was the meeting friendly.
- 30 A. Yes, it was quite friendly.
- 31 Q. Did Mr Rigney, for instance, seem quite receptive to any
32 further contact.
- 33 A. Yes. He didn't seem that hopeful that some sort of
34 negotiated settlement could be achieved, but he
35 certainly was prepared to arrange a further meeting with
36 all the members of the Lower Murray Aboriginal Heritage
37 Committee and to meet the Chapmans.
- 38 Q. Was this the first occasion that you were aware, you

- 1 became aware of any women's issues to do with the
2 island.
- 3 A. It was.
- 4 Q. You had been acting for the Chapmans, as you said, since
5 January of that year, 1994.
- 6 A. Correct.
- 7 Q. You contend at the time of this meeting, namely 26
8 April, that you were appraised of the background of the
9 bridge and the construction of the bridge and the
10 problems of it.
- 11 A. Yes. I had a full knowledge of all of that by this
12 time.
- 13 CONTINUED

S.M. PALYGA XN (MR SMITH)

1 Q. So that that was, from your point of view, a new issue.

2 A. Yes.

3 Q. What then was the result of the meeting. Did it achieve
4 any purpose or did it -

5 A. Yes, it did. It resulted in another meeting being set
6 up the very next day, the 27th April, between the
7 Chapmans and some members of the Aboriginal community,
8 as I understand from the Chapmans, the Rankines and the
9 Mileras, and David Rathman, the chief executive officer
10 of the Department of State Aboriginal Affairs was at
11 that meeting.

12 Q. It was not all that long after that meeting that the
13 Federal Minister, Mr Tickner, made an interim
14 declaration staying the construction of the bridge, that
15 declaration having been made on 12 May 1994.

16 A. That's correct.

17 Q. As solicitor for the Chapmans and their interests, as
18 your statement makes clear, you endeavoured to obtain
19 copies of the application which led to that declaration,
20 and any supporting documents and reports.

21 A. I did, on numerous occasions.

22 Q. Requests were made of you to both Mr Tickner and
23 Professor Saunders.

24 A. Yes. I made requests to both Professor Saunders and Mr
25 Tickner and also a verbal request of ATSIC.

26 Q. I think in relation to ATSIC, in early June, as your
27 statement sets out, ATSIC supplied you with a copy of
28 some ALRM correspondence to both the Minister, Mr
29 Tickner, and the State Minister, Dr Armitage. Is that
30 right.

31 A. That's correct.

32 Q. Looking at this bundle of documents produced to you,
33 there is a fax header sheet.

34 A. Yes.

35 Q. Then a letter from the Aboriginal Legal Rights Movement
36 Incorporated dated 23 December 1993 to the Federal
37 Minister.

38 A. That's correct.

S.M. PALYGA XN (MR SMITH)

1 Q. And signed by Tim Wooley.

2 A. Correct.

3 Q. Then a letter from the Aboriginal Legal Rights Movement
4 dated, again, 23 December 1993 to the State Minister, Dr
5 Michael Armitage.

6 A. That's correct.

7 Q. Again, a more extensive letter signed by Mr Tim Wooley.

8 A. Correct.

9 EXHIBIT 156 Fax header sheet, letter from
10 ALRM dated 23.12.93 to Mr Tickner, and
11 letter from ALRM dated 23.12.93 to Dr
12 Armitage tendered by Mr Smith.
13 Admitted.

14 Q. On 7 June 1994, Professor Saunders supplied you with
15 Some correspondence, did she not.

16 A. She did.

17 Q. Looking at this bundle produced to you, first of all,
18 there is a covering letter from Professor Saunders of 7
19 June 1994.

20 A. Correct.

21 Q. And enclosed in that covering letter, was copy letter
22 from the Aboriginal Legal Rights Movement Incorporated of
23 7 April 1994 to the Federal Minister, Mr Tickner, from
24 the solicitor, Tim Wooley.

25 A. Yes.

26 Q. In addition, you received another copy of the letter
27 previously tendered, that is, a letter from the
28 Australian Legal Rights Movement Incorporated, dated 23
29 December to the Federal Minister from Tim Wooley.

30 A. I did.

31 EXHIBIT 157 Covering letter from Professor Saunders
32 dated 7.6.94, copy letter from ALRM
33 dated 7.4.94 to Mr Tickner, and copy
34 letter of ALRM dated 23.12.93 to Mr
35 Tickner tendered by Mr Smith. Admitted.

36 Q. However, it is the case, as you make clear in your
37 statement, you did not receive any letters of

S.M. PALYGA XN (MR SMITH)

- 1 application to the Federal Minister that led to the
2 interim declaration, did you.
- 3 A. Well, the 7 April letter that's been tendered was that
4 application for the interim declaration. What
5 subsequently transpired in the judicial review
6 proceedings is that we hadn't been given all of the
7 application documents. There were two further letters
8 from the ALRM, one dated 20 April I think, and I can't
9 recall the date of the other one, that hadn't been
10 supplied to us.
- 11 Q. I think you tell us in your statement the earlier one
12 was 12 April.
- 13 A. Yes, that would be correct.
- 14 Q. You knew that Dr Neale Draper was involved.
- 15 A. Yes.
- 16 Q. I take it you would have known that from the media, in
17 particular, the 'Advertiser'.
- 18 A. From early April, yes.
- 19 Q. I think you requested a copy of Neale Draper's report of
20 29 April, did you not.
- 21 A. I did.
- 22 Q. You actually made a direct request for that from the
23 State Minister, Dr Armitage, did you not.
- 24 A. I did.
- 25 Q. Looking at this letter produced to you dated 23 May 1994
26 from your office, Michell Sillar Lynch & Meyer to Dr
27 Armitage, is that the letter which in effect requests a
28 copy of Dr Neale Draper's report.
- 29 A. It is. But it would appear to have been faxed on 24 May
30 from a note on the letter, not the day it is dated.
- 31 EXHIBIT 158 Letter dated 23.5.94 to Dr Armitage
32 from Michell Sillar Lynch & Meyer
33 tendered by Mr Smith. Admitted.
- 34 Q. I think you received a response to that request from the
35 Minister, did you not.
- 36 A. I did. His response eventually was that he could not
37 obtain the permission of the Aboriginal informants to
38 the report for its release to us.

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- 1 Q. Looking at this document produced to you, this is the
2 minister's letter to you in effect saying he couldn't
3 release it to you because of lack of permission from the
4 Aboriginal community.
- 5 A. That is correct. It is a letter dated 3 June 1994.
- 6 EXHIBIT 159 Letter dated 3 June 1994 from Dr
7 Armitage to Michell Sillar Lynch & Meyer
8 tendered by Mr Smith. Admitted.
- 9 Q. Undaunted, you made a direct approach to the ALRM for a
10 copy of Draper's report, did you not.
- 11 A. I did.
- 12 Q. I think you actually wrote on two occasions, being 6
13 June and 29 June.
- 14 A. I actually wrote on three. I also wrote on 22 June.
- 15 Q. Eventually, Tim Wooley wrote back to you saying that he
16 couldn't supply you with a copy of Draper's report.
- 17 A. That's correct. His letter is dated 4 July.
- 18 Q. Looking at this bundle of correspondence, first of all,
19 they are your three requests, and then the response on 4
20 July from Tim Wooley.
- 21 A. Yes. Although, that letter of 4 July had some
22 annexures. I believe it had a couple of other letters
23 to Dr Armitage attached to it.
- 24 EXHIBIT 160 Three letters from Michell Sillar
25 Lynch and Meyer to ALRM, and letter from
26 ALRM to Michell Sillar Lynch & Meyer
27 dated 4 July tendered by Mr Smith.
28 Admitted.
- 29 Q. In May 1994, you and your clients decided that you would
30 need to engage an anthropologist, is that correct.
- 31 A. Yes, that's correct.
- 32 Q. You spoke with Wendy Chapman on the topic, as your
33 statement shows, on 23 May 1994.
- 34 A. That's correct.
- 35 Q. As a result, you contacted a Dr Lindy Warrell.
- 36 A. That's correct. I spoke to Wendy Chapman immediately
37 after she'd been speaking to Lindy Warrell, and I then
38 telephoned Lindy.

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- 1 Q. Lindy Warrell spoke to you about some contact that she
2 had with Neale Draper.
- 3 A. She did. I asked her if she would be involved as an
4 anthropologist, and she expressed some reluctance, but
5 she did tell me that she'd think about it overnight. I
6 tried to convince her to take on the brief.
- 7 Q. Did she apprise you of any conversations she'd had with
8 Neale Draper on the topic of her becoming involved.
- 9 A. She - my recollection is that I had received some
10 information from Wendy about that conversation, and that
11 I'd discussed the information I received from Wendy with
12 Lindy Warrell.
- 13 Q. There was more direct information given to your client,
14 Wendy Chapman.
- 15 A. That's correct.
- 16 Q. As to how Dr Warrell was received into the picture, if
17 you like.
- 18 A. That's correct.
- 19 Q. In any event, you tried to convince Dr Warrell to take a
20 brief in the matter to do an investigation.
- 21 A. Yes.
- 22 Q. I think it was on the next day that she declined to be
23 involved.
- 24 A. That's correct.
- 25 Q. I think you also asked her if she would be involved if
26 she was, for instance, appointed by either Mr Tickner or
27 Dr Armitage.
- 28 A. Yes. That was several days subsequently.
- 29 Q. Did she agree to that course.
- 30 A. She did. I then got in touch, by letter, both with
31 Minister Tickner and with Minister Armitage, to appoint
32 her as such, but Mr Tickner refused to, and Dr
33 Armitage's response was inconclusive.
- 34 Q. I do not want to go into this in any detail, but you and
35 your clients made exhaustive submissions to Professor
36 Saunders, didn't you.
- 37 A. Well, they were very intense. A lot of work was done on
38 those. I don't claim that they're exhaustive, but, yes,

S.M. PALYGA XN (MR SMITH)

- 1 certainly they were very long submissions and they dealt
2 with a considerable number of issues.
- 3 Q. On Wednesday, 22 June 1994, Thomas and Wendy Chapman and
4 yourself met with Professor Saunders, did you not.
- 5 A. Yes, we did.
- 6 Q. Where was that are.
- 7 A. It was -
- 8 Q. What location.
- 9 A. It was in Grenfell Street, Adelaide, is my recollection,
10 but I could be wrong. It was in - I believe it was
11 across the road. I might be wrong about that.
- 12 Q. I don't need you to speak about what transpired. In any
13 event, I think it was on the evening of Thursday, 7 July
14 1994, that Mr Tickner, the Federal Minister, provided
15 you with a copy of Professor Saunders report. Is that
16 right.
- 17 A. He did.
- 18 Q. You were given an opportunity to comment on it by the
19 close of business on the following day, the Friday.
- 20 A. That's correct.
- 21 Q. Upon reading the Saunders report, as you make clear in
22 your statement, it was apparent to you that you needed
23 to see the Fergie report. Is that right.
- 24 A. That's correct.
- 25 Q. I think on the morning of 8 July you requested Mr
26 Tickner to provide you with a copy of the Fergie report.
27 Is that correct.
- 28 A. We did.
- 29 Q. Was that provided.
- 30 A. Yes. He subsequently agreed to provide it. It was
31 provided at 4 o'clock, subject to the same requirement
32 to comment on it by 5 o'clock, close of business Friday.
- 33 Q. Although Dr Warrell wasn't formally involved, you did
34 organise some preliminary comments from Dr Warrell to be
35 forwarded to -
- 36 A. Yes.
- 37 Q. Mr Tickner, is that right.

S.M. PALYGA XN (MR SMITH)

1 A. We engaged Lindy that day to come and review the
2 Saunders report and the Fergie report, and we managed,
3 in sufficient time, to get something to Mr Tickner that
4 evening. Although, after close of business was about
5 6.30 or 7 o'clock. We managed to send her first report
6 to Minister Tickner.

7 MR SMITH: I am about to tender two documents that
8 are documents of Dr Warrell. I am going to ask you only
9 to mark them for identification. I will not release
10 them to other counsel at the bar table at the moment,
11 with your leave, on the basis that I will need to speak
12 to Dr Warrell about her involvement, and I would like to
13 do that before taking the next step. But I would simply
14 like the documents to be identified at this stage.

15 COMSR: It is not appropriate, I suppose, to
16 release documents that are marked for identification in
17 any case.

18 MR SMITH: Certainly not these documents, which
19 have got all sorts of confidentiality markings on them.
20 I will contact Dr Warrell. But I would like them
21 identified because they fall into the chronology of
22 events with this witness. I indicate to counsel at the
23 bar table that I will attend to this matter quickly.

24 XN

25 Q. First of all, I produce to you a document dated 8 July
26 of Dr Lindy Warrell headed 'Comments on anthropological
27 issues.'

28 A. Yes, that's her report on the Saunders report.

29 Q. That was the first document you received from Dr
30 Warrell.

31 A. It was.

32 Q. That document was forwarded off to the Minister, was it.

33 A. It was about 6.30 or 7 p.m. on the evening of 8 July.

34 MFI 161 Report of Dr Warrell headed 'Comments
35 on Anthropological Issues' dated 8 July
36 1994 marked 161 for identification.

1 Q. Dr Warrell had more opportunity to prepare further
2 comments which were forwarded to the Federal Minister on
3 the next day, is that so.

4 A. That's correct.

5 Q. The next day being -

6 A. 9 July.

7 Q. Looking at this document produced to you, do you
8 recognise that as the second Warrell document, which is
9 dated 9 July and headed 'Comments on anthropological
10 report.'

11 A. Yes, I recognise that as that document.

12 MFI 162 Report of Dr Warrell headed 'Comments
13 on Anthropological Report' dated 9 July
14 1994 marked 162 for identification.

15 CONTINUED

S.M. PALYGA XN (MR SMITH)

1 MR ABBOTT: We don't have any cross-examination,
2 since his evidence doesn't affect the interests that I
3 represent.

4 MS PYKE: I would perhaps like to reserve my
5 rights. My client is not here today and hasn't seen
6 this. It would only be in particular areas of
7 consultations that I would ask questions.

8 MR KENNY: I need to do that as well. There is a
9 large number of letters in which my clients get a
10 mention along the way. I haven't had time to read those
11 letters to see if there are any questions I have. I
12 don't wish to delay the matter. I am not sure how we
13 can resolve it. Perhaps we can have the opportunity
14 after lunch today? I am not seeking a long period of
15 time. As we have gone through them, I haven't even had
16 an opportunity to even read the letters.

17 COMSR: Perhaps we can release Mr Palyga,
18 subject to recall?

19 WITNESS: Yes, I will be readily available.

20 MR MEYER: I will reserve any rights I have got
21 after the others.

22 MR SMITH: There is another topic I need to cover
23 with Mr Palyga.

24 FURTHER EXAMINATION BY MR SMITH

25 Q. Looking at the bundle of Colin James press clippings,
26 which were Exhibit 105 and attachment 13, now before
27 you.

28 A. Yes, I have the document.

29 Q. That is an article which is headed 'Bridge trump card.'

30 A. Yes, it appeared in The Advertiser on Tuesday, 12 April
31 in the 'Features' section.

32 Q. Did that provoke any activity by you.

33 A. Yes, it did. The article made reference to the Lower
34 Murray Aboriginal Heritage Committee as not being
35 consulted about the bridge proposal back in 1989/1990.
36 And, as a result of that line in the article, I wrote a
37 letter to the Lower Murray Aboriginal Heritage
38 Committee.

S.M. PALYGA XN (MR SMITH)

1 Q. That letter was a letter from you, dated 13 April 1994.

2 A. That is correct.

3 Q. Looking at the letter produced to you, do you recognise
4 that as the letter you wrote, if you like, declaiming
5 the allegation of a lack of consultation.

6 A. Yes, the letter complained of the fact that it had been
7 stated that this consultation hadn't taken place and
8 detailed some of the consultation that had taken place.

9 EXHIBIT 163 Letter, dated 13 April 1994, tendered by
10 Mr Smith. Admitted.

11 Q. I think you received a response to that letter from the
12 Aboriginal Legal Rights Movement.

13 A. No, I received a response from Johnston Withers acting
14 for the Lower Murray Aboriginal Heritage Committee.

15 Q. Looking at the letter produced to you from Messrs
16 Johnston Withers, dated 27 April 1994, do you recognise
17 that as the response to your previous letter.

18 A. Yes, that is a response in which Johnston Withers on
19 behalf of the Lower Murray Aboriginal Heritage Committee
20 denied having made any such statements to The
21 Advertiser.

22 EXHIBIT 164 Letter, dated 27 April 1994, tendered by
23 Mr Smith. Admitted.

24 Q. It is the case, is it not, that one of the concerns
25 expressed in the objection to the bridge by the
26 Aboriginal community was the necessity for pylons into
27 the river bed, is that right.

28 A. That was what we believed to be one of the claims, at
29 one stage, yes.

30 Q. Did you and your clients make a proposal purporting to
31 address that concern.

32 A. Yes, when we received the Saunders report it had one
33 passage from the confidential annexures included in the
34 body of the report. And this passage made it clear that
35 the objection to the bridge was apparently because it
36 went over water whereas the barrages placed in the water
37 could mediate separateness, the separateness of
38 Hindmarsh Island from the mainland. The bridge couldn't

S.M. PALYGA XN (MR SMITH)

1 do this because it went over the water and that was
2 claimed to be the objection to a bridge as distinct from
3 the barrages. We immediately wrote to the Aboriginal
4 Legal Rights Movement - I am sorry, we firstly wrote to
5 Minister Tickner suggesting that one way this apparent
6 concern of the Aborigines could be accommodated was if a
7 floating bridge or a pontoon bridge was built and this
8 objection would seem to have been completely met. We
9 wrote a letter to Mr Tickner. We also wrote to the
10 Aboriginal Legal Rights Movement making the same
11 suggestion to them. There was a long course of
12 correspondence with the Aboriginal Legal Rights Movement
13 over the matter, the end result of which is they
14 declined to consider the proposal until after the
15 Federal Court matter had been resolved.

16 Q. Looking at the letter produced to you, dated 14 July, is
17 that the letter to the Minister relating to the pontoon
18 bridge.

19 A. That's correct.

20 Q. You eventually got a response from, was it the
21 Aboriginal Legal Rights Movement, concerning that.

22 A. We wrote separately to the Aboriginal Legal Rights
23 Movement. The Minister eventually wrote back to us and
24 said it was a matter that should be taken up with the
25 Aborigines direct, but our correspondence with the
26 Aboriginal Legal Rights Movement was proceeding at the
27 same time.

28 Q. In the end as a result, that proposal of yours was dealt
29 with by a letter from the Aboriginal Legal Rights
30 Movement, was it.

31 A. It was, indeed.

32 EXHIBIT 165 Letter, dated 14 July 1994, tendered by
33 Mr Smith. Admitted.

34 MR SMITH: There is some further correspondence.
35 Matters are getting rather confused here at the bar
36 table, because my learned junior is trying to feed
37 copies to my learned friends and we are not keeping up
38 with copies that should go to the witness. I will make

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S.M. PALYGA XN (MR SMITH)

1 a bundle of the correspondence relating to the pontoon
2 bridge and I will put that in later after my learned
3 friends have got copies of it.
4 I have got no further question of Mr Palyga.
5 COMSR: Mr Palyga, you are released subject to
6 recall if required by any counsel.
7 NO FURTHER QUESTIONS
8 WITNESS RELEASED

W.J. CHAPMAN XN (MR SMITH)

- 1 MR SMITH CALLS
2 WENDY JENNIFER CHAPMAN SWORN
3 EXAMINATION BY MR SMITH
4 Q. You are a director of Binalong Pty Ltd, are you not.
5 A. Yes, I am.
6 Q. Binalong went into receivership I think on 8 April 1994.
7 A. That's correct.
8 Q. The receivers are Messrs Russell Heywood-Smith and John
9 Morgan from BDO Nelson Parkhill, is that right.
10 A. Correct.
11 Q. Binalong went into liquidation on 8 August 1994, is that
12 so.
13 A. I believe so.
14 Q. The liquidator is Mr Tony Smith of Ernst & Young.
15 A. Yes.
16 Q. It would be trite of me to say that you have followed
17 the events of the Hindmarsh Island bridge development
18 and the marina development which preceded it from the
19 1980s right through until the present time, is that so.
20 A. That is so.
21 Q. I think in connection with this Inquiry you have
22 provided a statement to the Commission, have you not.
23 A. Yes.
24 Q. Looking at this statement produced to you, do you
25 recognise that as the statement which you have provided
26 to the Commission.
27 A. That is correct.
28 EXHIBIT 166 Statement of witness, W.J. Chapman,
29 tendered By Mr Smith. Admitted.
30 Q. Have you a copy of that statement with you.
31 A. I have.
32 Q. You are also a director of the Marina Services Co Pty
33 Ltd.
34 A. Yes, I am.
35 Q. That company went into receivership on 8 April 1994.
36 A. It did.
37 Q. Just returning to Binalong, for the moment: Binalong is
38 one of the Chapman Group of Companies, which was formed

1 in the 1960s, that's right, isn't it.

2 A. Yes, that's correct.

3 Q. In connection with the activities of Binalong and the
4 plans of Binalong, you have been to a number of planning
5 meetings, have you not.

6 A. Yes.

7 Q. You have been aware of generally what was happening in
8 relation to Binalong's original planning application for
9 a marina and the steps taken to get approval for the
10 marina extensions.

11 A. Yes.

12 Q. During the course of steps being taken for the purposes
13 of the environmental impact study for the marina
14 extensions and bridge, I think a meeting was arranged
15 between yourself, Nadia McLaren, a consultant and Henry
16 and Jean Rankine at their home at Raukkan or Point
17 McLeay.

18 A. Yes, that is correct. Nadia McLaren was engaged by
19 Binalong as a consultant to put the whole of the
20 environmental impact statement together and, because she
21 was addressing each of the issues required, she and I
22 went together to that meeting.

23 Q. She was consulting to whom.

24 A. She was a consultant to Binalong Pty Ltd.

25 Q. I think your husband and Nadia had already met with the
26 Rankines, Henry and Jean.

27 A. That is correct.

28 Q. And Henry and Jean Rankine, what position did they hold
29 in the Raukkan community, as you understood it.

30 A. As I understood it, Henry was the Chairman of the
31 Raukkan Community Council.

32 Q. I think this meeting, this meeting that we are just
33 coming to now, was on 14 September 1989, was it not.

34 A. Yes, that is correct.

35 Q. The purpose of your meeting.

36 A. The purpose of the meeting was most particularly for
37 Nadia to continue her discussions with Henry and Jean.

38 I was made aware that she had previously met with my

W.J. CHAPMAN XN (MR SMITH)

1 husband and there were additional issues which needed to
2 be discussed. And it may well be asked why did my
3 husband go to one meeting and I went to another? We
4 were co-directors and we shared duties and it was
5 availability, at the time. Nadia and I went, because
6 these discussions were to be held and we were both
7 available.

8 Q. What was to be discussed precisely is as you have set
9 out in your statement, the proposed marina extensions
10 and bridge and to ascertain Aboriginal requirements
11 regarding heritage.

12 A. Yes.

13 Q. For the purposes of the environmental impact statement.

14 A. Yes, that is so.

15 Q. Do you remember what time it was that the meeting
16 commenced.

17 A. It was mid-morning, I would say we arrived there about
18 10.30 a.m.

19 Q. And the meeting lasted for how long.

20 A. Probably about two and a half hours, because we left
21 prior to any lunch.

22 Q. Did you yourself know Henry and Jean Rankine.

23 A. Yes, I did. I had reason to meet them on several
24 occasions previously. I was involved in the 1986
25 Sesquicentenary and the Bicentenary Celebration
26 Committees and my husband most particularly was the
27 Chairman of the Community Services Committee of both the
28 Jubilee 150 and the Australian Bicentenary. One of the
29 projects for the by centennial celebration was a funded
30 project of Signal Point Interpretive Centre at Goolwa.
31 And, as a result of my husband's close involvement, I
32 also took an involvement. The Aboriginal interpretation
33 which was included in that centre was very much guided
34 by Henry and Jean Rankine and, in fact, Henry
35 participated. So, on several occasions I had reason to
36 meet and we socialised in conjunction with that
37 involvement.

38 Q. The focus of your meeting with the Rankines was

- 1 obviously, tell me if I am wrong, the Aboriginal
2 significance of Hindmarsh Island.
- 3 A. Yes, indeed it was for the EIS, because we had
4 requirements to meet in the draft EIS being one section
5 Aboriginal heritage and Nadia was a meticulous
6 consultant and she wanted to further her knowledge
7 beyond her initial discussions.
- 8 Q. Tell us what you can remember then was discussed about
9 this topic, namely, the Aboriginal significance of
10 Hindmarsh Island, at this meeting with the Rankines.
11 CONTINUED

1 A. Basically, the questions and answers that were
2 forthcoming, both Henry of us and us of he and Jean,
3 were very much relative to their significance of
4 Hindmarsh Island, to the Ngarrindjeri community. We
5 canvassed the archaeological aspects, we canvassed the
6 mythological aspects and their relativity to other areas
7 and other happenings within the Ngarrindjeri lands.

8 COMSR: Will the detail of any of these
9 questions be matters which would require a consideration
10 of s.35?

11 MR SMITH: Mam, on my instructions, no, but I will
12 just make sure of that.

13 Q. Was there or was there not a discussion of any secret
14 sacred matters, or any matters of Aboriginal tradition
15 which you were given to understand were confidential in
16 some respects.

17 A. None whatsoever relative to the Hindmarsh Island
18 discussion. He did speak of an issue in another area
19 relative to the Tjirbuki dreaming, being along the area
20 of the gulf - and I won't go into that.

21 COMSR: I don't want the details of it. I want
22 to assure myself that any detail that might be discussed
23 is not going to cause any concern as far as s.35 is
24 concerned.

25 MR MEYER: My instructions accord with Mr Smith's
26 understanding. I understand that there is nothing that
27 we have had any s.35-type problem with.

28 XN

29 Q. Can you, as near as possible, tell us what was said
30 during the conversations about, you know, primarily
31 concerning Hindmarsh Island - but, if Hindmarsh Island
32 was discussed, in the context of other places.

33 A. Henry said -

34 COMSR: Before the witness starts, there is not
35 going to be any identification of any areas that should
36 not be identified?

37 MR SMITH: No.

38 A. Henry said very clearly that `Hindmarsh Island, no

- 1 problems. Granite Island, yes problems. Special
2 place'. But as far as Hindmarsh Island was concerned,
3 certainly no special reasons. He talked very freely
4 about the Ngurunderi dreaming and the Ngurunderi myth
5 and very clearly identified the area to which that
6 related, and gave a very clear indication to both Nadia
7 and myself that Hindmarsh Island was not a problem.
- 8 Q. Nadia, she was actually, as you indicated before,
9 preparing the draft environmental impact statement.
- 10 A. Yes, she was.
- 11 Q. Was she making notes, or any such thing, during this
12 conference.
- 13 A. Yes. Nadia took detailed notes.
- 14 Q. Were there discussions on the topic of tourism
15 opportunities.
- 16 A. Yes. We had a broad-ranging discussion on employment
17 opportunities for youth at Raukkan, on the need for them
18 to have a tourism industry. We talked about the use of
19 their indigenous culture as an industry within their own
20 community.
- 21 Q. That meeting then concluded, I think as you said, after
22 two or so hours.
- 23 A. Yes.
- 24 Q. I think following that meeting, Nadia McLaren went about
25 the business of preparing the draft environmental impact
26 statement.
- 27 A. Yes.
- 28 Q. I think you corresponded with the Rankines later, did
29 you not.
- 30 A. Yes, I did.
- 31 Q. Looking at this letter produced to you dated 9 November
32 with an attachment dated 14 November 1989, do you
33 recognise that, those two documents.
- 34 A. Yes, I do.
- 35 Q. The letter from you to Henry Rankine dated 9 November,
36 you recognise as your document.
- 37 A. Yes. Would you like me to describe that?
- 38 Q. No, that is fine. Enclosed in that letter was, amongst

1 other things, a response letter which you drafted for
2 Henry Rankine.

3 A. Yes.

4 Q. But which is blank there. As I understand it, it wasn't
5 returned to you.

6 A. It was never received in response.

7 EXHIBIT 167 Letter from Mrs Wendy Chapman to Henry
8 Rankine dated 9 November 1989 together
9 with a letter dated 14 November 1989
10 tendered by Mr Smith. Admitted.

11 Q. Your letter purports to enclose the draft environmental
12 impact statement prepared by Nadia McLaren; does it not.

13 A. That is correct.

14 Q. I'm not going to show you that now, but inside your
15 letter did enclose this for the Rankines.

16 A. Yes, it did.

17 Q. The enclosed document, apart from the draft
18 environmental impact statement, was a letter which you
19 prepared for Henry Rankine to return to your husband or
20 to Binalong Pty Ltd.

21 A. Yes.

22 Q. That was not returned signed, was it.

23 A. No, it was not.

24 Q. Did you ever receive any explanation, or did you chase
25 up the matter in any way.

26 A. We have never received any explanation and I have had
27 subsequent conversations, but, no, no explanation.

28 Q. In November - I'm now moving considerably ahead. A lot
29 happened, of course, between late 1989 and 1993 in
30 connection with the development, did it not.

31 A. It did, yes.

32 Q. Is it the case that your husband Thomas was primarily
33 involved in events which happened in those years.

34 A. Yes, that's correct.

35 Q. Although you followed them generally.

36 A. I certainly knew the broad outline of what was going on,
37 but I was involved in running other businesses.

38 Q. Can I take you then right down to November 1993. I

1 think you became aware, as your statement makes clear,
2 that Connell Wagner, the engineers, were undertaking
3 preliminary work in connection with the construction of
4 the bridge.

5 A. Yes.

6 Q. As part of this, they needed to survey the borrow pit
7 area within the marina development from which fill was
8 to be taken for the bridge approaches.

9 A. Yes, that's correct.

10 Q. It was about this time that Mr Draper and some members
11 of the Lower Murray Aboriginal Heritage Committee came
12 on to your property; is that right.

13 A. Yes, that's correct.

14 Q. Your statement fixes that as 2 November.

15 A. Yes.

16 Q. Can you tell us, is that by reference to a diary entry.

17 A. Yes, it is.

18 Q. Can you tell us what happened on that day then.

19 A. Neale Draper came to the marina and said that he was
20 going to look at the borrow pit area. We were well
21 aware that this had to be cleared in conjunction with
22 the clearance for the bridge. Afterwards, he came to
23 the marina office and spoke to our son Andrew and myself
24 and advised that the marina and the bridge sites were
25 all clear and that the Aboriginal Heritage Branch would
26 give a clearance to Connell Wagner to that effect.

27 Q. That conversation took place, that is you, Dr Neale
28 Draper and your son Andrew.

29 A. That's correct.

30 Q. Any other persons present.

31 A. I can't recall if a member of the Connell Wagner
32 management was there. It could have been a Mr Malcolm
33 Langmaid.

34 Q. I think Connell Wagner (SA) Pty Ltd subsequently
35 received a letter of clearance from the Department of
36 Aboriginal Affairs.

37 A. That is so.

38 Q. I won't show you that letter. The Commission will

- 1 receive that letter in due course. Can I take you now
2 to 20 May 1994. You had, or at least Binalong had,
3 engaged the services of an anthropologist, Mr Rod Lucas,
4 in 1990, had it not.
- 5 A. Yes, we had.
- 6 Q. That's the case, isn't it.
- 7 A. Yes, that is.
- 8 Q. Have you got p.3 of your statement in front of you.
- 9 A. Yes.
- 10 Q. On 17 April, as your statement records, that is - and
11 it's 17 April of 1994 we are talking of.
- 12 A. Yes.
- 13 Q. You spoke with Henry Rankine.
- 14 A. Yes, I did.
- 15 Q. Can you tell us was that on the telephone, that
16 conversation.
- 17 A. Yes. I phoned Henry. It was at a time when - at the
18 time when we did not know what the Aboriginal case to
19 answer was. And as Mr Palyga has stated in his
20 evidence, each one of our team was attempting to have
21 dialogue, meetings, conversations with relevant persons
22 to attempt to find a solution to the log jam.
- 23 Q. At that stage, that is 17 April 1994, was it the case
24 that women's business had not arisen so far as you were
25 aware.
- 26 A. I don't believe it had arisen then at all, no.
- 27 Q. On 17 April 1994, you spoke to Henry Rankine with a view
28 to addressing the Aboriginal concerns that -
- 29 A. Yes, to attempt to isolate the nature of the concerns
30 and to find out what the transition had been from the
31 time that we had our consultative meetings with Henry to
32 when suddenly there was a problem.
- 33 Q. I think you made a note of this conversation.
- 34 A. Yes, I did.
- 35 Q. In a notebook.
- 36 A. Yes, I did.
- 37 Q. Did you subsequently transpose that note in a
38 typewritten version.

1 A. Yes.

2 Q. I want to show you that. Looking at these three pages
3 of handwritten notes produced to you, do you recognise
4 those pages as copies of your notebook.

5 A. Yes, they are.

6 Q. Relating to this conversation.

7 A. Yes.

8 Q. Looking at this typewritten document produced to you, is
9 that a typed-up version of the handwritten note.

10 A. Yes, it is.

11 MR SMITH: Although the witness is giving evidence
12 on the basis of refreshing her memory, it might be
13 desirable that these notes are tendered.

14 EXHIBIT 168 Bundle of notes, three pages of
15 handwritten notes together with the
16 typed notes tendered by Mr Smith.
17 Admitted.

18 Q. By reference to the notes, typewritten and otherwise,
19 and the handwritten notes if you need to, will you tell
20 us what passed between you and Henry Rankine on 17 April
21 1994.

22 A. Yes. Henry willingly accepted my phone call and he
23 agreed the process of consultation goes back a long way.
24 He restated that he was on the regional council and he
25 said that he had made it clear to the regional council
26 that he had a good relationship with us. I said `Well,
27 Henry, why should this change?', and he said `I couldn't
28 tell you, it's attitude'. And I said `Who?', and Henry
29 then stated `Matt Rigney, chairperson'. These are
30 staccato notes. I don't take shorthand and they were my
31 notes. `Matt Rigney, chairperson, doing what he has
32 asked to do. Lot of people. Victor, Doug, lot of
33 people. Big thing Aboriginal heritage. Long time ago,
34 we were underdogs, "Yes boss, no boss", now policy of
35 Heritage Committee if we do find Aboriginal burial
36 sites, persons now for damage \$50,000 fined per day.
37 Our friends, white, talk nice to us. Why do you do this
38 now? Look at it.'

- 1 MR ABBOTT: Is she reading out the notes? I thought
2 she was going to use the notes to refresh her memory?
3 XN
4 Q. You don't need to repeat them word for word. You can
5 actually give the conversation as the notes help you to
6 reconstruct it.
7 A. I believe Henry was - Henry was saying to me that things
8 had changed and that now they had the power through the
9 heritage legislation. They understood the power that
10 they had. They also understood that there was money
11 available in the light of heritage to Aboriginal sites,
12 and he mentioned the sum of \$50,000 per day. He gave me
13 a very strong feeling by what he said that a lot of
14 their problems were with Government.
15 Q. Can I ask you - I know you have got your notes there.
16 If you could try and reconstruct the conversation, but
17 you don't have to do it in the staccato note form that
18 you have there. And try not to perhaps summarize the
19 impact as you took it to what was said, but rather your
20 memory of the conversation.
21 A. Well, Henry said that Matt had read out a letter at a
22 meeting the other day and he said that the letter was
23 degrading. He felt that the best way to approach the
24 problem relative to the Hindmarsh Island Bridge was to
25 contact Matt and Victor and Armitage and Rathman so that
26 it could be properly straightened out. He told me of a
27 skeleton which he considered had been improperly treated
28 and that was a demonstration that the Aboriginal
29 Heritage Branch was not properly dealing with their
30 heritage and that they had to take a stand. He talked
31 of the highway between Tailem Bend and Meningie and he
32 spoke of, he told me that they had used their power
33 under the Aboriginal Heritage Act to, in fact, delay the
34 progress of that highway and -
35 Q. Can I take you back a bit earlier than that. In your
36 notes, you see there you have 'Government not taking
37 care, consultation with you about bridge'. See that.
38 It's set down the bottom inset paragraph. Can you

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1 address that.

2 A. Right.

3 Q. Because you have gone beyond that, haven't you.

4 CONTINUED

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1 A. Yes. He was complaining about the government not taking
2 care. He said to me that `You go to a meeting and
3 Victor says "Keep this under wraps". In other words,
4 you can't tell anyone. You've got to be quiet about
5 what we've discussed in our meeting today and then you
6 go home and see it on national television.' He said they
7 found it very very difficult to understand how their
8 role was being interpreted by the government relative to
9 the Aboriginal heritage issue.

10 Q. Then you must have spoken about the Tailem Bend road.

11 A. Yes.

12 Q. What was said between you about that.

13 A. Henry said that they were able to negotiate a
14 settlement, having stopped the works using the
15 Aboriginal Heritage Act, and that there had been a
16 negotiation. It was on the basis of were there any
17 skeletons in this area, and he was demonstrating that
18 that is use of power very clearly. He then said `We do
19 not understand Armitage' and this was further to
20 discussion of their relativity or relationship with
21 government. He said that most particularly by quoting
22 what Armitage had said, `Sorry, that is the decision,
23 the bridge goes ahead'. He said that is why they were
24 up in arms. They were very very angry because they
25 believe they had an agreement with Dr Armitage, as the
26 Minister `but now it's like olden days, we're supposed
27 to say "Yes boss, no boss".'

28 Q. You then, by the look of your notes, turn to the
29 question of Sarah and Doug Milera.

30 A. Yes. I believe I was well aware at this stage that
31 Sarah and Doug were living in Goolwa, and I asked a
32 question of Henry with regard to their movement to the
33 town of Goolwa, and he said that they had been living in
34 Murray Bridge but spent some time in Goolwa. I asked
35 the question `Why Sarah and Doug?' I clearly remember
36 he said they were pensioners and therefore they were the
37 only ones that were able to move there, because they
38 were not working. They were working in Goolwa in

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1 conjunction with white people, 'our friends in Goolwa',
2 and he, in response to a question of mine, said 'I don't
3 know any of the white people'. I do recall I mentioned
4 names of some of the anti-bridge people in Goolwa, and
5 he didn't recognise any except for the surname of Tyson,
6 which he said rang a bell to him. There was one other
7 particular issue which Henry mentioned, and that was
8 regarding the Westpac decision. Henry said to me that
9 that decision was made two weeks prior to being in the
10 'Advertiser' relative to the withdrawal of the \$1
11 billion from Westpac Bank of ATSIC funds.

12 Q. That was what you can recall by reference to your notes
13 of what passed between -

14 A. Yes. I think Henry was very - Henry said to me that he
15 was keen that we contacted Doug - sorry, Matt and
16 Victor, and got a meeting around a table.

17 Q. You made the call to Henry Rankine, didn't you.

18 A. Yes.

19 Q. The object of the call was, from your point of view, to
20 find out what the Aboriginal problem was with the
21 construction of the bridge.

22 A. Yes, it was, but I was unable to ascertain from Henry if
23 there was a problem in specific nature. He virtually
24 said 'You must speak to Matt and Victor.'

25 Q. Did he also mention Armitage and Rathman, for instance -
26 David Rathman.

27 A. Yes, he did.

28 Q. So did you take up that suggestion.

29 A. Yes, we had - Mr Palyga had discussions, as he spoke of
30 in his evidence this morning, and that culminated in a
31 meeting which was arranged on 27 April in the Department
32 of Aboriginal affairs, and we understood that it was to
33 be with David Rathman present and the Lower Murray
34 Aboriginal Heritage Committee. It was held at 6 o'clock
35 in the evening.

36 Q. You went to that, did you.

37 A. Yes, I did.

38 Q. That was on 27 April, you have said.

1 A. 27 April 1994.

2 Q. That was at what location.

3 A. In Pulteney Street at the - I think it had been called
4 the Department of Aboriginal Affairs by this stage.

5 Q. You made some notes of this meeting at some juncture,
6 did you not.

7 A. Yes, I did.

8 Q. When.

9 A. I can't recall if it was as soon as we arrived back home
10 that night, and I assume it would be, I made some
11 handwritten notes, and the next morning typed up my
12 thoughts on what had transpired at the meeting.

13 Q. Looking at these two documents produced to you, first of
14 all, a document headed `Notes of meeting without
15 prejudice held on 27 April 1994 at 6 p.m., Department of
16 Aboriginal Affairs.'

17 A. Yes. That was the first set of notes which I made prior
18 to sitting down with Tom and attempting to reconstruct
19 the total subject matter covered in the meeting.

20 Q. That was the next day.

21 A. Yes.

22 Q. Was it or -

23 A. It was the next day that I typed these notes, yes.

24 Q. From handwritten notes.

25 A. Yes. I had some handwritten notes, but they were very
26 incomplete because it was inappropriate to note in a
27 meeting such as we had. And memory.

28 Q. You then set out what transpired in the meeting in a
29 more formal way on a document headed `Notes of meeting
30 with Aboriginals, 27 April 1994'. Is that right.

31 A. That's correct.

32 EXHIBIT 169A Notes headed `Notes of meeting without
33 prejudice held on 27 April 1994 at 6 p.m.
34 Department of Aboriginal Affairs'
35 tendered by Mr Smith. Admitted.

36 EXHIBIT 169B Notes headed `Notes of meeting with
37 Aboriginals, 27 April 1994' tendered by
38 Mr Smith. Admitted.

W.J. CHAPMAN XN (MR SMITH)

- 1 Q. Just to get the structure of the affair correct, the
2 meeting started out on the basis that present were David
3 Rathman, Doug and Sarah Milera, Henry and Jean Rankine
4 and yourself and your husband Tom.
- 5 A. That's correct.
- 6 Q. Then I think the numbers shrunk, is that right.
- 7 A. Yes. We had a discussion with the seven present. At
8 times there were six, and the Rankines and the Mileras
9 left agreeing to hold -
- 10 COMSR: I don't wish to interrupt, but do these
11 notes touch on any matters of concern?
- 12 MR SMITH: No. There is nothing secret or
13 confidential or sacred. It is a conference between the
14 parties in an effort to settle.
- 15 COMSR: They don't touch on any matters
16 concerning the Section 35: matters of sites, objects and
17 tradition?
- 18 MR SMITH: No. There is nothing canvassed in these
19 minutes that need cause you concern, bearing in mind
20 your ruling. In fact, I do not think there is anything
21 at all which would even depend upon your ruling.
- 22 XN
- 23 Q. So the structure then was the meeting proceeded
24 initially with the people I've named: David Rathman,
25 Doug and Sarah Milera, Henry and Jean Rankine, yourself
26 and your husband.
- 27 A. Yes, that's correct.
- 28 Q. That started at about 6 o'clock in the evening.
- 29 A. Yes.
- 30 Q. Then the Rankines and the Mileras left.
- 31 A. Yes, that's right.
- 32 Q. About what time.
- 33 A. I would think that was about 8 o'clock.
- 34 Q. Then you and your husband stayed on speaking with David
35 Rathman, did you.
- 36 A. Yes. David was very keen that we should stay and have
37 further discussion.
- 38 Q. So further discussion took place between you and him -

- 1 A. Yes.
- 2 Q. You and your husband and him, for what period of time.
- 3 A. At least an hour, I would suggest.
- 4 Q. By reference to your notes, and again you don't use the
5 notes to really refresh your memory as to the flow of
6 the conversation, can I ask you, first of all, the
7 purpose of the meeting was to resolve the problems of
8 the development proceeding, bearing in mind the
9 Aboriginal interests and the opposition to the
10 development that had arisen from Aboriginal interests,
11 is that right.
- 12 A. Yes, that is true.
- 13 Q. It was a follow-up on the suggestion of Henry Rankine.
- 14 COMSR: I notice that the notes say the meeting
15 was held on an without prejudice basis.
- 16 MR SMITH: Yes, but the privilege will not extend.
17 It doesn't extend to the material, the subject of this
18 discussion. It is not as if an agreement was reached or
19 some negotiated position was concluded.
- 20 XN
- 21 Q. Perhaps just to canvass that with you, did you nominate
22 the meeting as being without prejudice.
- 23 A. I'm sorry, I cannot recall that. I would think it more
24 likely that we initiated that.
- 25 Q. To the extent that it is your privilege, you would waive
26 it, is that the position.
- 27 A. I believe so. I don't see that there would have been
28 any other reason for it.
- 29 Q. By reference to the notes, tell us what was said by the
30 various people at the meeting.
- 31 A. Doug said that he didn't want to meet with consultants.
32 He wanted to talk to the developers. So we explained
33 very clearly that we were the developers. Sarah said
34 that she didn't know of any consultation in the past,
35 and she got very very upset when we demonstrated the
36 consultation which had occurred. We had the copies of
37 the documents of the Lucas and the Edmonds reports with
38 us, because we believed that they were issues that

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1 should be discussed with the Lower Murray Aboriginal
2 Heritage Committee. Sarah became extremely upset when
3 she realised that there had been perhaps consultation of
4 which she had not been made aware.

5 Q. Perhaps you better tell us what happened and what she
6 said. You said to her that you had consulted 'And have
7 a look at this'. Did something like that happen.

8 A. Yes. She asked David Rathman if they had copies of
9 those reports in the department. He did not give her a
10 specific answer. She said that she was extremely upset
11 about letters, and she was talking of 'litigation,
12 pensioners, my friend's in Goolwa', and she left the
13 room.

14 Q. So you have recorded there 'Sarah extremely upset about
15 letters'. Were they the letters to the protesters that
16 we are talking about here.

17 A. Yes. They would have been the letters that went to the
18 persons who were opposing the bridge.

19 Q. So was that an early stage of the meeting that Sarah
20 left the meeting.

21 A. Yes, she did. Doug went and attempted to bring her back
22 in, unsuccessfully, followed by another person, I
23 believe it was David Rathman, and she eventually came
24 back into the meeting.

25 Q. Your next note is, at least following the more
26 formalised note, Exhibit B, 'No room for negotiation'.
27 What was said there on that topic. Why did you put that
28 down.

29 A. It was stated very clearly, and I'm sorry I can't tell
30 you who said it, but it was certainly stated clearly
31 that there was no room for negotiation, the bridge
32 cannot go ahead. It was stated that it was for
33 Aboriginal spiritual reasons and Sarah said 'From the
34 heart' and she could not discuss the reasons with us.
35 Doug said that they didn't want money. Compensation was
36 not an issue. They just wanted control. Doug said 'We
37 now have the power and we will use it'. We raised the
38 issue of the cockle train, because the cockle train

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1 thunders through the, by then identified, midden on the
2 mainland side of the bridge construction site. And Doug
3 said `Yes, we have considered stopping it. We have the
4 power and can also negotiate'. David Rathman said to us
5 at the meeting that he was - this was in the full
6 meeting - extremely concerned about Draper's briefing
7 notes appearing in the `Advertiser'. At that stage,
8 when the media was discussed, Sarah threatened us about
9 anything appearing in the press about that particular
10 meeting. She seemed paranoid that -

11 COMSR

12 Q. Perhaps if you could tell us what was said.

13 A. She said she did not want anything to appear in the
14 press. She did not want the people in Goolwa to know, I
15 believe, that she had met with us. Henry Rankine said
16 in the discussions that he and Jean had a very high
17 respect for both Tom and myself, and alluded to our
18 discussions and consultation that we had had in the
19 past. Sarah accused us of photographing her with her
20 friends. We disputed this vehemently and said that at
21 no time had we ever photographed Sarah or Doug.

22 CONTINUED

1 She called us liars. It was very obvious that at that
2 meeting we couldn't get any further. And David Rathman
3 was of the opinion that it was important that a second
4 meeting be convened and that all members of the
5 committee be present. We said very strongly that we
6 would available anywhere, anytime to meet with the full
7 committee. We would travel to wherever they chose to
8 have a meeting and we would await notification. And
9 that meeting finished at about 8 o'clock.

10 XN

11 Q. Before we go to the second phase, which was discussions
12 between you and David Rathman, weren't they.

13 A. Yes.

14 Q. Can I go back to your original notes, because there are
15 a couple of topics canvassed there: at the beginning you
16 say that Doug started the meeting and said that
17 developers' consultation was wrong.

18 A. That's correct.

19 Q. What did he say there.

20 COMSR: What are we getting on to now? What
21 meeting?

22 MR SMITH: There are two sets of notes of the same
23 meeting. The rougher version has got a couple of topics
24 that I want to canvass with the witness. That is all.
25 It is not a different meeting. It is just another set
26 of notes of this witness relating to the same meeting.

27 XN

28 Q. That's correct, isn't it.

29 A. That's correct, yes. Doug stated very clearly at the
30 beginning of the meeting that the consultation was
31 wrong. They wanted to meet with developers, not with
32 consultants. And that's when we said very clearly we
33 are the developers, we are not consultants.

34 Q. Then you have canvassed the question of you then
35 produced copies of reports, such as Edmonds, Lucas, etc.

36 A. Yes.

37 Q. You have canvassed that. You mention there in your
38 first set of notes, A, that David Rathman indicated that

1 new surveys were being done, is that right.

2 A. That's correct.

3 Q. Do you see under that you have recorded some
4 conversation obviously of Sarah Milera.

5 A. Yes.

6 Q. What did she say.

7 A. Sarah said with regard to the surveys - David Rathman
8 said that new surveys were being done and Sarah said `It
9 is all from within. The history hasn't been written
10 yet. And they are still learning about it.' And it was
11 at that stage that Sarah became very angry and left the
12 meeting. She said that `The bridge is taboo. Big
13 special reason.' And she said very clearly `There is no
14 such thing as minimal.' And that it supported her
15 previous statement that there can be no bridge.

16 Q. It was at about that time that she left, obviously.

17 A. Yes.

18 Q. You asked her, according to your notes, what was it that
19 the bridge was destroying and was it her response `More
20 than meets the eye.'

21 A. Yes, it was.

22 Q. Sarah obviously left then, because your next entry is
23 `Sarah was persuaded to come back.'

24 A. Sarah was persuaded to come back to the discussions and
25 she said - she willingly obviously came back and she
26 said that their heritage was poisoned, persecuted and
27 bones laughed at. And she said `Draper was taught by
28 me.' She felt the issue was done underhanded and that
29 money was not the issue. `We cannot be bought off.'

30 ADJOURNED 12.50 P.M.

- 1 RESUMING 2.32 P.M.
2 WITNESS W.J. CHAPMAN, EXAMINATION BY MR SMITH CONTINUING
3 Q. You were referring to your notes of the meeting of 27
4 April 1994, a meeting between you and your husband, Tom,
5 David Rathman, Doug and Sarah Milera, Henry and Jean
6 Rankine.
7 A. Correct.
8 Q. I think you were giving evidence by reference to part A
9 of the notes. That is, the less formal typed up
10 version. Have you got that in front of you.
11 A. Yes, I have.
12 Q. We had reached the stage where you were telling the
13 Commissioner that Sarah said that Draper had been taught
14 by her. Have you got that portion.
15 A. Yes.
16 Q. You have then quoted 'Issue was done underhanded.' Who
17 said that.
18 A. I have no particular note of who said the issue was done
19 underhanded, but it was a specific quote and it was said
20 that money was not the issue. And that they cannot be
21 bought off. They do not want the bridge. The bridge
22 would be like a sword in their bodies. 'We want all
23 those actions retracted.' And that referred to legal
24 actions which we had running in the courts. And that
25 the river bed is important.
26 Q. That formal part of the meeting, I think, as you have
27 noted there, ended, without any real conclusion being
28 reached.
29 A. That's correct.
30 Q. But there was an understanding you have made a note of
31 that there would be a further meeting with all members
32 of the committee present.
33 A. That's correct.
34 Q. The time and place, etc., was going to be arranged.
35 A. Yes, and we were awaiting the outcome.
36 Q. I think what happened then was that the Milera's left,
37 the Rankines left, leaving you and your husband talking
38 with David Rathman.

1 A. That's correct.

2 Q. You have made notes of this secondary meeting with David
3 Rathman.

4 A. Yes, I have.

5 Q. I don't intend leading you through that.

6 COMSR

7 Q. Was this a sort of a private conversation, between
8 yourself and David Rathman, that had occurred then.

9 A. It was after the meeting Mr Rathman indicated that he
10 would like to continue talking with us. I don't know
11 whether it would be considered a private conversation or
12 a conversation with the Director of the Department of
13 Aboriginal Affairs relative to the meeting that we had
14 just had and the issue which was under discussion. We
15 didn't consider that it was a private conversation. We
16 believed it was very much a discussion with the
17 Director.

18 COMSR: I am not really sure of the status of
19 that conversation. There may be nothing in it, but I
20 have an idea that it is a matter that at least Mr
21 Rathman should have some opportunity of addressing.

22 MR SMITH: Yes, it is a very short topic. You
23 could, for the time being, at least, suppress
24 publication of that.

25 COMSR: Yes, there is an expression of opinion
26 perhaps.

27 I propose to just suppress that part of the notes
28 that refers to the discussion with Mr Rathman, so that
29 he is given an opportunity to be apprised of it, of the
30 contents of it, and see if there is any representation
31 he wishes to make concerning it.

32 MR SMITH: I will speak with him in detail about
33 it, expeditiously.

34 Just for the sake of clarity, do you -

35 COMSR: It just deals with that part of the
36 notes where the conversation appears to be just a
37 conversation between the witness, her husband and Mr
38 Rathman.

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- 1 MR SMITH: So, that, for the sake of the media, you
2 suppress from publication that part of both sets of
3 notes?
- 4 COMSR: Both sets of notes.
- 5 MR SMITH: Both sets of the notes of the witness,
6 Wendy Jennifer Chapman, dealing with the meeting which
7 followed the bigger meeting of 27 April between herself,
8 her husband and David Rathman.
- 9 COMSR: That part of Exhibit 169A and B
10 concerning the conversation with Mr Rathman at the
11 conclusion of the more formal part of the meeting.
12 XN
- 13 Q. Can I take you to 20 May 1994, which I had come to
14 before: I asked you, I think, to confirm that, in 1990,
15 Binalong had engaged the services of the anthropologist,
16 Dr Rod Lucas.
- 17 A. That is correct.
- 18 Q. To investigate the anthropology of the area, if you
19 like.
- 20 A. Yes.
- 21 Q. You had a report from Dr Rod Lucas, in 1990, did you
22 not.
- 23 A. Yes, we did. That was a part of the EIS process and it
24 was relative to the anthropology of Hindmarsh Island.
25 And his brief was arranged and written by the Department
26 - the Aboriginal Heritage Branch with regard to the
27 extension to the marina development and the bridge to
28 Hindmarsh Island.
- 29 Q. I think that report is already before the Commission and
30 I don't intend to go to it in any detail. But, included
31 in Dr Lucas's conclusions was 'There is no extant
32 mythology which specifies mythological sites on
33 Hindmarsh Island.'
- 34 A. That's correct.
- 35 Q. Dr Lucas recommended to you that you engage another
36 anthropologist, Dr Lindy Warrell, did he not.
- 37 A. He did. By 20 May, there had been iterations that the
38 difficulty with the Aboriginal community was relative to

- 1 women's issues. And my husband had previously phoned Dr
2 Rod Lucas, as the consultant who had done our work.
3 And, on 20 May, I phoned Dr Lucas and discussed further
4 the requirements relative to Minister Tickner's interim
5 order, the s.9 order, which was placed upon the bridge
6 site, on 12 May. As a result of that, we were under the
7 impression that a mediator would be appointed and we
8 would have a part to play in that mediation and
9 reporting. And we believed that it was appropriate that
10 we should be fully armed with the best material that was
11 available.
- 12 Q. Lucas recommended that you engage Dr Lindy Warrell.
13 A. Yes, he firstly said that it was obviously appropriate
14 that a female anthropologist should be appointed and it
15 is very difficult to make one's own selections of female
16 anthropologists and he did recommend Dr Lindy Warrell.
- 17 Q. As you say in your statement, at p.4, 'He recommended
18 her, on the basis that she had experience in Aboriginal
19 matters and the ability to investigate women's issues.'
20 A. Yes, he did. And he instanced work which Dr Warrell had
21 recently done, in terms of women's issues.
- 22 Q. Did you telephone her then.
23 A. I telephoned Dr Warrell.
- 24 Q. Did she indicate that she had been following the issue
25 in the papers and was thinking about a brief in the
26 matter.
27 A. Yes, she did.
- 28 Q. As your statement shows, she said more than that. That
29 she personally knew some of the relevant Aboriginal
30 people.
31 A. Yes, she did.
- 32 Q. The situation, however, had changed, by 23 May, had it
33 not.
34 A. Yes, indeed, it had.
- 35 Q. What happened.
36 A. Dr Warrell informed me that she had spoken with Dr Neale
37 Draper. He had become - he had said to her that he had
38 become aware that she had been dealing with the Chapmans

1 with a view to acting as their anthropological
2 consultant. She told me that Dr Draper had said the
3 following to her: that she was getting in over her head.
4 That he didn't want anybody interfering in this issue.
5 That he didn't want any more players stepping in and
6 mucking things up. And she would be putting her
7 livelihood and future work from the Department under
8 threat by undertaking the brief.

9 MR SMITH: I undertake to notify Mr Steele of that
10 material. He is acting for Dr Neale Draper.

11 XN

12 Q. Having told you that that was how she was received by Dr
13 Neale Draper, what did she then say to you.

14 A. Dr Warrell then advised that she did not wish to take
15 the brief.

16 Q. The next event - there were obviously numerous other
17 events - but the next event of major significance was
18 the attendance or the meeting between yourself, your
19 husband and your solicitor, Mr Palyga, with Professor
20 Saunders and her assistant, Anne Mullins, on 22 June
21 1994, is that correct.

22 A. That is so.

23 Q. We don't need to go into that. I think about a week
24 after that meeting with Professor Saunders, you spoke
25 again with Henry Rankine, did you not.

26 A. I did.

27 CONTINUED

- 1 Q. Would you describe the tenor of the conversation with
2 him, just to start with.
- 3 A. Henry was quite off-hand with me and he said he didn't
4 want to talk to me. However, he did reiterate what he
5 had said to me on 17 April and that was that things had
6 changed. He said he was really buzzed off and he said
7 that newspapers, television and radio, all these
8 reports. He spoke of an incident at a barbecue at
9 Goolwa which had been on the television and he said that
10 'No-one has taken notice of what Aboriginals say. There
11 will be no discussion any more'. He spoke of Dr
12 Armitage in a derogatory fashion and he said 'I have
13 people who have got punch'.
- 14 Q. Did he conclude the conversation, as you said, by
15 indicating that he was sorry, but from now you would be
16 talking through solicitors.
- 17 A. That is correct. And I said to Henry 'This is a very
18 sad day because we always had a good relationship'. He
19 said 'Yes, it is a sad day'.
- 20 Q. In the course of the time that you have been embroiled
21 in this development on Hindmarsh Island and in
22 particular the bridge, you've maintained a file of
23 clippings which have particular emphasis on the papers
24 of Victor Harbor, Goolwa and occasionally Strathalbyn;
25 is that correct.
- 26 A. That's right.
- 27 Q. That is, the papers that circulate locally around the
28 Goolwa/Hindmarsh Island area.
- 29 A. Yes.
- 30 Q. I will show you those in a minute. Is it the case that
31 from day one in terms of your developments, they have
32 received press coverage in the area.
- 33 A. Yes, that is so.
- 34 Q. More intense as the bridge dispute welled up; is that
35 right.
- 36 A. Certainly.
- 37 Q. Looking at these - I'm not going to show you these
38 individually I hasten to say, but you have kept these

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XXN (MR KENNY)

1 volumes from 1980 through until June 1995.

2 _ . That is correct.

3 Q. They feature, do they, the local papers as well as some
4 of the major newspapers.

5 A. Yes. I cannot say they are exhaustive. They are those
6 we have been able to catch.

7 Q. Talking about the Victor Harbor Times and the Southern
8 Argus.

9 A. There should be some Messenger articles, and they would
10 be what I consider local papers, together with the
11 national daylies, and there are magazine articles and
12 other texts.

13 MR SMITH: I tender those three volumes on the
14 basis they will be copied and replaced with manageable
15 indexed copies.

16 EXHIBIT 170 Three volumes of newspaper clippings
17 marked A, B and C tendered by Mr Smith.
18 Admitted.

19 MR MEYER: If that is left on the basis that
20 counsel can make a request to have a copy and if only
21 one copy is made and Mrs Chapman can have them back. I
22 don't want to see all of that copied unnecessarily.

23 MS PYKE: I would like to reserve my
24 cross-examination to discuss with Dr Fergie about the
25 consultation processes.

26 CROSS-EXAMINATION BY MR KENNY

27 MR KENNY: I can't say that I have complete
28 instructions on everything that Mrs Chapman has said. I
29 will start on the instructions I have. I will need to
30 take some more details from my client, particularly the
31 Rankines, in relation to the discussions they had. I
32 certainly do have some instructions in relation to them
33 to enable me to start.

34 XXN

35 Q. Your first meeting with Henry and Jean Rankine at that
36 place at Raukkan, that was on 14 September 1989; is that
37 correct.

38 A. Yes.

- 1 Q. At that stage, I understand you talked to them about
2 your marina development on Hindmarsh Island; is that
3 correct.
- 4 A. Our purpose of visiting was to discuss our marina
5 development and the bridge on Hindmarsh Island and to
6 discuss with Henry and with Jean the Aboriginal heritage
7 issues relative to the area.
- 8 Q. At that stage, did you have permission to proceed with
9 the bridge.
- 10 A. This was - no, we did not. This was part of the process
11 of putting the draft EIS together.
- 12 Q. Did you take down any documentation to show them in
13 relation to your development.
- 14 A. I can't recall. Nadia McLaren would have been the one
15 carrying documentation.
- 16 Q. I understood that you didn't take any notes of that
17 meeting; is that correct.
- 18 A. Nadia McLaren would have taken the notes.
- 19 Q. Do you have copies of her notes.
- 20 A. No, I don't.
- 21 Q. I understand she is - I think in your letter you suggest
22 she returned to Denmark, was it, or somewhere.
- 23 A. It was Norway, but she is elsewhere.
- 24 Q. Is she in Australia at the moment.
- 25 A. No, she is overseas.
- 26 Q. You haven't seen those notes since that time.
- 27 A. No.
- 28 Q. At the time of that meeting, what stage were you in
29 relation to the development on Hindmarsh Island; had any
30 work actually been undertaken on Hindmarsh Island at
31 that time.
- 32 A. Yes, there was a great deal of work that had been
33 undertaken.
- 34 Q. That was in relation to the marina.
- 35 A. Yes.
- 36 Q. But no application had been made to the planning
37 authorities as to the bridge at that stage; is that
38 correct.

- 1 A. Yes, an application had been made for - I'm sorry, I do
2 not have those planning documents in front of me. The
3 application for our development had been lodged on two
4 occasions. Firstly, it had been lodged with the SAPC.
5 It was not dealt with because the Supplementary
6 Development Plan had not been addressed. It was put on
7 hold for 12 months while the Government attempted to
8 address an SDP, but did not, in fact, solve their
9 problems within that period of time. In order to get
10 our planning application before a relevant authority, it
11 was subsequently lodged and we were required to do an
12 EIS with a condition that a bridge be part of that EIS.
- 13 Q. Did you specifically mention to Henry Rankine anything
14 about the bridge.
- 15 A. I can't say that I specifically mentioned to Henry
16 Rankine anything about the bridge, but our purpose to
17 visit Henry and Jean was relative to the preparation of
18 an EIS for our development and the bridge.
- 19 MR MEYER: For chronology, I'm assisting with a
20 couple of dates.
- 21 MR KENNY: I have no difficulty with my friend.
22 This is not an issue and I don't expect the witness to
23 remember off the top of her head and I have no
24 difficulty with it.
- 25 A. Perhaps if I could, by further explanation, as I have
26 said in my evidence, a letter was written to Henry
27 Rankine by myself on 9 November 1989 which enclosed the
28 draft EIS which was very clearly stated for the
29 extensions to the marina development on Hindmarsh Island
30 and the bridge.
- 31 XXN
- 32 Q. That is the letter that you sent after that meeting you
33 had with Henry.
- 34 A. Yes, together with the full document of the draft EIS.
- 35 Q. As far as you can recall, it's possible that there might
36 not have actually been anything said about the bridge
37 during that first meeting.
- 38 A. I did not say that.

- 1 Q. I put to you that nothing was said about the bridge at
2 that meeting with Henry and Jean Rankine.
- 3 A. I would dispute that, because the intention of going to
4 Henry Rankine was to get the relevant information for
5 the draft EIS to be produced, and the bridge was a
6 component of that draft EIS.
- 7 Q. You have no memory of any specific discussion about the
8 bridge; is that correct.
- 9 A. I have no memory of specific discussion. I would have
10 been an extremely irresponsible person if the intent was
11 to produce a document for a bridge as well as a
12 development, to have not entered that into discussion.
- 13 Q. Did Mr Rankine say anything to you about skeletons on
14 Hindmarsh Island.
- 15 A. Could you define that question please?
- 16 Q. I'm simply asking a general question. Was there any
17 mention of skeletons. If you want more particulars:
18 Did he say anything about what you should do if you find
19 any.
- 20 A. On what occasion?
- 21 Q. On the development of your marina.
- 22 A. On what occasion were you taking about that?
- 23 Q. I'm still talking about this first meeting with Henry
24 and Jean Rankine at the premises at Raukkan.
- 25 A. To be specific about what occurred at that meeting is
26 very difficult for me to say, because, as I have already
27 explained, I personally did not take notes, but on many
28 occasions, or on several occasions, discussions with
29 Henry revolved around skeletal remains and the
30 Aboriginal interests in seeing any skeletal remains
31 handled with the utmost sensitivity.
- 32 Q. It's fair to say that Henry was very concerned about
33 that particular point; that was a very big issue to him
34 at all times.
- 35 A. Henry was, I would suggest, reverent in his treatment of
36 Aboriginal heritage and most particularly any remains of
37 his forebears.
- 38 Q. Do you recall at that first meeting at Raukkan that he

1 asked you that if any skeletal remains were found during
2 the development at the marina, that you go around them.

3 A. You have just jogged my memory. Yes, that is quite
4 correct. And, in fact, there was discussion over
5 skeletal remains being treated correctly. There had
6 been no evidence within our development, in the
7 archaeological survey that had been done to that date -
8 which was the Edmonds survey of 1988 - which determined
9 that there were any skeletal remains within our
10 development. But it was certainly made very clear to
11 both Nadia and myself that in terms of development it
12 was extremely important.

13 Q. I think that in the later telephone conversation you had
14 with him on 17 April 1994, he again raises the issue of
15 remains.

16 A. Yes. Henry raised that issue relative to an incident
17 about which he was extremely upset. He said to me that
18 ETSA had apparently found a skeleton at 10.30 a.m. one
19 day and, to the best of his knowledge, the police at
20 Victor Harbor had been notified. He mentioned the name
21 of a person by the name the Fitzpatrick, who, I believe,
22 was an employee of the Department of Aboriginal Affairs,
23 or may have been the Aboriginal Heritage Branch, and
24 that by 2.30 in the afternoon it was reburied - and he
25 knew nothing about it. He told me that he rang the
26 heritage branch to make a complaint to David Rathman, so
27 that must have been the person, I think, and he was
28 tremendously upset that it took three to four months to
29 answer his letter. And he believes that no further
30 investigation was conducted. And he said to this day
31 they do not know where the skeleton is. He was
32 decidedly perturbed about it and entioned to me that Mr
33 Fitzpatrick has been removed from that particular area
34 and had gone to the Riverland.

35 Q. If I can go back to the first meeting at Raukkan again.
36 At that stage, I suggest to you that really what Henry
37 Rankine said to you was that he believed there was no
38 difficulty with the building of the marina, there was no

1 Aboriginal concerns about the building of the marina.

2 A. I'm sure he said that.

3 Q. What I am putting to you is that Henry Rankine made no
4 mention in relation to the building of a bridge.

5 A. I do not have the notes of that meeting.

6 Q. If we can then turn to the 17 April 1994 telephone
7 conversation. On the first page of those notes, there's
8 a mention of a \$50,000 a day fine. I understood when
9 you read out your notes earlier this morning that you
10 didn't mention the fact that what Henry was talking
11 about was, in fact, not any damages claim but that if
12 you disturbed an Aboriginal site and didn't stop work
13 when requested to do so, you could be subject to a
14 \$50,000 a day fine under the Aboriginal Heritage Act.

15 A. Yes. And we were very conversant with the provisions of
16 the Act. Perhaps I could add that relative to that
17 \$50,000 a day fine and Henry's change of attitude with
18 regard to the 'then and now', so to speak, I think it
19 must be remembered that at the time that we did our EIS
20 and the planning approval was given, the same Aboriginal
21 Heritage Act was in effect. Nothing had changed in
22 terms of legislation.

23 Q. In that same telephone conversation, you discussed with
24 him the question of the road between Tailem Bend and
25 Meningie; is that correct.

26 A. Henry opened up the conversation and he said that when
27 the highway was to be built between Tailem Bend and
28 Meningie, the Lower Murray Aboriginal Heritage Committee
29 became involved and they stopped the work for six
30 months. And that was on the basis that there had not
31 been a study undertaken of the path of that highway and
32 that the Lower Murray Aboriginal Heritage Committee
33 wished to make certain that it did not traverse burial
34 land and areas of significant heritage importance.

35 CONTINUED

- 1 Q. Would you describe the tenor of the conversation with
2 him, just to start with.
- 3 A. Henry was quite off-hand with me and he said he didn't
4 want to talk to me. However, he did reiterate what he
5 had said to me on 17 April and that was that things had
6 changed. He said he was really buzzed off and he said
7 that newspapers, television and radio, all these
8 reports. He spoke of an incident at a barbecue at
9 Goolwa which had been on the television and he said that
10 'No-one has taken notice of what Aboriginals say. There
11 will be no discussion any more'. He spoke of Dr
12 Armitage in a derogatory fashion and he said 'I have
13 people who have got punch'.
- 14 Q. Did he conclude the conversation, as you said, by
15 indicating that he was sorry, but from now you would be
16 talking through solicitors.
- 17 A. That is correct. And I said to Henry 'This is a very
18 sad day because we always had a good relationship'. He
19 said 'Yes, it is a sad day'.
- 20 Q. In the course of the time that you have been embroiled
21 in this development on Hindmarsh Island and in
22 particular the bridge, you've maintained a file of
23 clippings which have particular emphasis on the papers
24 of Victor Harbor, Goolwa and occasionally Strathalbyn;
25 is that correct.
- 26 A. That's right.
- 27 Q. That is, the papers that circulate locally around the
28 Goolwa/Hindmarsh Island area.
- 29 A. Yes.
- 30 Q. I will show you those in a minute. Is it the case that
31 from day one in terms of your developments, they have
32 received press coverage in the area.
- 33 A. Yes, that is so.
- 34 Q. More intense as the bridge dispute welled up; is that
35 right.
- 36 A. Certainly.
- 37 Q. Looking at these - I'm not going to show you these
38 individually I hasten to say, but you have kept these

W.J. CHAPMAN XN (MR SMITH)
XXN (MR KENNY)

1 volumes from 1980 through until June 1995.

2 _ . That is correct.

3 Q. They feature, do they, the local papers as well as some
4 of the major newspapers.

5 A. Yes. I cannot say they are exhaustive. They are those
6 we have been able to catch.

7 Q. Talking about the Victor Harbor Times and the Southern
8 Argus.

9 A. There should be some Messenger articles, and they would
10 be what I consider local papers, together with the
11 national daylies, and there are magazine articles and
12 other texts.

13 MR SMITH: I tender those three volumes on the
14 basis they will be copied and replaced with manageable
15 indexed copies.

16 EXHIBIT 170 Three volumes of newspaper clippings
17 marked A, B and C tendered by Mr Smith.
18 Admitted.

19 MR MEYER: If that is left on the basis that
20 counsel can make a request to have a copy and if only
21 one copy is made and Mrs Chapman can have them back. I
22 don't want to see all of that copied unnecessarily.

23 MS PYKE: I would like to reserve my
24 cross-examination to discuss with Dr Fergie about the
25 consultation processes.

26 CROSS-EXAMINATION BY MR KENNY

27 MR KENNY: I can't say that I have complete
28 instructions on everything that Mrs Chapman has said. I
29 will start on the instructions I have. I will need to
30 take some more details from my client, particularly the
31 Rankines, in relation to the discussions they had. I
32 certainly do have some instructions in relation to them
33 to enable me to start.

34 XXN

35 Q. Your first meeting with Henry and Jean Rankine at that
36 place at Raukkan, that was on 14 September 1989; is that
37 correct.

38 A. Yes.

- 1 Q. At that stage, I understand you talked to them about
2 your marina development on Hindmarsh Island; is that
3 correct.
- 4 A. Our purpose of visiting was to discuss our marina
5 development and the bridge on Hindmarsh Island and to
6 discuss with Henry and with Jean the Aboriginal heritage
7 issues relative to the area.
- 8 Q. At that stage, did you have permission to proceed with
9 the bridge.
- 10 A. This was - no, we did not. This was part of the process
11 of putting the draft EIS together.
- 12 Q. Did you take down any documentation to show them in
13 relation to your development.
- 14 A. I can't recall. Nadia McLaren would have been the one
15 carrying documentation.
- 16 Q. I understood that you didn't take any notes of that
17 meeting; is that correct.
- 18 A. Nadia McLaren would have taken the notes.
- 19 Q. Do you have copies of her notes.
- 20 A. No, I don't.
- 21 Q. I understand she is - I think in your letter you suggest
22 she returned to Denmark, was it, or somewhere.
- 23 A. It was Norway, but she is elsewhere.
- 24 Q. Is she in Australia at the moment.
- 25 A. No, she is overseas.
- 26 Q. You haven't seen those notes since that time.
- 27 A. No.
- 28 Q. At the time of that meeting, what stage were you in
29 relation to the development on Hindmarsh Island; had any
30 work actually been undertaken on Hindmarsh Island at
31 that time.
- 32 A. Yes, there was a great deal of work that had been
33 undertaken.
- 34 Q. That was in relation to the marina.
- 35 A. Yes.
- 36 Q. But no application had been made to the planning
37 authorities as to the bridge at that stage; is that
38 correct.

- 1 A. Yes, an application had been made for - I'm sorry, I do
2 not have those planning documents in front of me. The
3 application for our development had been lodged on two
4 occasions. Firstly, it had been lodged with the SAPC.
5 It was not dealt with because the Supplementary
6 Development Plan had not been addressed. It was put on
7 hold for 12 months while the Government attempted to
8 address an SDP, but did not, in fact, solve their
9 problems within that period of time. In order to get
10 our planning application before a relevant authority, it
11 was subsequently lodged and we were required to do an
12 EIS with a condition that a bridge be part of that EIS.
- 13 Q. Did you specifically mention to Henry Rankine anything
14 about the bridge.
- 15 A. I can't say that I specifically mentioned to Henry
16 Rankine anything about the bridge, but our purpose to
17 visit Henry and Jean was relative to the preparation of
18 an EIS for our development and the bridge.
- 19 MR MEYER: For chronology, I'm assisting with a
20 couple of dates.
- 21 MR KENNY: I have no difficulty with my friend.
22 This is not an issue and I don't expect the witness to
23 remember off the top of her head and I have no
24 difficulty with it.
- 25 A. Perhaps if I could, by further explanation, as I have
26 said in my evidence, a letter was written to Henry
27 Rankine by myself on 9 November 1989 which enclosed the
28 draft EIS which was very clearly stated for the
29 extensions to the marina development on Hindmarsh Island
30 and the bridge.
- 31 XXN
- 32 Q. That is the letter that you sent after that meeting you
33 had with Henry.
- 34 A. Yes, together with the full document of the draft EIS.
- 35 Q. As far as you can recall, it's possible that there might
36 not have actually been anything said about the bridge
37 during that first meeting.
- 38 A. I did not say that.

- 1 Q. I put to you that nothing was said about the bridge at
2 that meeting with Henry and Jean Rankine.
- 3 A. I would dispute that, because the intention of going to
4 Henry Rankine was to get the relevant information for
5 the draft EIS to be produced, and the bridge was a
6 component of that draft EIS.
- 7 Q. You have no memory of any specific discussion about the
8 bridge; is that correct.
- 9 A. I have no memory of specific discussion. I would have
10 been an extremely irresponsible person if the intent was
11 to produce a document for a bridge as well as a
12 development, to have not entered that into discussion.
- 13 Q. Did Mr Rankine say anything to you about skeletons on
14 Hindmarsh Island.
- 15 A. Could you define that question please?
- 16 Q. I'm simply asking a general question. Was there any
17 mention of skeletons. If you want more particulars:
18 Did he say anything about what you should do if you find
19 any.
- 20 A. On what occasion?
- 21 Q. On the development of your marina.
- 22 A. On what occasion were you taking about that?
- 23 Q. I'm still talking about this first meeting with Henry
24 and Jean Rankine at the premises at Raukkan.
- 25 A. To be specific about what occurred at that meeting is
26 very difficult for me to say, because, as I have already
27 explained, I personally did not take notes, but on many
28 occasions, or on several occasions, discussions with
29 Henry revolved around skeletal remains and the
30 Aboriginal interests in seeing any skeletal remains
31 handled with the utmost sensitivity.
- 32 Q. It's fair to say that Henry was very concerned about
33 that particular point; that was a very big issue to him
34 at all times.
- 35 A. Henry was, I would suggest, reverent in his treatment of
36 Aboriginal heritage and most particularly any remains of
37 his forebears.
- 38 Q. Do you recall at that first meeting at Raukkan that he

1 asked you that if any skeletal remains were found during
2 the development at the marina, that you go around them.

3 A. You have just jogged my memory. Yes, that is quite
4 correct. And, in fact, there was discussion over
5 skeletal remains being treated correctly. There had
6 been no evidence within our development, in the
7 archaeological survey that had been done to that date -
8 which was the Edmonds survey of 1988 - which determined
9 that there were any skeletal remains within our
10 development. But it was certainly made very clear to
11 both Nadia and myself that in terms of development it
12 was extremely important.

13 Q. I think that in the later telephone conversation you had
14 with him on 17 April 1994, he again raises the issue of
15 remains.

16 A. Yes. Henry raised that issue relative to an incident
17 about which he was extremely upset. He said to me that
18 ETSA had apparently found a skeleton at 10.30 a.m. one
19 day and, to the best of his knowledge, the police at
20 Victor Harbor had been notified. He mentioned the name
21 of a person by the name the Fitzpatrick, who, I believe,
22 was an employee of the Department of Aboriginal Affairs,
23 or may have been the Aboriginal Heritage Branch, and
24 that by 2.30 in the afternoon it was reburied - and he
25 knew nothing about it. He told me that he rang the
26 heritage branch to make a complaint to David Rathman, so
27 that must have been the person, I think, and he was
28 tremendously upset that it took three to four months to
29 answer his letter. And he believes that no further
30 investigation was conducted. And he said to this day
31 they do not know where the skeleton is. He was
32 decidedly perturbed about it and entioned to me that Mr
33 Fitzpatrick has been removed from that particular area
34 and had gone to the Riverland.

35 Q. If I can go back to the first meeting at Raukkan again.
36 At that stage, I suggest to you that really what Henry
37 Rankine said to you was that he believed there was no
38 difficulty with the building of the marina, there was no

1 Aboriginal concerns about the building of the marina.

2 A. I'm sure he said that.

3 Q. What I am putting to you is that Henry Rankine made no
4 mention in relation to the building of a bridge.

5 A. I do not have the notes of that meeting.

6 Q. If we can then turn to the 17 April 1994 telephone
7 conversation. On the first page of those notes, there's
8 a mention of a \$50,000 a day fine. I understood when
9 you read out your notes earlier this morning that you
10 didn't mention the fact that what Henry was talking
11 about was, in fact, not any damages claim but that if
12 you disturbed an Aboriginal site and didn't stop work
13 when requested to do so, you could be subject to a
14 \$50,000 a day fine under the Aboriginal Heritage Act.

15 A. Yes. And we were very conversant with the provisions of
16 the Act. Perhaps I could add that relative to that
17 \$50,000 a day fine and Henry's change of attitude with
18 regard to the 'then and now', so to speak, I think it
19 must be remembered that at the time that we did our EIS
20 and the planning approval was given, the same Aboriginal
21 Heritage Act was in effect. Nothing had changed in
22 terms of legislation.

23 Q. In that same telephone conversation, you discussed with
24 him the question of the road between Tailem Bend and
25 Meningie; is that correct.

26 A. Henry opened up the conversation and he said that when
27 the highway was to be built between Tailem Bend and
28 Meningie, the Lower Murray Aboriginal Heritage Committee
29 became involved and they stopped the work for six
30 months. And that was on the basis that there had not
31 been a study undertaken of the path of that highway and
32 that the Lower Murray Aboriginal Heritage Committee
33 wished to make certain that it did not traverse burial
34 land and areas of significant heritage importance.

35 CONTINUED

- 1 Q. In fact, your notes suggest three to six months.
2 A. Yes, you're correct, three to six months.
3 Q. So Henry was being general about that.
4 A. Yes. He said that the survey was done, they stopped the
5 work, there were no skeletons so the road was okay.
6 Q. But you are not suggesting, I take it, that that was
7 simply done as an exercise of power by the Heritage
8 Committee.
9 A. I believe that Henry was suggesting to me that that was
10 their way of using the legislation to make sure that the
11 power that they had was properly exercised.
12 Q. I suggest to you really what Henry was talking about was
13 that they had power that they could exercise if they
14 needed to, to ensure that Aboriginal sites and other
15 places of importance were protected and respected. Just
16 so that I am clear, I am not saying that he said those
17 exact words.
18 A. I believe that is not correct. I think Henry made it
19 very clear to me that at the time that we did our EIS
20 and achieved our approval, yes, there was legislation,
21 but that in terms of the use of that legislation, they
22 were still in the 'yes boss, no boss' situation. And he
23 said that more than once to me. But he says 'Look at it
24 now, we have power and we're going to use it. No power
25 then. Have power now'. I certainly was of the
26 impression that at the time they did not realise the
27 power that the legislation - it was new legislation, or
28 relatively new legislation, and I think we have all got
29 to understand this, and it had not been used, and he
30 said very clearly 'No power then, have power now.'
31 Q. In fact, in the front of your notes you actually refer
32 to as being 'a long time ago'. You have written that.
33 A. 'Long time ago underdogs', yes. He said 'We were the
34 underdogs'.
35 Q. I suggest to you what he was referring to is not simply
36 the period since 1988, when the Aboriginal Heritage Act
37 came in. He was also referring to years before that.

- 1 COMSR: When he said what? You said he was
2 referring to years before 1988.
- 3 MR KENNY: The question of the Aboriginal saying
4 `Yes boss, no boss'.
- 5 WITNESS: Is that a question?
- 6 COMSR
- 7 Q. I think the question is, was Mr Rankine referring not
8 only to the period about 1988, but also to a period long
9 ago when he was talking about the aborigines saying `Yes
10 boss, no boss.'
- 11 A. He didn't specify any dates. `Long time ago' in 1994,
12 that could have been four years ago, it could have been
13 24 years ago. He didn't specify.
- 14 XXN
- 15 Q. In that conversation with you on 17.4.94, he didn't
16 indicate to you that he believed that the bridge could
17 be built, is that correct.
- 18 A. He did not indicate whether the bridge could or could
19 not be built. I asked him why there was a change in
20 attitude. He said `I couldn't tell you'. He said `It
21 is an attitude'. And I said `Relating to who?' And he
22 says `Matt Rigney, chairperson, doing what he is asked
23 to do'. `Who has asked him to do it?' `A lot of
24 people'.
- 25 MR KENNY: I can perhaps indicate I don't have full
26 instructions in relation to this, but I will ask some
27 general questions which may enable me to speed the
28 matter up a bit.
- 29 XXN
- 30 Q. If we can move to the meeting of 27.4.94 at David
31 Rathman's office. If I read this correctly, you don't
32 make any mention of anything that Henry or Jean Rankine
33 have said. Is that correct.
- 34 A. I don't make any specific mention.
- 35 Q. Except - I'm sorry, I withdraw that.
- 36 A. `High respect for Wendy and Tom'.
- 37 Q. Yes. Was there anything else that they said in that
38 meeting that you can recall.

- 1 A. Not that I can specifically recall. The meeting was
2 dominated very much by Sarah, and Doug to a lesser
3 degree.
- 4 Q. Was it clear to you at that meeting that there was some
5 very real concerns about the Aboriginal people about the
6 building of the bridge.
- 7 A. I have stated very clearly what Sarah said, and I have
8 also spoken of some things which Doug said. If that can
9 be considered representative of the Aboriginal people -
10 as I understand it, Doug was a member of the Lower
11 Murray Aboriginal Heritage Committee, I cannot tell you
12 the status of the other three people at the meeting, and
13 if four people can be considered representative of the
14 Aboriginal people, then that's not my decision to make.
- 15 Q. Perhaps we can narrow it down. The people that were at
16 that meeting indicate to you clearly they had some
17 concerns about the bridge from, shall we say, an
18 Aboriginal heritage perspective.
- 19 A. Doug expressed a concern that they didn't want to talk
20 to consultants. They wanted to talk to the developers.
21 I believe we demonstrated ably that we were the
22 developers. That was one of his concerns. Sarah
23 virtually took over the meeting and one of her main
24 concerns was the litigation with her white friends in
25 Goolwa. She spoke -
- 26 Q. Can I just stop you there. That's in 169B, at Part 3,
27 you say `She was extremely upset about letters,
28 litigation, pensioners and my friends'. What she was
29 referring to there, I take it, was you had issued
30 contempt applications against protesters who had
31 attended that bridge site.
- 32 A. No, they were not contempt applications.
- 33 Q. They were injunctions, is that correct.
- 34 A. They were 45D injunctions under the Trade Practices Act
35 against ten parties, I believe, at that stage, for
36 secondary boycott.
- 37 Q. You had actually had them issued by the Supreme Court,
38 is that -

- 1 A. Federal court on 30 March 1994.
- 2 Q. In your first lot of notes, which was 169A - have you
3 got a copy of those in front of you.
- 4 A. They are the formal or the informal?
- 5 Q. The ones that I call 169A are headed 'Notes of meeting
6 without prejudice', the ones with no numbers down the
7 side, for simplicity sake. You refer to them as formal
8 and informal. 169A, are they the informal notes.
- 9 A. Yes.
- 10 Q. And 169B are the formal notes.
- 11 A. Yes.
- 12 Q. Perhaps just on that point, why did you draw up formal
13 notes.
- 14 A. Because I sat down with Tom after I had drafted what I
15 considered was to be my recollection of the meeting, the
16 two of us were there and we wished to put through to our
17 solicitors a formalised account of the meeting.
- 18 Q. So 169B was really prepared for the use of your
19 solicitors - or for instructing your solicitors, is that
20 correct.
- 21 A. Both sets of notes went through to our solicitors, but
22 we believed that that was a more comprehensive and
23 notable discussion, particularly the further discussion
24 with David Rathman. Although, there are different
25 points raised.
- 26 Q. Perhaps we can go to those in a moment. If we can just
27 concentrate on point 3, where you say in B, 'Sarah was
28 extremely upset about the letters, litigation,
29 pensioners, my friends'. Was that why she left the
30 room, because immediately above that you have written
31 'Left the room in a huff', referring to Sarah.
- 32 A. I believe that is why Sarah left. She was particularly
33 emotional about the issue.
- 34 Q. In the notes marked 'A' you have written 'Sarah said it
35 is from within. The history hasn't been written yet and
36 they are still learning about it. Sarah became very
37 angry and left the meeting. It was stated the bridge is
38 taboo. Big special reason. No such thing as minimal.

1 We ask "What is it destroying?" and I presume someone
2 gave you an answer `More to it than meets the eye'.
3 Then Sarah comes back in. There is no suggestion of
4 litigation in your first set of notes.

5 A. As I said to you, Mr Kenny, these were my jottings, my
6 first attempt when I sat at my computer the morning
7 after this meeting, and I put down my thoughts of what
8 had been said and done. I then sat down with this, with
9 my husband, and we very carefully tracked through the
10 meeting, because I guess it would be as well known to
11 you as any other person that having a meeting with
12 Aboriginal people, it is not appropriate to sit there
13 and note every word they say.

14 Q. I would also concede it is not always possible to do so.

15 A. Thank you.

16 Q. Is it fair to say from your `A' notes that Sarah wasn't
17 only just upset about the litigation, but she was upset
18 about the bridge or some big special reason why that
19 bridge would be damaging to her.

20 A. Sorry, upset - why are you asking the question about
21 upset? Relative to what?

22 Q. What I am suggesting to you, and it is really more a
23 question rather than a suggestion perhaps - I simply
24 question, when you say Sarah became upset and angry and
25 left the meeting, that perhaps it may have been about
26 the litigation, but she was also upset because of some
27 taboo and some big special reason that the bridge
28 shouldn't go ahead.

29 A. I think it is appropriate to say that Sarah's upset was
30 greatest on the subject of litigation. However, she
31 articulated her reasons for saying that the bridge is
32 big special reason taboo. I certainly had the
33 impression that her greatest anger - if I can put her
34 upset state, it was anger, and it was most particularly
35 about `The litigation, pensioners, my friends'.

36 Q. But it wasn't, I suggest to you, strong enough for you
37 to actually mention that in the first lot of notes that
38 you yourself wrote.

- 1 OBJECTION My Meyer objects.
2 MR MEYER: It is a bit difficult for this witness
3 to say why Sarah is upset, unless she gives a reason for
4 that. The only one who can come along and say why Sarah
5 was upset is Sarah.
6 MR KENNY: This witness has given reasons why she
7 was upset: litigation, pensioners, friends. All I am
8 trying to do is clarify a position. In the first set of
9 notes, Sarah Milera appears to be very upset for some
10 special reason, some taboo reason about the bridge.
11 COMSR
12 Q. You say you wrote this first set of notes - you jotted
13 down as the meeting progressed, did you.
14 A. No, these -
15 Q. This was the next morning when you got to your computer.
16 A. Yes, absolutely.
17 Q. You can see that you say `Sarah became very angry and
18 left the meeting'. Then you go on to say `It was stated
19 that the bridge is taboo'. Was that stated after she
20 left the meeting, while she was at the meeting. You
21 have got two or three statements there and you then say
22 `Sarah was persuaded to come back to the talks. Am I to
23 understand that what occurs between Sarah leaving the
24 meeting and Sarah being persuaded to come back to the
25 talks, is covered by those two or three lines that you
26 have got there. You see that she has left the meeting,
27 then you have got four lines of typing, and then you say
28 `Sarah was persuaded to come back to the talks'. Is it
29 or is it not the case that what occurs in those four
30 lines is whilst she was out of the meeting, or what is
31 the situation.
32 A. I think that would be quite correct to assume that.
33 Sadly, I did not put down margin notes of who said what
34 to whom. But I would - I have said that Sarah left at
35 that point, and that Sarah was persuaded to come back to
36 the talks. I would assume that those three subjects or
37 three statements were made while she was out of the
38 room. I might add that while Sarah was out of the room

1 there was a great deal of coming and going, and really
2 non-progress in the meeting because - well, it just
3 happened differently. While Sarah was out, we didn't
4 want to pressure discussion in Sarah's absence. We
5 deemed it appropriate that we were to have the meeting
6 with the four people, and we handled this meeting as
7 sensitively as we could. Whilst a member of the meeting
8 was upset, we considered that it was inappropriate to
9 attempt to bulldoze discussions on. It just doesn't
10 happen that way.

11 XXN

12 Q. Don't get me wrong. I am not suggesting at all that you
13 were at all insensitive or that you were attempting to
14 bulldoze anything in this meeting. I am not making that
15 suggestion at all. I am simply trying to clarify the
16 point of why you thought Sarah became upset. I think we
17 have explored that far enough. At point 4 in part B of
18 the notes, do you recall who made those comments, or was
19 that made generally by the Aboriginal people that were
20 present.

21 A. I don't recall who specifically said any of those
22 things, but that was a very clear message.

23 Q. Was there any suggestion of the spiritual reasons being
24 associated with any women's business.

25 A. No.

26 Q. But that was a factor that David Rathman raised with you
27 after, is that correct.

28 A. It was an issue that we were aware of as a result of the
29 meeting the day before with Matt Rigney. It was
30 certainly not mentioned by Sarah, Doug, Henry or Jean.

31 Q. It was mentioned by David Rathman after they had left,
32 is that correct.

33 A. Can you point me to the -

34 Q. P.2 of Part A of your notes, right at the top.

35 A. Yes, that is correct. Which they couldn't talk about.

36 Q. When he said `they', who did you understand David
37 Rathman to be referring to.

- 1 A. I previously noted that Rathman was convinced that
- 2 speaking to the Mileras - sorry, `Rathman convinced that
- 3 speaking to the Mileras as they left, their position was
- 4 not extreme, and that the matter could be resolved'.
- 5 Then I say that David reinforced the point that
- 6 objection was based on women's issues which they
- 7 couldn't talk about, and I am assuming it is the people
- 8 with whom we had met.
- 9 CONTINUED

- 1 Q. When you say 'reinforced', was that referring to
2 something that David Rathman had said earlier.
- 3 A. I can't recall that detail.
- 4 Q. Is it possible that Rathman may have mentioned the
5 women's issues earlier in the meeting.
- 6 A. I can't recall that detail.
- 7 Q. Going to the injunctions that you had received from the
8 Federal Court and, again, the question of Sarah becoming
9 upset about that: the injunctions had been, I take it,
10 served on people. Did all of them live down in that
11 Goolwa area.
- 12 A. There were interim injunctions granted by the Federal
13 Court on 30 March 1994 upon, as I recall, ten parties.
14 And, as I go through the parties, I believe, as a result
15 of previous evidence, you will determine that they had a
16 close relativity to Sarah. The CFMEU, and two
17 individual officers of the CFMEU, being Ben Carslake and
18 David Thomason. The Conservation Council of South
19 Australia, and, as I recall, two officers of the
20 Conservation Council, being Margaret Bolster and
21 Professor David Shearman. That gives me six. The
22 Friends of Goolwa and Kumarangk, as an incorporated
23 body. A Mr Richard Owen. A Mr Doug Hassel. And there
24 is a tenth.
- 25 Q. I think you have done very well to list nine. I don't
26 require you to name them all, but they were people
27 that -
- 28 A. They were people with whom Sarah Milera particularly had
29 a close relationship with in the task for stopping the
30 construction of the bridge and that had been overt and
31 well-publicised.
- 32 Q. I think we have seen one of Mr James's articles
33 indicating that you had taken photographs of the
34 protestors, if we can call them that.
- 35 A. The newspapers and television stations had taken lots of
36 photographs, too. So, they were a well-photographed
37 group and they were a well-publicised group.
- 38 MR KENNY: I do have some other questions, but I

1 think it is probably appropriate that, at this stage, I
2 stop my cross-examination. It is probably the limit of
3 my specific instructions.

4 COMSR: I take it that Mrs Chapman will be
5 available on Monday? I would like to finish with this
6 witness's evidence so that we are not in the situation
7 of interposing.

8 MR KENNY: I quite agree with you and would
9 undertake to be able to finalise this witness on Monday
10 morning.

11 MR SMITH: We won't be resuming until Tuesday, so
12 Mr Kenny and those people reserving their rights will
13 have until Tuesday.

14 MR KENNY: In that case, I would fully expect that
15 I would be able to cross-examine.

16 MR MEYER: My position would be that Mrs Chapman
17 should be finished before Mr Tom Chapman commences his
18 evidence, so that appears to be agreed between the
19 parties.

20 MR KENNY: I have no difficulty with that.

21 COMSR: Is there anyone else who wishes to
22 cross-examine the witness.

23 MR MEYER: No, I reserve my position, until
24 everybody else has finished.

25 MR SMITH: Subject to that, that is all the
26 evidence from Mrs Chapman, today, at least. So, if she
27 could be held over until Tuesday, at 10.15?

28 COMSR: Yes.

29 WITNESS STOOD DOWN

30 MR SMITH: There was a minor hiccup with one of the
31 exhibits, when Mr Palyga was giving evidence. And,
32 subject to problems this may cause counsel, it is
33 Exhibit 165. There was a bundle of documents relating
34 to correspondence about the proposal for a pontoon
35 bridge instead of a piered or pylon supported bridge.

36 COMSR: We have the wrong document, do we?

37 MR SMITH: No, we had one of many documents
38 tendered as Exhibit 165.

1 Could I just replace Exhibit 165 with a bundle of
2 correspondence, between Michell Sillar Lynch & Meyer,
3 the Federal Minister and the Aboriginal Legal Rights
4 Movement? It is a bundle of correspondence, commencing
5 with a letter dated 14 July 1994. I think that was the
6 exhibit. And it is a bundle of nine letters, the first
7 being of 14 July 1994 and the last being of 15 November
8 1994.

9 COMSR: We will substitute, then, the previous
10 documents and replace them with the bundle of nine
11 letters, commencing with the letter dated 14 July 1994.
12 And that then will constitute Exhibit 165.

13 MR MEYER: I understand Mr Kenny indicates he can
14 proceed with the cross-examination of Mr Palyga, at this
15 stage.

16 COMSR: Is that right?

17 MR KENNY: Yes, I had hoped to do that. Given that
18 we have just received another bundle of letters, at this
19 stage. I say I have no cross-examination. I don't
20 expect that I will. In fact, I don't see anything that
21 really causes me any concern. But I would like perhaps
22 the opportunity to raise that again on Tuesday, if I
23 could? But, as I say, I do not expect that I will, in
24 fact, have any questions, unless Mr Meyer gives me
25 something.

26 MR MEYER: I don't know whether Ms Pyke has formed
27 a view yet?

28 MS PYKE: No, I haven't formed a view. And it
29 might be that my cross-examination will be more of Mrs
30 Chapman, because, as I anticipate, it will basically be
31 to do with procedural, consultative matters.

32 MR SMITH: There is one small item of evidence we
33 could, in effect, dispose of now.

34 There was, from the bar table, an expressed wish
35 that the interview between Ray Martin and Doreen
36 Kartinyeri be obtained by the Commission and form part
37 of the evidence. We have got that now from Channel 9
38 and I could play it and have it received into evidence,

- 1 if everybody was happy with that now.
- 2 COMSR: Yes, I am not sure that everybody who
3 might perhaps be an interested party, as it were, is
4 represented here.
- 5 MR SMITH: They can have a look at it on Monday,
6 once it becomes an exhibit, it can be shown during
7 Monday. It is only a five minute excerpt.
- 8 COMSR: Is that for the purpose of showing what
9 matters were in the public arena?
- 10 MR SMITH: Yes, in part. Primarily from our point
11 of view. And there is a discussion of women's business,
12 between Doreen Kartinyeri and Ray Martin.
- 13 COMSR: Does anyone wish to be heard on this
14 application?
- 15 MR KENNY: I understand that there are other
16 parties before this Commission that have also given
17 various interviews or there are other transcripts of
18 interviews with particularly Doug Milera. Perhaps we
19 may be seeking, at a later date, to tender those, or
20 some of those, as well. I believe the Campbells, Chirpy
21 Campbell, has given various interviews about this -
- 22 COMSR: Has it been suggested that Mr Campbell
23 plays a part in -
- 24 MR SMITH: Mr Campbell, he is a witness, yes, we
25 don't want to turn the Commission into just a replaying
26 of what has been on the media.
27 But, does Mr Kenny have any objection to this tape
28 being played?
- 29 MR KENNY: I haven't seen this tape. I have no
30 idea what is on it.
- 31 COMSR: I understand it is an interview.
- 32 MR SMITH: It is an interview between Ray Martin,
33 Doreen Kartinyeri and Sandra Saunders.
- 34 VIDEO PLAYED
35 VIDEO ENDS
- 36 MR SMITH: I think the date of that is on the
37 spine, 22 May. I tender that video of 22 May 1995. We
38 will obtain a transcript of that and supply it to

1 counsel.

2 EXHIBIT 171 Video, dated 22 May 1995, tendered by Mr

3 Smith. Admitted.

4 MR SMITH: That is all the evidence for today.

5 COMSR: You are asking now for an adjournment

6 until Tuesday?

7 MR SMITH: 10.15 Tuesday.

8 ADJOURNED 3.43 P.M. TO TUESDAY, 26 SEPTEMBER 1995 AT 10.15 A.M.

W.J. CHAPMAN XXN (MR KENNY)

1 COMSR STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 TUESDAY, 26 SEPTEMBER 1995

6

7 RESUMING 10.27 A.M.

8 MR SMITH: The program for today is the completion
9 of Wendy Chapman's cross-examination; the completion of
10 any cross-examination of the witness, Steven Palyga; and
11 the evidence today of Thomas Chapman.

12 WITNESS W.J. CHAPMAN, CROSS-EXAMINATION BY MR KENNY

CONTINUING

13 Q. I would like to mention to you the Lucas report. At
14 this stage we cannot discuss it in detail, as it is one
15 of the documents that is restricted pursuant to Section
16 35. I take it, that you have read the Lucas report of
17 1990, which was originally tendered here as Exhibit 15,
18 I believe.

19 A. Yes, I have. I would have - I was of the impression
20 that there were certain issues of the Lucas report that
21 may be under Section 35, but the sections which are what
22 I would call the political sections and the corporate
23 areas would not be under Section 35 at all.

24 Q. In that report, is it correct to say essentially - and I
25 am not touching upon the Section 35 matters - Dr Lucas
26 has identified three Aboriginal groups as having an
27 interest in the development of Hindmarsh Island. Do you
28 recall that.

29 A. Yes, I do. He consulted very widely with Mr Steve
30 Hemming of the South Australian Museum; Mr Philip Clarke
31 of the South Australian Museum, Neva Grzybowicz of the
32 South Australian Museum; Mr Henry Rankine, representing
33 Raukkan Community Council of Point McLeay; Susie
34 Hutchings of the Aboriginal Heritage Branch; and the
35 other groups he consulted with were Mr Victor Wilson,
36 representing the Ngarrindjeri Tendi, the Lower Murray
37 Heritage Committee; Mr Paul Kropinyeri, representing the
38 Riverland Heritage Committee and also the Jerry Mason

- 1 Senior Community Centre; Mr Tom Trevor of the
2 Ngarrindjeri Tendi, and also representing the Lower
3 Murray Heritage Committee and the Ngarrindjeri Lands and
4 Progress Association; and also Mr Robert Day,
5 representing the Lower Murray Heritage Committee.
- 6 Q. The question I asked you was in fact that Mr Lucas
7 identified three Aboriginal community groups as having a
8 particular interest in issues relating to the
9 development of Hindmarsh Island.
- 10 A. My answer was yes, and I have demonstrated his -
- 11 Q. I am not asking you who he may have spoken to or what he
12 may have said or done. I am simply saying there were
13 three organisations identified by Dr Lucas as having a
14 particular interest.
- 15 A. Can you just refer me to the exact section of the report
16 where they are identified?
- 17 Q. I don't wish to refer you to the report.
- 18 COMSR: The whole report is restricted because
19 sections of it, of course, cannot be revealed.
- 20 XXN
- 21 Q. In his report, Dr Lucas identified the Raukkan Community
22 Council, the Ngarrindjeri Tendi and the Ngarrindjeri
23 Land and Progress Association, as three groups who had a
24 particular interest in the development on Hindmarsh
25 Island. Is that correct.
- 26 A. They are the three groups with whom he met with
27 obviously appointed representatives.
- 28 Q. I am not asking you whether he met with them or what was
29 said. I am simply saying he identified those three
30 groups as having a particular interest.
- 31 COMSR
- 32 Q. Did he identify those three groups as having a
33 particular interest.
- 34 A. I believe that what I have read from the report clearly
35 shows that he identified those three groups: the Raukkan
36 Community Council, the Ngarrindjeri Tendi, represented
37 by Victor Wilson - sorry, represented by Mr Henry

1 Rankine; and Mr Tom Trevor represented the
2 Ngarrindjeri Lands and Progress Association.

3 XXN

4 Q. In the recommendations that arose from Dr Lucas' report,
5 he recommended that the developer on Hindmarsh Island,
6 or any developer, consult with the Aboriginal bodies
7 that he had mentioned in his report: namely, the three
8 being the Raukkan Community Council, the Ngarrindjeri
9 Tendi and the Ngarrindjeri Lands and Progress
10 Association. Is that correct.

11 A. I don't believe that is correct -

12 OBJECTION My Meyer objects on the ground
13 of relevance.

14 MR MEYER: What is the relevance (a) to Mr Kenny's
15 clients, and (b), to the terms of reference of this
16 commission? We are now straying far away from the Terms
17 of Reference.

18 MR KENNY: My clients are represented on all three
19 of those organisations, I think I can say. They were at
20 that relevant time. The relevance to this inquiry is
21 the question of whether there was or was not a
22 fabrication. We say, in fact, there was no fabrication,
23 but we also say there was no proper inquiry carried out
24 by the developers, Binalong Pty Ltd, until very late in
25 the piece. If there is to be any criticism that the
26 women's business arose at a later date, we need to
27 explore what consultations took place at an earlier
28 time.

29 COMSR: I think a lot of the evidence of the
30 witness is concerned with the question of the extent of
31 the consultation. It seems to me it is appropriate.

32 OBJECTION OVERRULED

33 COMSR

34 Q. Do you want the question repeated.

35 A. Yes.

36 LAST QUESTION QUESTION READ BY REPORTER

37 MR MEYER: My friend's answer to the objection
38 doesn't match up with the question that was asked. If

W.J. CHAPMAN XXN (MR KENNY)

1 the question that is asked is that there was very late
2 consultation, in fact, the witness has already answered
3 that Dr Lucas consulted these people. Mr Kenny's
4 question is now related to a subsequent time, as I
5 understand it, arising out of the Lucas report, not
6 arising out of consultation that took place by Lucas.
7 He refers to 'at an early time'.

8 COMSR: I think his question though is aimed at
9 what consultation there was between the developers
10 themselves and the three groups. I think that is the
11 tenor of the question.

12 MR KENNY: Yes. We have a serious difficulty that
13 we cannot produce the Lucas report, and I am trying to
14 tread carefully around it. I am happy to leave the
15 questioning of this witness until the Lucas report is
16 available, if it does become available, and will
17 conclude this discussion then. It is not my wish to do
18 it then, but it may be preferential. I am attempting to
19 get on with the hearing of this matter and complete the
20 cross-examination of witnesses. I appreciate the
21 difficulties that causes the commission.

22 COMSR: So far I do not think there is any
23 question that you have asked that, on the face of it,
24 produces a problem with Section 35. Whether answers
25 might is another matter, of course. But this answer
26 itself doesn't seem to invite anything that is a problem
27 with Section 35.

28 Your objection, My Meyer, is something different.
29 But I do think that what Mr Kenny is asking is 'When did
30 you, the developers, personally consult with these
31 groups?' Is that what you are asking the witness?

32 MR KENNY: It goes a little further, if I can
33 indicate where I am heading. The recommendations in the
34 Lucas report were later picked up in the draft
35 environmental impact statement, and they were later
36 attached to the planning consent which was given by the
37 State Minister for Environment and Planning.

W.J. CHAPMAN XXN (MR KENNY)

1 COMSR: That may be so, but I am trying to work
2 out what your question is to the witness. Are you
3 asking the witness -

4 MR KENNY: Essentially, I am asking 'Did Dr Lucas
5 recommend that you consult with these three groups?'

6 COMSR: That you personally and your husband
7 consulted with these three groups.

8 MR KENNY: No, I am not limiting it to her and her
9 husband, but the company Binalong Pty Ltd, who I
10 understand was the developer of the marina and the
11 bridge at Hindmarsh Island.

12 MR MEYER: My friend having indicated where these
13 questions are taking him, I repeat my objection. What
14 is the relevance of the planning consent to your terms
15 of inquiry? What is the relevance of that to the issue
16 of there being a fabrication? My friend has said it is
17 because there is an accusation of a fabrication. He
18 hasn't linked that in any way to the planning consent
19 that was given.

20 COMSR: But, My Meyer, as I understand the
21 evidence of Mrs Chapman at least, it is to this effect:
22 That there was consultation, thorough consultation, with
23 various Aboriginal groups in which, I suppose, I am
24 going to be asked to draw the inference that, had there
25 been women's business, then surely some of that would
26 come to light in the course of those consultations. I
27 think that that is the aspect of it that Mr Kenny's
28 questions are directed to.

29 MR MEYER: Without doubt there will be a submission
30 that this development was something that was known to
31 those communities as early as 1989, and that both the
32 Chapmans and various consultants took steps to consult
33 with those communities at some time prior to 1990 and
34 including 1990, i.e., that there was information that
35 was available and notice. To extend that then to an
36 issue of what was in the planning consent, that is where
37 I say we have strayed into an irrelevancy.

- 1 COMSR: I certainly don't see that it is going
2 to assist me to know what was in the planning consent,
3 but the question of the degree to which there was
4 consultation is certainly an issue before me, and I
5 understand that to be the purpose of Mr Kenny's
6 questions. Is that the issue?
- 7 MR KENNY: Yes.
- 8 COMSR: It seems to me that is a perfectly
9 appropriate line of questioning for Mr Kenny.
- 10 QUESTION ALLOWED
11 XXN
- 12 A. In order to answer Mr Kenny's questions, I believe there
13 are some peripheral issues which should be canvassed.
- 14 Q. I am not asking you to canvass the peripheral issues.
15 All I want to know is, were these three Aboriginal
16 bodies identified by Dr Lucas as being bodies or groups
17 that you should consult with.
- 18 A. I have answered that question, and I have said that the
19 consultant engaged by Binalong, being Rod Lucas,
20 consulted with each of those groups, and I have named
21 the persons.
- 22 Q. I am not asking you to talk about what Dr Lucas did or
23 didn't do. I am simply referring you to a
24 recommendation that the developer consult with those
25 three groups.
- 26 A. I don't believe, Mr Kenny, that the way you have put
27 that recommendation to me is correct. It is not
28 verbatim from the report, and I believe for me to answer
29 it without perhaps expanding further on the issues which
30 are canvassed within the body of the report, relevant to
31 that recommendation - it would be wrong for me to partly
32 answer it.
- 33 Q. I don't ask that you expand on it.
- 34 COMSR
- 35 Q. Are you saying that the question cannot be answered yes
36 or no.
- 37 A. That is what I am saying.
- 38 MR KENNY: I am happy to leave it.

- 1 COMSR: When you are talking about `developer',
2 are you talking about Binalong? Is that what you are
3 putting to the witness?
4 MR KENNY: Yes.
5 COMSR
6 Q. I think the question is: did Dr Lucas recommend that
7 Binalong confer with the three groups mentioned.
8 A. That's not the way the recommendation is couched.
9 XXN
10 Q. You subsequently received planning approval, did you
11 not, from the State Minister for Environment and
12 Planning for the extensions to the marina and the
13 bridge, is that correct.
14 A. That's correct.
15 Q. I understand that in the planning permission there were
16 certain conditions, is that correct.
17 A. Yes.
18 Q. I understand that one of those conditions was that you
19 consult with the three Aboriginal groups that I have
20 previously named, is that correct.
21 A. I don't have those planning conditions before me.
22 Q. Do you recall whether there was a recommendation that
23 you consult with those three groups though.
24 A. I don't have the recommendation in front of me, and I
25 can't be sure of that specific wording.
26 Q. Do you have a copy of those recommendations or those
27 conditions.
28 A. No, not in front of me.
29 Q. Did you ever receive a copy of the conditions from the
30 State Minister with the planning approval.
31 A. Mr Kenny, you would be as aware of the Federal Court
32 proceedings evidence as I am, and you would also be very
33 well aware that the recommendations that were attached
34 to the approval were in fact carried out, and we were
35 very cognizant of those recommendations.
36 Q. Mrs Chapman, you would be aware that I wasn't present at
37 the Federal Court proceedings and that you were, but I
38 understood that the effect of your evidence in the

1 Federal Court was that the page of the letter setting
2 out the requirements that you consult with those three
3 Aboriginal groups that I have previously mentioned - and
4 when I refer to the letter, I refer to the letter of the
5 State Minister for Environment and Planning - the effect
6 of your evidence was that you did not receive that page
7 of the recommendations. Is that correct.
8 A. The effect of my evidence was that the recommendations
9 which were attached to a letter were superseded by the
10 production of recommendations, and I gather they came
11 from the department. There was a variation in those. I
12 did not at any time dispute that the recommendations
13 which were produced, as I believe as the result of the
14 department providing them, were inappropriate, nor were
15 they at odds with what we considered were our
16 responsibilities.
17 CONTINUED

- 1 Q. But the question is: Did you receive in the letter of
2 approval from the State Minister a copy of conditions
3 that required or requested that you consult with the
4 three Aboriginal groups that I previously mentioned.
- 5 A. Mr Kenny, I have answered that question. I do not have
6 the approval before me and I am not - my memory does not
7 tell me whether those three groups were named in the
8 approval process document.
- 9 Q. If I can take away the three names and simply say: Did
10 you receive with the letter from the State Minister
11 recommendations that you consult with any Aboriginal
12 groups.
- 13 A. I have said I do not have that document in front of me
14 and I cannot remember what the detail of the conditions
15 of the approval were.
- 16 Q. Do you have a copy of that document at all.
- 17 A. With me, no.
- 18 Q. Have you provided a copy of that to your solicitors.
- 19 A. I believe it is with the Federal Court papers. I know I
20 viewed it in the box, in the witness box in the Federal
21 Court and, in fact, we do not have a copy of that. We
22 did not have a copy of that in our records until such
23 time as it was produced. I think it is important to say
24 that our office had be moved and papers and documents
25 had shifted, and at the time that we were asked for the
26 relevant documents, I did the very best I could to
27 produce every paper that I was asked for.
- 28 Q. Can you tell us when you first saw in the planning
29 approval conditions the recommendation that Binalong
30 should consult directly with relevant Aboriginal
31 representative bodies.
- 32 A. No, I can't be -
- 33 OBJECTION Mr Meyer objects.
- 34 COMSR: The witness has not said that she did
35 see the conditions.
- 36 MR KENNY: I suggest she has. The suggestion I am
37 making is that this witness has not consulted with the
38 relevant bodies and should have done so. And as I

1 understood her earlier evidence -

2 COMSR: Perhaps you could ask her that.

3 MR KENNY: I admit I haven't seen the transcript,
4 but there was a recommendation from the State Minister
5 that she consult with these groups. I understood in
6 part of her evidence that this was not received by the
7 Chapmans; this particular page with the conditions for
8 consultation with Aboriginal groups was not received.

9 WITNESS: However, that is only one of the aspects
10 of the consultation process and whilst this does not
11 encroach on s.35 of the Act, of the most important
12 paragraph which refers to that consultation -

13 COMSR: Just a minute, Mrs Chapman. I have to
14 be careful in respect of this report.

15 Q. The question I think Mr Kenny is putting to you is that
16 you did not sufficiently, or Binalong, whichever the
17 developer is for these purposes, did not sufficiently
18 consult with the Aboriginal groups or community
19 concerned.

20 A. In the report, there is a clear paragraph which says `In
21 respect of Hindmarsh Island, the Tendi resolved to
22 contact all of those families with respect to the island
23 in -

24 MR MEYER: The difficulty with this is that
25 requiring this witness to answer questions yes or no is
26 somewhat like a repeat performance of what occurred in
27 the Federal Court, and then answers are taken out of
28 context. The witness must be allowed to answer. This
29 is an inquiry. The witness must be allowed to answer
30 the question as fully as she considers to be necessary
31 so that the answers that are given - and you will have
32 seen in the documents that have been tendered, in press
33 reports and matters of that nature, where one question
34 is taken with one answer being taken totally out of
35 context of the whole of the evidence. I submit that is
36 what Mr Kenny is doing again right now in relation to
37 what I have already said is taking us up an irrelevant
38 path. If this issue of consultation subsequent to 1990

1 is relevant, then Mrs Chapman must be able to explain
2 what it is that she said was undertaken. In other
3 words, my friend should let her finish, otherwise I will
4 do it in re-examination. That won't alter the fact that
5 the question and answer that Mr Kenny takes will be
6 taken in isolation, any re-examination will be ignored
7 to produce the effect that is desired.

8 MR KENNY: That sounds like a definition of
9 cross-examination which I thought that that I was trying
10 to do. If my friend wishes to re-examine, I have no
11 difficulty with that.

12 COMSR: In a court case, that is a different
13 situation. I'm in a situation of trying to get as much
14 information as I can concerning these matters. But, it
15 seems to me that there is something at cross-purposes
16 occurring here between the witness and yourself and I'm
17 not really clear about this. As I understand it you're
18 seeking to find out from the witness whether, in
19 addition to the information that is in the Lucas report,
20 there were other consultations carried out?

21 MR KENNY: No, I'm not seeking that. That is not
22 my question at all. Perhaps I will withdraw any
23 previous questions I have and embark upon a new tack, as
24 it were.

25 COMSR: Remembering, of course, the provision in
26 the Terms of Reference, I'm not to prejudice anything to
27 do with the Federal Court proceedings.

28 MR KENNY: I will leave that completely alone at
29 the moment.

30 XXN

31 Q. Looking at this document produced. That, as I
32 understand it, was a letter you received in April 1990
33 from the State Minister for Environment and Planning
34 granting you planning consent essentially; is that
35 correct.

36 A. It was directed, addressed to my husband. I didn't
37 receive it personally.

38 Q. Did you see that letter when it was received.

1 A. I would imagine so, because it was the apex of our
2 planning application.

3 Q. At the time, you were also a director of Binalong Pty
4 Ltd; is that correct.

5 A. Yes.

6 Q. In fact, you and your husband were the only two
7 directors.

8 A. I can't remember if that is correct or not.

9 Q. Attached to that letter, there are a number of
10 conditions; is that correct.

11 A. Yes.

12 Q. If you turn to the attachment headed, the first page
13 headed 'Attachment' with number 1 and number two on
14 there.

15 A. Yes.

16 Q. At the time that you saw this letter on the first
17 occasion, were those attachments and in particular that
18 first page attached to that letter.

19 A. I have answered that question previously when you
20 quizzed me. The attachment which I had and produced at
21 the time of the Saunders' report was not that document.
22 I searched records and the only document I had available
23 to me at that time is the document which was attached
24 for the Federal Court proceedings. This particular
25 attachment was produced to me while I was in the witness
26 box of the Federal Court and I have no reason to say
27 that that was not the correct attachment, neither can I
28 tell you why that was not attached to that letter in the
29 files. I did not work in this office at the time. I
30 did not keep my husband's records and I was not
31 responsible for filing the records that were received
32 into the office of Binalong Pty Ltd.

33 Q. So, the effect of what you are saying is that you don't
34 know whether that attachment, or any of it, was attached
35 to this letter from the Minister of April 1990; is that
36 correct.

37 A. That is beside the point as far as the conditions were
38 concerned, because we had been through all the

1 procedures of an EIS and we had documents with known
2 responsibilities of Aboriginal consultation -

3 Q. I ask that you stop there. The question is simply: Are
4 you able to say whether or not there were any
5 attachments to this letter of April 1990 from the
6 Minister for Environment and Planning.

7 A. I have answered that question.

8 Q. I would like you to repeat the answer, in saying whether
9 you do or do not recall whether these attachments were
10 attached to the letter.

11 A. I have answered the question by saying that at the time
12 that we were requested to produce to Professor Cheryl
13 Saunders in our submission the documentation, a certain
14 list or a certain attachment was with the letter from
15 the Minister. I was asked to see if there was another
16 attachment and that I could possibly have made a
17 mistake. I was unable to find in the records at that
18 time any other attachment. The first time I saw that
19 specific attachment was when it was put to me in the
20 witness box at the Federal Court; and, in fact, I
21 discovered later that that attachment was faxed to our
22 solicitor's office.

23 Q. If I understand that long answer, the first time you saw
24 the attachment to this letter of April 1990 was in the
25 witness box in the Federal Court proceedings last year.

26 A. That I am specifically aware of. You really have to
27 understand that this goes back an awfully long way in
28 April 1990, which is in excess of five years ago.

29 COMSR: Mr Kenny, I don't think we can follow
30 this line of questioning about what happened in the
31 Federal Court proceedings and nor can I see -

32 MR KENNY: It is not my intention to follow what
33 happened in the Federal Court proceedings. I simply
34 note that this appears to be a letter from the Minister
35 granting planning consent and I will seek to tender the
36 document shortly. There is an attachment to it and I
37 wish to ask the witness some questions about the
38 conditions contained in that attachment.

- 1 COMSR: I understand the witness to have said
2 that she didn't see that letter until it was produced in
3 the witness box.
- 4 MR KENNY: No, she didn't see the attachment, she
5 says that she saw the letter.
- 6 COMSR: I mean the letter.
- 7 MR KENNY: I have no doubt she saw it very shortly
8 after it was received. It is clearly the most important
9 document they would have received for some time and I
10 have no doubt that she did read it - and I don't think
11 the witness denies that. The question of the attachment
12 is what she is denying seeing until the Federal Court
13 proceedings. The relevance of it is that the attachment
14 to that letter contains conditions that require the
15 developer to consult with relevant Aboriginal
16 representative bodies.
- 17 MR MEYER: It would be my submission that that is
18 irrelevant. I don't want to repeat my submission again.
19 Mr Kenny needs to pin his colours to the mast. What he
20 is referring to is a consent to build a bridge and it's
21 a consent to build a bridge that is dated 19 April 1990.
22 The material question is for the purposes of relevance
23 at that moment: Was Binalong entitled to build a bridge
24 in the position in which it had specified that had been
25 the subject of the EIS, et cetera? The answer is yes.
26 Any issue of relevant consultation is up to the moment
27 when the planning consent is issued, because whatever
28 discussions are going to take place after April 1990,
29 they are going to relate to the implementation of the
30 planning consent to build the bridge. They are not
31 going to relate to whether you can or cannot build a
32 bridge. The question that we are discussing is in
33 relation to whether there is fabrication of sacred
34 secret women's business in relation to the proposal to
35 build a bridge. The relevant consultation is that which
36 takes place prior to 11 April 1990; i.e., prior to the
37 planning consent. Whatever the discussions that were
38 going to take place afterwards as far as the planning

1 consent was concerned, that wasn't going to affect the
2 decision of whether a bridge was going to be built or
3 not. No obligations on Binalong in relation to
4 obtaining a planning consent to consult after April
5 1990. The question is: Was there consultation with the
6 relevant Aboriginal groups prior to April 1990? Mr
7 Kenny can have ruled that cross-examination on that is
8 relevant. What happens afterwards, in my submission,
9 unless Mr Kenny can demonstrate a relevance, is
10 irrelevant. If I'm going to build something and I get
11 building approval and planning approval - as your Honour
12 would know having sat in the Planning Appeal
13 Jurisdiction of the District Court - once I have
14 planning approval and once the appeal periods have run
15 out, et cetera, I'm entitled to go ahead and build it.
16 The considerations, the planning considerations, et
17 cetera, have been dealt with.

18 COMSR: I appreciate that, but I understand that
19 Mr Kenny is attempting to show the extent to which the
20 developer has consulted with the various Aboriginal
21 groups. If he wants me to draw some inferences to the
22 adequacy or otherwise of that, no doubt in due course he
23 will do so. As long as his questions are devoted to
24 that issue and not to the issue of whether there was
25 consent given or otherwise, but the witness appears to
26 me to have given evidence-in-chief as to consultations
27 that were carried out.

28 MR MEYER: I understand that. But what I'm driving
29 at is what the submission is that Mr Kenny wishes to
30 make in relation to the question of consultation as to
31 the building of a bridge, not the -

32 COMSR: I'm not concerned with any building of
33 the bridge. It's not an issue before me. The question
34 of the consent that has been given to the building of
35 the bridge or whether it should or shouldn't have been,
36 that is just not a matter.

37 MR MEYER: That has shifted the whole subject out
38 of relevance. What Mr Kenny is seeking to cross-examine

1 about is the conditions of consent for the building of a
2 bridge.

3 COMSR: No. What I think what he is eventually
4 going to get around to is the issue of how much
5 consultation was carried out. I trust we are going to
6 get there quickly, Mr Kenny, if that is so?

7 MR KENNY: I thought this would take me a couple of
8 minutes, but the witnesses answers have been much
9 longer.

10 COMSR: Perhaps if we get to the heart of it
11 without the build-up.

12 MR KENNY: Perhaps if I tender that letter so that
13 you have it before you.

14 MR MEYER: It is an MFI. That is part of the
15 documents that I understand are going to be tendered by
16 Mr Smith.

17 MR KENNY: I'm happy for that to occur.

18 MR SMITH: I should be tendering such evidence as
19 this and I'm happy to do that. That document recurs in
20 Mr Chapman's evidence, so at this stage if it could be
21 marked, I suppose it then occupies a number.

22 MR MEYER: If we identify the document that he is
23 been talking about as document no.32 in the list of
24 documents and if it could be tendered through Mr
25 Chapman, that identifies it in the transcript.

26 MR KENNY: That is sufficient.

27 XXN

28 Q. Subsequent to that letter of April 1990, I understand
29 there was an assessment report prepared by the
30 Department of Environment and Planning; is that correct.

31 A. Yes.

32 Q. Do you recall that there were conditions attached to
33 that assessment report - or recommendations I should
34 say.

35 A. Could I be shown the document please, because I can't
36 recall specifically at all?

37 Q. Looking at the assessment report from the Department of
38 Environment and Planning produced, I am told that

- 1 document was released in March 1990. Do you recall
- 2 that.
- 3 A. I don't see a date on the document and, no, I can't
- 4 remember what date it was.
- 5 CONTINUED

1 Q. Did you receive a copy of that assessment report.

2 A. The company did, yes.

3 Q. Did you see a copy of that assessment report at around
4 April 1990.

5 A. I am sure I did.

6 Q. Going to p.40 of that report, under R2.5.

7 A. Yes.

8 Q. Do you recall seeing those recommendations contained in
9 R2.5.

10 A. Yes, and I also recall having very carefully analysed
11 those recommendations relative to the Lucas report and
12 most particularly the fact that the Tendi resolved to go
13 away and have their meeting. Talk about it amongst
14 themselves. Identify the families which had an interest
15 in the heritage of Hindmarsh Island. And come back to
16 Binalong, to have discussions.

17 Q. I ask you to stop there. I am not asking you what is
18 contained in the Lucas report and the consultations that
19 Lucas undertook.

20 MR KENNY: That is a separate topic we will have to
21 look at another time. I can't explore this topic, at
22 this time.

23 A. One recommendation can't be taken in isolation, because
24 it forms the total recommendations in the Lucas report.
25 And, to accept that one recommendation can be seen in
26 isolation and seen in isolation from the body of the
27 report, is misconstruing the intent of a recommendation.

28 COMSR: Mr Kenny, I must say, I am not quite
29 clear where the line of questioning is leading us,
30 because we are not concerned, are we, with the adequacy,
31 or it has never been suggested that the consultation was
32 inadequate for the purposes of obtaining approval for the
33 development up until the stage where there was a claim
34 that something had not been revealed. That is, the
35 women's business. Are you seeking to reopen the whole
36 issue of the adequacy of the consultation process, apart
37 from the issue of women's business?

38 MR KENNY: Certainly, I am seeking to explore what

1 consultation took place, after the Lucas report was
2 prepared. I am not seeking to go through the
3 consultation that Dr Lucas undertook. That is subject
4 to evidence, at a later time, if it becomes relevant.

5 All I am seeking to do is explore the consultation
6 with the various Aboriginal groups between 1990 and
7 1994. What consultations were undertaken.

8 MR MEYER: I repeat, it is irrelevant?

9 COMSR: To what end, Mr Kenny?

10 MR KENNY: I have no doubt that there will be a
11 suggestion that the women's business was a recent
12 invention. We have heard it on a number of occasions.
13 And there will be questions about, if it was there all
14 the time, why didn't it appear earlier?

15 What I am seeking to explore is the overall
16 consultation that was undertaken by Binalong Pty Ltd,
17 particularly during the period from 1990 onwards.

18 COMSR: You want a history from the witness of
19 the consultation process between the developer and the
20 various Aboriginal groups, is that what you are seeking,
21 between 1990 -

22 MR KENNY: After the Lucas report, yes.

23 COMSR

24 Q. Are you able to answer that.

25 A. Yes, I am very easily able to answer that question and,
26 once again, I go back to the Lucas report and I cannot
27 answer the question unless I refer to it, because the
28 recommendation in the report which Mr Kenny has put to
29 you is one of, indeed, five recommendations and all
30 recommendations tie together.

31 Q. As a consequence of what was in the Lucas report, the
32 developer undertook certain consultative processes, did
33 it.

34 A. The developer was required - no, I beg your pardon, may
35 I retract that?

36 Q. Whether it was required to or not.

37 A. The Aborigines resolved, the Aboriginal groups resolved
38 to leave the project - I am sorry. They resolved to go

1 away and talk with their people about the issues. And
2 they resolved that, after they had had their own meeting
3 and identified the families with the responsibility to
4 the island -

5 MR KENNY: This is within the knowledge of Dr Lucas
6 and not within the knowledge of this witness. As I
7 understand it, the consultation was undertaken with Dr
8 Lucas, not this witness.

9 COMSR

10 Q. Yes, after the Lucas report and possibly because of the
11 contents of the Lucas report, was there any further
12 consultation that took place between the developer and
13 various Aboriginal groups.

14 A. It was very clearly our turn to wait for the Aborigines
15 to come back to us after they had had their meeting and
16 there was to be a meeting then convened. We were to be
17 notified. There was to be a meeting convened on
18 Hindmarsh Island with Binalong and the Aboriginal
19 persons involved and we are waiting to this day to have
20 that meeting.

21 Q. Is this the situation that since the Lucas report there
22 has not been any further consultation, because you are
23 waiting for the Aboriginal groups to get back in touch
24 with you, is that what you are telling me.

25 A. At large until 1994 when my husband and I had various
26 conversations with Henry Rankine. I spoke with Jean
27 Rankine. We had a meeting with the Mileras and with the
28 Rankines. We spoke with the Lower Murray Aboriginal
29 Heritage Committee on-site, on two occasions. In fact,
30 I believe that may well have been in 1993, at the end of
31 1993, but the Aboriginal groups, the three bodies which
32 Mr Kenny has spoken of, resolved to go away and do their
33 own homework on the traditional owners of Hindmarsh
34 Island and come back to us. Yes, there was a condition
35 that, when the meeting was to be held, we were to meet
36 the expenses. That was not a problem. We have never
37 heard back from the Aborigines. I, in fact, phoned Mr
38 Henry Rankine and made the point `Henry, we have never

1 heard back from you.'

2 MR KENNY: The difficulty I have is I would like to
3 explore some of that, but, as I understand it, those are
4 matters that were raised, not by the developer, Binalong
5 Pty Ltd, but by Dr Lucas. It is more appropriate to be
6 canvassed as part of his evidence if he is called and if
7 a s.35 authorisation is made.

8 COMSR: Perhaps we can just clarify that first
9 of all.

10 COMSR

11 Q. Leaving aside any contact which Dr Lucas may have had on
12 your behalf, did you or Mr Chapman or someone else
13 contact the various Aboriginal groups after the Lucas
14 report.

15 A. After the approval?

16 Q. After you obtained the Lucas report.

17 A. The Lucas report became a component of our EIS
18 provisions, upon which an approval was given. And, as I
19 have explained, one of the key things that came out of
20 the Lucas report was that the Aboriginals were to go
21 away and discuss their own issues amongst themselves and
22 come back to the company. Now, at that time, Tom and I
23 most decidedly would have met with them. There would
24 have been no further reason to have external
25 consultants, but I don't believe that Binalong was
26 probably any different from BHP or CRA or, in fact, any
27 other development company in this country, but managing
28 directors and directors do not go out and specifically
29 one-on-one consult. In fact, Tom and I possibly did
30 more than most development companies would do by having
31 our own personal discussions.

32 COMSR: I am letting the witness answer in her
33 own way, because then I may be able to pick up the
34 threads.

35 MR KENNY: It is quite clear that there were
36 conditions attached to that planning approval and what I
37 am saying is that one of those conditions - and if I can
38 read from the assessment report from the Department of

- 1 Environment & Planning, at p.40 R2.5, it says -
2 MR SMITH: I am sorry to interrupt my learned
3 friend, but could we perhaps get on with the
4 cross-examination, rather than have long submissions?
5 Why is Mr Kenny making this submission? To justify the
6 questions? Can't we just get on with cross-examination?
7 COMSR
8 Q. I am having a little difficulty myself in trying to
9 understand, Mrs Chapman, what you are saying. What I am
10 attempting to clarify in my own mind is this: apart from
11 the consultations that Mr Lucas might have had on your
12 behalf, did you or Mr Chapman or anyone else connected
13 with Binalong personally speak to any of the Aboriginal
14 groups concerned after 1990.
15 MR KENNY: That's correct.
16 A. After April 1990, no, because we were waiting for them
17 to come back to us, which very clearly was their resolve
18 and their intention. And, in terms of adhering to the
19 planning approval, we were to -
20 COMSR
21 Q. I am not really sure that that has got anything to do
22 with the issue of the extent to which there was
23 consultation.
24 COMSR: Now, Mr Kenny, do you wish to explore
25 any further matters concerning the issue of
26 consultation?
27 MR KENNY: Yes.
28 XXN
29 Q. Were you ever told by any of the representatives of the
30 three Aboriginal organisations I have previously
31 mentioned that they would get back to you in relation to
32 a meeting on Hindmarsh Island.
33 A. Me personally, I don't believe so.
34 MR KENNY: I do wish to go back to the point I was
35 reading out before at p.40 of the assessment report. I
36 have two further questions on this topic.
37 Now, at R2.5, the condition reads:
38 `Binalong should consult directly with the relevant

1 Aboriginal representative bodies identified herein, and
2 with any other Aboriginal persons chosen by those
3 bodies.'

4 XXN

5 Q. Are you aware that the relevant Aboriginal bodies
6 identified therein were the Ngarrindjeri, Tendi, the
7 Raukkan Community Council, the Ngarrindjeri Lands and
8 Progress Association and the Lower Murray Heritage
9 Committee.

10 MR MEYER: I repeat the same objection. I won't
11 argue it again, but equally I say it is the same as
12 before. My friend still hasn't identified the relevance
13 of that issue, but I am not arguing it again.

14 MR KENNY: I am asking for clarification and I am
15 asking did you or Binalong Pty Ltd consult with those
16 groups after that date? And I just want to clarify that
17 point and that is as far as I wish to go.

18 MR MEYER: Can I summarise this as succinctly as I
19 can, if Mr Kenny answers this question what was Binalong
20 meant to do with any answer to the question in relation
21 to the approval which was given? That answers the
22 relevance of the issue. Otherwise it is irrelevant and
23 Mr Kenny hasn't identified yet, if you go along and talk
24 to Mr Rankine as Chairman of the Tendi or community
25 after April 1990, what do you do with the answer that
26 you have got in relation to the fabrication of women's
27 business? If he answers that question, I will
28 understand the relevance of these questions.

29 COMSR: I don't know that we are asking Mr Kenny
30 questions.

31 MR MEYER: He is the one who is trying to say the
32 questions are relevant. I am trying to say they are
33 irrelevant and trying to summarise why I say that. If
34 he can answer that and say why they are relevant, I will
35 stop interrupting.

36 MR KENNY: I think you have already ruled that this
37 is relevant.

38 COMSR: Yes, the extent of consultation is a

1 matter which, however it arose, Mr Meyer, is an issue
2 before me.

3 MR MEYER: Sure.

4 COMSR: In that it throws light or is capable of
5 throwing light on the main question I have to consider.

6 So, I propose to allow Mr Kenny to ask those two
7 questions. Perhaps the first one is unnecessary, but it
8 draws the witness's attention to the topic at least, if
9 nothing else.

10 XXN

11 Q. After April 1990, did the developer, Binalong Pty Ltd,
12 consult with those three groups that I have identified.

13 A. I think that is probably the third time you have asked
14 me the question and I have taken you back each time to
15 the Lucas report and I would ask why consult? I am not
16 an anthropologist and I am not an archaeologist -

17 COMSR

18 Q. Is the answer 'No, we didn't.'

19 A. I have said that we spoke with members of the Lower
20 Murray Aboriginal Heritage Committee on our property and
21 all the other things that are already in the transcript
22 this morning, but I have never yet had a planning
23 approval where I have gone back to the authorising body
24 to say 'Are you really, really, really sure that I can
25 do what you have said that I can do?' And that is
26 really what Mr Kenny is asking me. He has asked me did
27 I go back to Victor Wilson 6 months down the line and
28 say 'Victor, are you really, really, really, really sure
29 that there is nothing there that is going to stop me? I
30 have got an approval.'

31 Q. I think that perhaps I am not concerned with the
32 planning processes, as such. The reason that they are
33 featuring at all here is that, to some extent, they
34 explain why you were - why Binalong was involved in
35 consultations. I am only concerned to find out the
36 extent of the consultations. Now, you say that, as I
37 understand what you are saying, that there was no reason
38 for you to return for any further consultations and that

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- 1 you personally had no further consultation with the
2 various Aboriginal groups. Is that what you are saying.
- 3 A. That is correct, other than those that I have given you
4 this morning.
- 5 Q. I know you want to explain the reasons why that was so,
6 but I am concerned with just what, in fact, took place.
- 7 MR KENNY: I think that clarifies that point.
8 XXN
- 9 Q. The companies that were involved in the marina
10 development and the Hindmarsh Island bridge were, as I
11 understand it, Binalong Pty Ltd, is that correct.
- 12 A. That's correct.
- 13 Q. And one other, if I recall your earlier evidence.
- 14 A. I am sorry -
- 15 Q. Was there another company.
- 16 A. There was only one development company, and that was
17 Binalong.
- 18 Q. And Binalong Pty Ltd, I think you have given us evidence
19 subsequently, went into liquidation, is that correct.
- 20 A. Did I give you that evidence? It is in liquidation.
- 21 Q. And it went into liquidation, when.
- 22 MR MEYER: What is the relevance of this? This has
23 been traversed. It was traversed in the opening. It is
24 just repeating it.
- 25 MR KENNY: What I am exploring, if I can indicate,
26 is the question of the exact position of this witness in
27 relation to financial interest in this matter.
- 28 COMSR: How is that going to assist me and how
29 is it relevant to the witnesses that you are
30 representing, Mr Kenny?
- 31 MR KENNY: It arises really out of suggestions put
32 by Mrs Chapman's solicitor to you earlier, that the
33 Chapmans were losing \$20,000 a day with each delay in
34 this Commission. I understood that the witness's
35 evidence was the company was in liquidation, was being
36 liquidated. It would appear to me that this witness
37 doesn't have a financial interest in the outcome of this
38 Royal Commission.

RF 36D

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(MS PYKE)

1 COMSR: Whether the witness does or doesn't have
2 a financial interest, I do not see that it is relevant
3 to the issue before me of whether or not there was
4 fabrication of women's business.

5 MR KENNY: It is simply in overall light of her
6 evidence.

7 COMSR: My Terms of Reference go only so far.
8 I do not see that they extend to inquiring into the
9 financial affairs of the company.

10 MR KENNY: I quite agree with you, but I am simply
11 asking these questions to provide a complete picture in
12 relation to this witness and her involvement in the
13 whole development of Hindmarsh Island and her interest
14 since that time.

15 COMSR: I really do not think that is going to
16 be of any assistance to me.

17 MR KENNY: I will not pursue it any further with
18 this witness. If it becomes relevant at a later date
19 with Mr Tom Chapman, I may re-explore that and put it to
20 you, but I will take those questions no further with
21 this witness.

22 MR MEYER: I can assist. If what Mr Kenny wishes
23 to establish is why I should make a submission that
24 \$20,000 a day is being lost, that is simply answered by
25 Mr Palyga, and, when he is in the witness box, I will
26 clear it up with him. It will the shortest, most
27 succinct way to do it.

28 CROSS-EXAMINATION BY MS PYKE

29 Q. I want to ask some questions in terms of your
30 consultation with members of the Aboriginal community,
31 that is, yourself, your husband, your son, and Binalong.
32 The three Chapmans, if I can put it that way, and your
33 company. So when I am asking you these questions, just
34 bear in mind that is who I am talking about. Obviously
35 you can only answer about your husband and your son to
36 the extent that you know. As I understand it - and
37 again please correct me if you think I am getting this

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1 wrong - your husband, Mr Chapman, consulted with Mr and
2 Mrs Rankine some time in late 1989. Do you recall that.

3 A. Yes, he did.

4 Q. As far as you are aware, is that the first consultation
5 that the Chapman family and Binalong had had with
6 Aboriginals in relation to the Hindmarsh Island/Goolwa
7 issue and development.

8 A. No, it is not.

9 OBJECTION Mr Meyer objects.

10 MR MEYER: We are covering the same ground again.

11 I don't know what these early consultation periods have
12 got to do with Dr Fergie. We are starting again.

13 MS PYKE: There have been various exhibits
14 tendered as part of this witness's evidence, exhibit
15 156, 163 -

16 COMSR: They touch on your client's situation?

17 MS PYKE: They talk about consultation, and there
18 is exchange of correspondence that has been tendered as
19 part of this case.

20 COMSR: That might be so, but of course each
21 party that is represented will be affected in a
22 different way and to a different extent by the evidence.

23 MS PYKE: I am hamstrung. Let me say I will be
24 asking at the end of my cross-examination to reserve my
25 rights to cross-examine further when the Lucas report
26 and, indeed, Dr Fergie's report are clarified as to
27 whether they will or will not be evidence before you.
28 In essence, after the Section 35 issue is sorted out.

29 Without going into Dr Fergie's report -

30 COMSR: You say this evidence touches on Dr
31 Fergie's report?

32 MS PYKE: Yes. There are some criticisms in Dr
33 Fergie's report - when I say 'criticisms', some
34 reference to the consultative process is probably as far
35 as I can put it at the moment - but we have got the
36 position here that the witness calls, quite
37 independently of that, as part of her case, issues to do
38 with consultation and basically their belief as to the

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- 1 adequacy. It seems to me that if evidence can be led
2 but cannot be cross-examined on, it is not an
3 appropriate process.
- 4 COMSR: You can cross-examine to the extent that
5 it implicates your client.
- 6 MS PYKE: Yes. I am saying that in Dr Fergie's
7 report, I will put to you very generally, there is
8 reference to the consultative process. It is certainly
9 part of my instructions to ascertain what consultations
10 took place.
- 11 MR MEYER: My point is that has happened. Unless
12 my friend is going to suggest something that has not
13 been traversed, she is welcome to put that, but
14 otherwise -
- 15 COMSR: Perhaps you better give Ms Pyke an
16 opportunity to frame her questions.
- 17 XXN
- 18 Q. Prior to the meeting between the Chapmans and the
19 Rankines in late 1989, what meetings or consultations
20 are you aware of that either the Chapman family or
21 Binalong had with Aboriginal people in connection with
22 Goolwa and Hindmarsh Island and the development.
- 23 A. I had certainly had contact with the Rankines over a
24 period of probably two or three years.
- 25 Q. That is prior to 1989.
- 26 A. Yes, and that was at Goolwa, on the telephone, and most
27 particularly relative to Signal Point, relative to the
28 Ngarrindjeri mythology or legends which Henry was
29 involved with with putting together for Signal Point,
30 discussions very much relevant to the Ngarrindjeri
31 lands.
- 32 Q. So that is with Mr and Mrs Rankine.
- 33 A. Yes.
- 34 Q. Had you had contact with any other Aboriginal person in
35 relation to the development of Goolwa and Hindmarsh
36 Island.
- 37 A. Me personally?
- 38 Q. Yes.

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1 A. Not that I can recall.

2 Q. Mr Chapman, no doubt, will speak for himself on that
3 topic. Are you aware of whether your son Andrew, from
4 his discussions with you, had any contact with any -

5 A. I can't answer that.

6 Q. There was a meeting with Mr Chapman and the Rankines, as
7 I understand it, some time in late 1989. Then there was
8 a meeting -

9 A. Together with, if I may add, Nadia McLaren from Social
10 and Ecological Assessment Pty Ltd, SEA, and this was the
11 consulting group which undertook the responsibility for
12 the EIS process on behalf of Binalong Pty Ltd.

13 Q. There was a meeting on 14 September 1989 between Nadia,
14 yourself and the Rankines, which gave rise to the letter
15 to Mr Rankine -

16 A. That's correct, yes.

17 Q. Of 9 November 1989.

18 A. Yes.

19 Q. There was then the commissioning of the report by Mr Rod
20 Lucas. Binalong requested Mr Lucas to prepare a report.

21 A. Yes, I believe in the interim there was also another
22 consultant engaged in that, that was Vanessa Edmonds.

23 Q. I was going to get to that.

24 A. But that was before the Lucas consultancy.

25 Q. Was that before your meeting in September 1989 with Mr
26 Henry Rankine.

27 A. Sorry, was which before that?

28 Q. The report that you just referred to, the Vanessa
29 Edmonds report.

30 A. No, I don't think so.

31 Q. Can you recall when that was.

32 A. I think it was after that meeting.

33 Q. So there is the Vanessa Edmonds report, and again I
34 don't want to traverse the Section 35, but generally
35 speaking that was an archaeological report.

36 A. These were requirements by the Aboriginal Heritage
37 Branch of the Department of Environment and Planning.

W.J. CHAPMAN XXN (MS PYKE)

1 Developers seek advice and gain advice from government
2 departments and it was their -

3 Q. I am asking you whether it was an archaeological report.
4 It is a very simple question. Was Vanessa Edmonds'
5 report, insofar as you are aware, an archaeological
6 report.

7 A. It certainly was.

8 Q. And Mr Lucas's report was an anthropological report.

9 A. Absolutely.

10 Q. As I understand the situation, the next contact between
11 the Chapman family and Binalong with the Aboriginal
12 community was some time in late 1993, when there was an
13 on-site meeting with Mr Neale Draper in about November
14 1993.

15 A. I do remember that meeting.

16 Q. Would you agree with me that, for whatever reason, from
17 late 1989 through to November 1993, there had not been
18 direct contact between the Chapman family or Binalong
19 with the Aboriginal community in relation to the issues
20 of the development on Hindmarsh Island and Goolwa.

21 OBJECTION Mr Meyer objects.

22 MR MEYER: We are traversing all the same ground
23 again. There is no need to traverse it all again.

24 MS PYKE: I would like the question answered.

25 MR MEYER: I object.

26 MS PYKE: You can rule on the objection.

27 COMSR: I think the witness has already said as
28 much.

29 MS PYKE: It hadn't been put to her in the
30 November 1993 incident, so I am just wanting to -

31 COMSR: Perhaps it hadn't been put November
32 1993.

33 MS PYKE: Yes.

34 QUESTION ALLOWED

35 COMSR

36 Q. Is that the case, Mrs Chapman.

37 A. As far as I am personally concerned, I don't believe I
38 either required to nor did I.

1 XXN

2 Q. Indeed, I suggest that situation continued, that is,
3 there was no contact. You have gone through your
4 reasons and we need not repeat those. The next contact
5 between the Chapman family and the members of the
6 Aboriginal community to do with issues associated with
7 the development was, as I understand your evidence, your
8 telephone attendance upon Mr Henry Rankine on 17 April
9 1994.

10 A. We had had no reason to contact the Aboriginals. We had
11 found no skeletons or skeletal remains.

12 COMSR

13 Q. I appreciate that, but the question is: was that the
14 next contact.

15 A. Yes, because suddenly there was a reason, that there was
16 an uprising.

17 XXN

18 Q. And that was the telephone call with Mr Henry Rankine.
19 Thereafter, the next contact of the Chapman family -

20 A. I am sorry, I can't answer for the Chapman family.

21 Q. For yourself, certainly, the next contact was the
22 meeting of 27 April 1994, being that meeting at which Mr
23 Rathman attended, the Mileras attended and the Rankines
24 attended.

25 A. Yes, that would be the next contact with those people.

26 Q. Would you agree with me that for you personally, your
27 major personal contact with the Aboriginal community has
28 been your contact with the Rankines.

29 A. The Rankines were the people who were identified by the
30 Aboriginal Heritage Branch of the Department of
31 Environment and Planning as being the senior
32 Ngarrindjeri people with whom a developer on Hindmarsh
33 Island should consult and make contact, and at no time
34 did that change.

35 Q. Regardless of that, my question was, so far as you
36 personally were concerned, they were your prime contact,
37 weren't they.

38 A. I have answered that question.

W.J. CHAPMAN XXN (MS PYKE)

- 1 Q. Looking at Exhibit 160, which is a letter to Mr Tim from
2 Mr Palyga, your solicitor, advising that he acted for
3 the Chapmans, it says `We note you act for the Lower
4 Murray Aboriginal Heritage Committee. We enclose a copy
5 of a report in Saturday's "Advertiser" in which the
6 committee called for Mrs Chapman to publicly release
7 evidence of Binalong's consultation process. As a
8 result we have written today to the Minister for
9 Aboriginal Affairs. We enclose a copy of the letter.
10 Could you please have your client urgently contact the
11 Minister to support the release of the evidence of
12 Binalong's consultation process as publicly called for
13 by your client'. Do you have a copy of that letter that
14 was enclosed in the letter from Michell Sillar Lynch to
15 Mr Wooley.
- 16 A. I'm sorry, are you asking me if I have it in my hand?
- 17 Q. Have you got it or have your solicitors got it.
- 18 A. Sorry, which date are we talking about?
- 19 Q. If you look at the letter. I can't tell you the date.
20 I am reading from the letter that your solicitor has
21 sent.
- 22 MS PYKE CALLS FOR PRODUCTION OF LETTER.
- 23 MR MEYER: We have a room for this matter. I dare
24 say, if given proper notice, we can go and search for
25 the letter. I am sure Mr Palyga has got it somewhere.
26 I will have to look at it then to decide what the
27 relevance is.
- 28 COMSR: What is the relevance?
- 29 MS PYKE: The letter from the Minister sets out
30 the consultation process that Binalong undertook, so I
31 want to have a look at it for that, as to what was being
32 said to the Minister on 6 June 1994.
- 33 COMSR: You are saying it is a draft letter sent
34 to the Minister setting out the consultative processes?
- 35 MS PYKE: Yes. It was an enclosure in the letter
36 to Mr Wooley of 6 June 1994. We have got the letter to
37 Mr Wooley, but we haven't got the enclosure to which the
38 letter refers.

W.J. CHAPMAN XXN (MS PYKE)

- 1 MR MEYER: Ask Mr Wooley for it. He is close to
2 your client.
- 3 MS PYKE: Mr Wooley is not close to my client.
- 4 MR MEYER: He instructed her.
- 5 MS PYKE: That is a separate issue completely. I
6 have no access to ALRM or their documents.
- 7 COMSR: All right counsel, if you can either
8 address questions to the witness or your remarks to me.
9 I think we will get along a lot faster.
- 10 MS PYKE: I am simply saying there has been a
11 letter tendered without the annexures and I call for the
12 annexure to the letter.
- 13 MR SMITH: I will attend to that through Mr Meyer.
- 14 NOT PRODUCED
15 XXN
- 16 Q. Looking at Exhibit 167, that's the letter that you sent
17 to Mr Rankine, asking him to sign the enclosed letter
18 about the environmental impact statement, at para.4 you
19 say this `We have enclosed a copy of our draft
20 environmental impact statement for you to look at'.
21 Firstly, is that the same draft environmental impact
22 statement that has just been tendered.
- 23 A. Yes. There was only one.
- 24 Q. You go on to say `We were very grateful for your advice,
25 which has been incorporated into the document, as well
26 as your assurance that there is no problem with our
27 development regarding the Aboriginal heritage and sites.
28 Such assurance will be good for us to display when other
29 people try to make mischief'. What did you mean by
30 that. Had you been having -
- 31 A. I have actually quizzed myself as to why that sentence
32 would have been put in going back to November 1989. My
33 strongest recollection is that Henry observed there were
34 difficulties within the Aboriginal community itself.
- 35 CONTINUED

- 1 Q. Is it fair to say back at that stage - and I appreciate
2 you're going back six years almost - that you would have
3 been aware that there was some dissent in the Aboriginal
4 community.
5 A. I don't know whether it was dissent.
6 Q. Or difference.
7 A. Or a difficulty, that is the way I put it.
8 Q. Is what you are telling me that you have no idea now and
9 can't recall what that difficulty is.
10 A. No.
11 Q. Or what you were told about it.
12 A. No.
13 Q. You have in your notes of the meeting with Aboriginals
14 of 27 April 1994 - and I'll deal firstly with the 169B.
15 That's the formal notes.
16 A. Yes.
17 Q. The reference in para.4 of those formal notes to
18 Aboriginals spiritual reasons, did Sarah Milera or
19 anyone else present at that meeting expand upon what was
20 meant.
21 A. No.
22 Q. Thereafter, if we go over - and this is the further
23 discussion with David Rathman over on p.2 of the notes -
24 there's item K 'They don't like the barrages'.
25 A. Yes. I can't expand upon that. That's a note that was
26 there.
27 Q. That came out of the meeting at which only yourself and
28 your husband and David Rathman were present.
29 A. Yes, so I'm unable to answer for him.
30 Q. Am I correct in saying that is something Mr David
31 Rathman said.
32 A. It would have been a comment, and I can't answer for him
33 as to why it would have been said.
34 Q. It wasn't a comment that you and your husband made.
35 A. No.
36 Q. In the document 169A, we get to about -
37 A. I don't have that.
38 Q. Looking at the rough notes of the meeting.

1 A. Yes, I have those.

2 Q. At about .7 on the page, there are three numbered items,
3 one, two and three. That's the first page of those
4 notes.

5 A. Yes.

6 Q. No.3 is 'Riverbed is important'. Do you recall who said
7 that.

8 A. No. I'm having difficulty in coming to grips with that.
9 I don't recall who said that. These rough notes were
10 purely an overview of material which had been discussed
11 and I am unable to attribute that comment to a specific
12 person. I'm looking through the other notes to see if,
13 in fact, there is any reference to it there.

14 Q. I'm not being critical I'm merely asking the question.

15 A. But that was not the first time we'd heard that. That
16 did not occupy our minds particularly. It had been
17 mentioned before by one of the white picketers from
18 Goolwa - Mrs Joy Harvey - and also it had been
19 mentioned, I believe, by Matt Rigney the day before.

20 Q. I'm asking you about this particular meeting, whether
21 you can recall who said this at the meeting. You note
22 it as an issue in this meeting. I was merely asking you
23 whether you recall who said it. And if your answer is
24 no, that is more than a sufficient answer. You then go
25 on and record, over on p.2 of those notes, 'David' -
26 backtracking there. Accord to go your notes on p.1,
27 bottom of p.1, you conduct the meeting with Mr Rathman,
28 yourself and Mr Chapman and the others had left. You
29 then go on: 'David reinforced the point that objection
30 was based on women's issues which they couldn't talk
31 about'. Did Mr Rathman say anything else that you can
32 recall.

33 A. Well, I think one must tie that with the last three
34 lines on the previous page where David was convinced
35 that, speaking to the Mileras as they left the meeting,
36 their position was not extreme and that the matter could
37 be resolved.

38 Q. My question was, and it's a very specific question, you

W.J. CHAPMAN XXN (MS PYKE)

1 have recorded here `David reinforced the point that
2 objection was based on women's issues which they
3 couldn't talk about'. All my question was was nothing
4 to do with the preceding page. Did Mr Rathman say
5 anything more about the women's issues that you noted
6 there on p.2.

7 A. I don't believe very much was said about the women's
8 issues because the men were not talking about it to us,
9 about it at that stage, and Sarah was only talking about
10 the spiritual business. And, in fact, Mr Palyga and my
11 husband had spoken to Matt Rigney the previous day and
12 had been told that there was this anatomical female
13 issue relative to geography.

14 Q. You refer in your statement, and this is Exhibit 166,
15 your actual statement, to - and it's over on p.4 - `On
16 20 May 1994, we were recommended by Rod Lucas to engage
17 Dr Lindy Warrell'.

18 A. Yes.

19 Q. As I understand from your evidence - and I'm not going
20 to go back over what you said in your statement, Dr
21 Warrell indicated that she didn't wish to take the
22 brief.

23 A. Dr Lucas - I phoned Dr Lucas on that particular day.
24 I'm sorry, I can't seem to find the page of my
25 statement.

26 Q. I am not asking you to.

27 A. I phoned Dr Lucas and he said, yes, he believed we
28 should confront the issue head-on and he did suggest
29 that we should engage a strong, fiery female
30 anthropologist because it was an issue which would
31 require that character in a woman. And, of course, we
32 said we did not know any female anthropologist, that was
33 not our sphere of business. And he recommended Dr Lindy
34 Warrell and said that she had had experience working
35 with women in the Port Augusta area, that she would be
36 objective as she was not embroiled in the issue.

37 Q. All I'm putting to you is that Dr Lucas suggested Dr
38 Warrell. I don't want to go through all the evidence

W.J. CHAPMAN XXN (MS PYKE)

1 that you have given. You've set out in the statements
2 the reasons why Dr Warrell advised she didn't want to
3 take the brief.

4 A. Yes.

5 Q. In Mr Palyga's evidence, he refers to, ultimately, in
6 fact, Dr Warrell was engaged and provided some
7 preliminary comments and some further comments that were
8 sent to Mr Tickner. My questions to you is this: Do
9 you know how Dr Warrell came to be subsequently engaged,
10 having refused to previously be involved in the matter.

11 A. She anticipated -

12 OBJECTION Mr Meyer objects on the ground of
13 relevance.

14 MS PYKE: Dr Fergie will give the various
15 conversation between herself and Dr Warrell in this
16 matter and I want the witness to answer the question as
17 to how she got involved.

18 MR MEYER: What's the relevance I'm asking?

19 MS PYKE: As this witness said, Dr Warrell is
20 going to be trotted out as an independent, objective
21 witness and I think it's appropriate for me to test how
22 she came to be involved in the matter.

23 MR MEYER: I don't think that it is appropriate to
24 suggest that witnesses are trotted out in this inquiry
25 for any purpose. If Miss Pyke has something that is
26 relevant to put in relation to some discussions by Dr
27 Fergie, then that should be put.

28 COMSR: This witness cannot attest to it.

29 MR MEYER: Miss Pyke has put a vague proposition.
30 Let her put her instructions if it is relevant.

31 MS PYKE: This witness has given her evidence in a
32 long answer that he wanted Dr Warrell, she is an
33 independent objective witness and Dr Warrell declined to
34 accept the brief, and Dr Warrell was rebriefed. I am
35 asking this witness how that came about.

36 MR MEYER: I'm objecting on the ground that that is
37 irrelevant. If Dr Fergie is to give evidence about if
38 that is the case, then put what Dr Fergie said.

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- 1 MS PYKE: That is not what Dr Fergie said to this
2 witness. I cannot put to this witness what Dr Fergie
3 said.
4 XXN
5 Q. I will ask this question. Did you telephone -
6 COMSR: How can this witness say why Dr Warrell
7 might or might not have done something in respect of a
8 subsequent -
9 MS PYKE: I will put this question.
10 XXN
11 Q. Did you initiate the contact with Dr Lindy Warrell to
12 prepare the submissions for Mr Tickner.
13 A. An awful lot happened. An awful lot of conversations
14 took place. I could not give an honest and direct
15 answer to that question.
16 Q. Is it fair to say that you don't know whether the
17 engagement ultimately of Dr Warrell came from you
18 initiating the contact with her - by that, I mean you or
19 Binalong - or whether it was initiated by Dr Warrell
20 contacting you.
21 A. No, it certainly wasn't Dr Warrell contacting us.
22 Q. As far as you're aware, your solicitor -
23 OBJECTION Mr Meyer objects as to relevance.
24 COMSR: What is the purpose of this?
25 MS PYKE: I want to know how Dr Warrell became
26 engaged.
27 COMSR: That might be interesting. Does it
28 assist me with the Terms of Reference?
29 MS PYKE: In due course - Dr Warrell's reports
30 have been marked for identification. They may or may
31 not be tendered. This witness clearly said in her
32 evidence that Dr Warrell was an objective
33 anthropologist.
34 WITNESS: I did not state that.
35 COMSR: She was told that. I don't know whether
36 the witness is in any position to comment on the
37 objectivity of an anthropologist. Even then, it is
38 difficult to see the relevance of it.

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XXN (MR MEYER)

- 1 MR MEYER: My difficulty is this Miss Pyke is
2 hedging. Either she puts her instructions or doesn't,
3 it's as simple as that.
- 4 MS PYKE: The witness says she doesn't know. I
5 asked the question and she said she doesn't know and I'm
6 happy to leave it at that.
- 7 NO FURTHER QUESTIONS
- 8 CROSS-EXAMINATION BY MR MEYER
- 9 Q. I understand that you went to the Middleton Tavern on
10 the occasion when Kym Denver met with Doug Milera which
11 culminated in the evening meeting at Victor Harbor.
- 12 A. Yes, that's correct.
- 13 Q. You recall the day I'm talking about.
- 14 A. Yes. 5 June I think it was.
- 15 Q. I think you went there for the purpose of taking a
16 battery for a phone.
- 17 A. Primarily to take a child and secondary to take a
18 battery for a telephone.
- 19 Q. That was Kym Denver's daughter; you picked her up.
- 20 A. She arrived home from school and I picked her up.
- 21 Q. How long were you at the Middleton Tavern.
- 22 A. I would say maximum 30, 35 minutes.
- 23 Q. Did you have an opportunity to observe Doug Milera.
- 24 A. Yes, I did.
- 25 Q. Did you form any view as to his sobriety.
- 26 A. When I arrived Doug specifically asked to speak to me.
27 He talked with me, or at me, and I would say he was
28 absolutely in command of his language and his faculties
29 and he was not drunk.
- 30 Q. You then left again and went off on your own business.
- 31 A. Yes.
- 32 Q. I think that your husband Tom had been there for some
33 time during that afternoon.
- 34 COMSR: How can the witness answer that?
- 35 MR MEYER: Only because I think she was telephoned
36 anyway by Tom.
- 37 XXN
- 38 Q. Is that so.

1 A. Yes.

2 Q. And he did say that.

3 A. Yes.

4 Q. You went there as a result of a call from Tom.

5 A. Yes.

6 Q. There have been some allegations about or references to
7 truckloads of bones, I think, emanating, it's suggested,
8 from The Friends of Kumarangk. Has there, in the course
9 of the construction of the marina, been the removal of
10 truckloads of bones from any of the area developed by
11 Binalong.

12 A. To my knowledge and in the name of the company,
13 categorically not.

14 Q. Steering away from truckloads to the removal of bones at
15 all, whether it be in boots of cars or in any other way,
16 has that occurred.

17 A. Absolutely not.

18 Q. Was there an occasion, in fact, when some bones were
19 exposed by wind erosion or water erosion or anything
20 like that.

21 A. Yes.

22 Q. Do you have any knowledge of what occurred on that
23 occasion. If you don't have personal knowledge, does
24 Tom have personal knowledge.

25 A. Tom has personal knowledge.

26 Q. An event like that did happen.

27 A. It did.

28 Q. There has been reference to the issue of a super
29 highway. I understand that to mean a road which is
30 going to join up with Highway One down past Wellington
31 somewhere.

32 A. I have heard a rumour.

33 Q. Has there been any discussion in relation to the
34 development of your development of Hindmarsh Island, the
35 marina and the associated bridge of the construction of
36 a super highway.

37 A. No.

38 Q. Have you been party to any such discussion.

1 A. No.

2 Q. You have been asked some questions this morning about
3 issues of consultation, and I have made some objections,
4 as you have no doubt heard. I'm interested in a couple
5 of matters. An agreement was reached between your
6 company, the State Government and the Goolwa and Port
7 Elliot Council in relation to the construction of a
8 bridge; is that right.

9 A. Yes.

10 Q. That's been called in other places the tripartite
11 agreement, hadn't it.

12 A. Yes.

13 Q. Do you recollect the approximate date of that agreement.

14 A. I think it was March/April 1993, somewhere in that
15 vicinity.

16 Q. Pursuant to that agreement, who had the responsibility
17 for the construction of the bridge.

18 A. State Government.

19 Q. For how long had Binalong been in negotiations with the
20 Government and the Goolwa and Port Elliot Council
21 leading up to the tripartite agreement.

22 A. To the best of my recollections, we commenced the
23 drafting of the draft heads of agreement in
24 August/September 1992; may have been a little later than
25 that.

26 Q. Prior to the drafting of the agreement, what discussions
27 took place in terms of time, and if the drafting of the
28 agreement was the initiation of the process, say so.

29 A. I can't recall specifically meetings or discussions, but
30 I'm sure there would have been for a period prior to
31 that.

32 Q. I want to take your attention back to this issue of the
33 planning consent and the assessment report that Mr Kenny
34 has referred to. Are you familiar with what I'm talking
35 about.

36 A. Yes.

37 Q. Do you understand the planning consent to suggest that
38 the consultation that is referred to should take place

- 1 in relation to the actual construction of the bridge.
- 2 A. At the time that the assessment report was written?
- 3 Q. No, at the time of the consent.
- 4 A. In April?
- 5 Q. What I'm looking to distinguish between, so I know when
- 6 this argument is about, the conditions that are referred
- 7 to in the dot points all refer to actions to be taken as
- 8 part of the execution of the development work.
- 9 A. Yes.
- 10 CONTINUED

- 1 Q. Therefore, in relation to the first dot point, do I
2 understand that, as far as you are aware, that refers to
3 the execution of the development work, ie the
4 construction of the bridge.
- 5 A. Yes, I would suggest that.
- 6 Q. Has the construction of the bridge commenced yet.
- 7 A. We have had two false starts.
- 8 Q. Has at any time the construction of the bridge been
9 undertaken by Binalong.
- 10 A. No.
- 11 Q. Can I put this to you: that it is for the person who is
12 constructing the bridge to carry out the relevant or
13 referred to -
- 14 OBJECTION Ms Pyke objects.
- 15 MS PYKE: If Mr Meyer wants to ask a question, but
16 to put a statement to the witness -
- 17 MR MEYER: I am asking the witness what her
18 understanding is.
- 19 MS PYKE: It is cross-examination and leading the
20 witness.
- 21 MR MEYER: It is cross-examination. You are able
22 to lead.
- 23 MS PYKE: This is re-examination.
- 24 MR MEYER: No, this is cross-examination. This
25 isn't my witness. I haven't called her.
- 26 COMSR: Yes, I think he is entitled to put a
27 leading question.
- 28 XXN
- 29 Q. What I am putting to you is simply this: in my
30 understanding, it is the State Government's - from back
31 in August 1992 or thereabouts onwards it wasn't Binalong
32 who was going to build this bridge.
- 33 A. I believe it was earlier than that and, in fact, from
34 October 1991 when the Premier publicly made the
35 announcement that the Government would build the bridge.
36 And that was a very public announcement.
- 37 Q. Looking at the document now before you, do you recognise
38 that document.

1 A. Yes, I do.

2 Q. What is it.

3 A. It is the agenda for the Lower Murray Aboriginal
4 Heritage Committee, undated.

5 Q. There is, in fact, some writing in blue pen or biro in
6 the top right-hand corner.

7 A. Yes, that is my husband's writing and it was purely for
8 a filing identification.

9 Q. Are you able to identify the letters that appear at the
10 top, the handwritten letters.

11 A. Yes.

12 Q. What do they stand for.

13 A. That is for our particular file. It is Aboriginal
14 information general file.

15 Q. There is a date inserted. What do you understand the
16 relevance of the date to be.

17 A. There was a second paper attached to this particular
18 document, which was dated 11.9.09, to the best of my
19 memory.

20 Q. September 1990.

21 A. Yes.

22 Q. Is it an agenda which sets out items to be discussed by
23 the Lower Murray Aboriginal Heritage Committee.

24 A. Yes.

25 Q. Does para.2 of the items to be discussed refer, in
26 para.2 (c), to Hindmarsh Island.

27 A. Yes.

28 MR MEYER: Since it is Mr Chapman's writing on the
29 document, I ask that it be marked for identification.

30 MR SMITH: It could be tendered.

31 COMSR: It is an agenda of the Lower Murray
32 Aboriginal Heritage Committee, is it?

33 MR MEYER: I am happy to tender it, if counsel
34 assisting is happy to tender it.

35 MR SMITH: Yes.

36 EXHIBIT 172 Agenda for Lower Murray Aboriginal
37 Heritage Committee tendered by Mr Smith.
38 Admitted.

W.J. CHAPMAN XXN (MR MEYER)
REXN (MR SMITH)

1 XXN

2 Q. Looking at the copy document I now produce to you, is
3 that a handwritten note prepared by you.

4 A. Yes, it is.

5 Q. There has been a date written on the bottom of it. Is
6 that your handwriting.

7 A. No.

8 MR MEYER: There is a date written on the bottom of
9 28 June 1994. I can tell you that, from my general
10 knowledge of being Mr Palyga's partner for 10 years,
11 that it is his writing, but I will fix that, when he is
12 in the witness box.

13 MR KENNY: We will accept that.

14 MR MEYER: Mr Palyga will tell you that he took the
15 date from the notebook.

16 XXN

17 Q. What does that conversation relate to.

18 A. It relates to my attempt to phone Henry Rankine and
19 Henry was engaged in a meeting and I spoke with his
20 wife, Jean.

21 Q. Was that on 28 June 1994.

22 A. Yes, it was.

23 Q. In that conversation you discussed a number of matters
24 with Jean Rankine.

25 A. Yes, I did.

26 Q. What does the note at the end of that page refer to.

27 A. I talked with Jean about our consultation processes in
28 the earlier days and she explained that at that time it
29 was low profile. And I had attempted in the earlier
30 part of the conversation to talk to her about the
31 changed attitudes, the changed players in the game. And
32 she said to me that 'The Government has brought about
33 change with regard to voicing opinions. They can voice
34 their opinions now.'

35 EXHIBIT 173 Copy handwritten note tendered by Mr
36 Meyer. Admitted.

37 RE-EXAMINATION BY MR SMITH

38 Q. Do you have a copy of Exhibit 173 in front of you, which

1 is the note of your conversation, of 28 June 1994.

2 A. Yes, I have.

3 Q. You accept, do you, the eloquent evidence given from the
4 bar table by Mr Meyer that this was a note of a
5 conversation on 28 June 1994.

6 A. Yes, it was.

7 Q. Can you explain the note to us. There is a reference
8 here to Sarah, Doug, Day, Trevorrow, Campbells with, for
9 instance, against Trevorrow you have got 'Doesn't know.'
10 What does that mean.

11 A. Yes, I had a conversation with Jean in an attempt to
12 discuss issues which had arisen of which we had very
13 little knowledge. Having asked 'Where have we gone
14 wrong?', she said 'I don't know.' I asked if Sarah was
15 a descendant of that area and she didn't know. And I
16 asked was she a warki and there was no answer. I asked
17 her was Doug one of the McHughes family and she said
18 she'd be guessing. I asked of the Day family. She said
19 she didn't know. The Trevorrow family. She didn't
20 know. The Campbell family. She didn't know.

21 Q. You then say 'Tendi in Adelaide.'

22 A. Yes, I am having difficulty in actually working out what
23 that might have meant.

24 Q. Does that mean the decisions are coming from Adelaide.
25 The Lower Murray Nungas Club is the next one. What does
26 that mean.

27 A. I have every reason to believe that the Aboriginal
28 Advisory Committee is a margin note which I have there
29 and that is against the 'Tendi' and 'in Adelaide', and
30 'the Lower Murray Nungas Club'. In other words, I saw
31 that - and 'these other groups and organisations', and
32 those are all in together as the areas where the
33 decisions were coming from.

34 Q. If you look in the left-hand top margin, is that the
35 name 'Val Power', with an arrow down to 'Elder Kurna'.

36 A. Yes, that's correct.

37 Q. Did those have anything to do with your conversation
38 with Henry or Jean Rankine.

- 1 A. With Jean, yes, I think I asked Jean about the women
2 Elders and that was the answer, that there was a Kurna
3 Elder. And I also asked her who were the other women
4 Elders and she said 'I don't know. I can't tell you.'
- 5 Q. Of course, by this time, there has been, what, one if
6 not two temporary stays on construction of the bridge.
- 7 A. Two.
- 8 Q. Two.
- 9 A. Correct.
- 10 Q. And the permanent one occurred on 9 July, didn't it.
- 11 A. Yes.
- 12 Q. Then we have got underneath 'Lower Murray Nungas Club'
13 you have noted 'all these other groups and
14 organisations.'
- 15 A. Yes.
- 16 Q. Can you explain that.
- 17 A. And that is in conjunction with the Tendi, the Lower
18 Murray Nungas Club and the Aboriginal Advisory
19 Committee. And she said that these were all the groups
20 that were now involved.
- 21 Q. See there is underneath 'women Elders' question mark
22 'cannot tell you', you have already explained that, then
23 under that 'Remind them of' something 'meeting diaries'.
24 What is written there.
- 25 A. 'Remind them of the needed meeting.' And Jean said that
26 she would make sure it was in their diaries.
- 27 Q. What 'needed meeting' is that.
- 28 A. Decidedly at the meeting that we had with Henry and Jean
29 and Sarah and Doug on 27 April 1994, it was agreed that
30 it would be advisable to have a meeting with the full
31 Lower Murray Aboriginal Heritage Committee and, in spite
32 of several phone calls the next day and I think ensuing
33 days, we had no response whatsoever as to that next
34 meeting.
- 35 Q. Going back then to get some sense out of that to the
36 meeting with David Rathman, the Mileras and the
37 Rankines, Tom and yourself - Tom Chapman, your husband
38 and yourself on 27 April at the Aboriginal Affairs

1 Department.

2 A. Yes.

3 Q. Which concluded on the basis that there would be a
4 meeting with the full committee, didn't it.

5 A. Yes, and we said that we would meet anywhere, anytime to
6 suit the committee. We were at their disposal, but it
7 was urgent that this meeting be held.

8 Q. Therefore that reference in your notes of 28 June 1994,
9 is to that meeting that was proposed, if you like -

10 A. Yes.

11 Q. At the end of the meeting with Rathman, on 27 April.

12 A. Yes.

13 Q. Is that right.

14 A. Yes.

15 Q. You have got there 'Henry committee member.' You are
16 just reminding yourself, are you, that Henry is Chairman
17 of -

18 A. Of the Aboriginal Advisory Committee.

19 Q. Being another organisation as distinct from the Lower
20 Murray Aboriginal Heritage Committee.

21 A. Yes.

22 Q. Your last entry there is 'At that time low profile', you
23 have explained that. What about the last line, what
24 does that say.

25 A. It says 'Government has brought about change - voice our
26 opinion.' And that related very much to the discussion
27 in the light of the change of opinion and tied in very,
28 very clearly with what Henry had said to me in previous
29 conversations 'Now we have power. Now we will use it.'

30 COMSR

31 Q. I am not quite clear of one aspect: after the Government
32 became responsible, as it were, for the building of the
33 bridge, what part did the developer - you were then to
34 develop land on the island, I take it.

35 A. That is correct.

36 Q. What part did the developer then take in any
37 consultations with Aboriginals concerning the bridge
38 construction.

1 A. The consultation which occurred was relative to the
2 borrow pit and the borrow pit was an area of Binalong's
3 land which was soil -

4 Q. It is not going to involve me in any discussion
5 concerning matters that -

6 MR MEYER: S.35.

7 COMSR: Yes.

8 A. No, it was a segment of our land which had been
9 identified as a suitable - suitably soil tested area for
10 soil to be removed and used for the approaches of the
11 bridge. We as a company were allowing that soil to be
12 used at no cost to the Government and that had to be
13 cleared for our Aboriginal heritage purposes prior to
14 any excavation taking place.

15 COMSR

16 Q. But as far as the construction of the bridge was
17 concerned, was the situation that any Aboriginal groups
18 and interests were consulted by the Government
19 thereafter, or what was the situation.

20 A. The responsibility for any form of consultation once the
21 responsibility for the construction of the bridge passed
22 to the Government would have been with the Government.

23 Q. Is it the situation that thereafter as far as the
24 developer was concerned its main purpose in consultation
25 would have been in respect of the development which was
26 to take place on the island.

27 A. That's correct. And we were not doing any developing,
28 we were not doing any works at all. We could not do any
29 further work without the bridge being constructed. Our
30 planning approval prevented any further expansion of the
31 Marina Goolwa until the bridge was 'substantially
32 commenced' I think it was said.

33 MR MEYER: I was just going to say, your Honour has
34 strayed into the planning matter.

35 COMSR: I wasn't. I was concerned with the
36 Aboriginal consultation and what might have influenced
37 the degree of consultation after a certain -

38 MR MEYER: 'Strayed' wasn't a good word. If you

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1 ask the question of Mrs Chapman how did the planning
2 consent work -

3 COMSR: No, I am not interested in how it worked
4 but how it affected the process of consultation.

5 MR MEYER: She will explain the next step of
6 development by Binalong was contingent on the bridge and
7 that will avoid that.

8 COMSR: She has already explained that.

9 REXN

10 Q. There has been said I think in the evidence in this
11 Commission that ETSA discovered in the course of some
12 work they were doing on Hindmarsh Island at some stage
13 some relics, some burial relics of some sort.

14 A. Yes.

15 Q. Can you tell us whether they were discovered - I don't
16 want you to tell us precisely where, but was that
17 anything to do with the work on the marina that Binalong
18 was doing.

19 A. No.

20 COMSR: It is possible to answer that yes or no
21 I take it.

22 MR SMITH: Yes.

23 A. The answer is no, it was not on any of Binalong's land
24 nor associated with our development.

25 REXN

26 Q. Can I go to the topic just to clear this up: is it the
27 case that on 26 April, when your husband, Steve Palyga,
28 Peter Walsh from the Australian Government Solicitor's
29 office and Matt Rigney met at North Adelaide - first of
30 all you were not there, were you.

31 A. I was not.

32 Q. But you certainly had had reported to you the outcome of
33 that meeting, didn't you.

34 A. Yes.

35 Q. Was that the first occasion that women's issues in
36 relation to Hindmarsh Island had been conveyed to you.

37 A. Yes.

38 Q. 26 April 1994.

1 A. Yes, it was.

2 Q. Then, as events unfolded, by May of 1994, women's issues
3 had arisen in several contexts, hadn't they, in
4 connection with this development.

5 A. Yes.

6 Q. To the extent that you sought Rod Lucas's advice about
7 engaging an expert to deal with this, amongst other
8 things, this topic of women's issues, is that right.

9 A. Yes.

10 Q. And you told us in evidence and again this morning that
11 in May of 1994, in fact, 20 May, your statement shows,
12 you were recommended by Rod Lucas to engage Dr Lindy
13 Warrell.

14 A. Yes.

15 CONTINUED

- 1 Q. Eventually, and your statement details it, Dr Lindy
2 Warrell, although she declined to accept a brief she did
3 in fact give you some assistance in your consultation,
4 if you like, with Professor Saunders.
5 A. Yes, that's correct.
6 Q. And two documents were produced by her to assist you in
7 your consultations with Professor Saunders.
8 A. Yes.
9 Q. Those documents, although they are only marked for
10 identification, were in the nature of the peer review
11 type document, weren't they.
12 A. I can't recall the detail.
13 Q. Don't worry about it. The document has to get in
14 eventually anyway, and it will speak for itself if it
15 does. In any event, you've maintained contact with Dr
16 Warrell, haven't you.
17 A. Yes, we have - I have.
18 Q. To the extent that you have had conversations with her
19 about her participation in this commission, have you
20 not.
21 A. Yes, I have.
22 Q. There was a particular occasion when you had a telephone
23 conversation with Dr Warrell concerning her earliest
24 involvement in Hindmarsh Island, is that right.
25 A. Yes.
26 Q. You made a note of that conversation.
27 A. Yes.
28 Q. Do you have the notes with you or copies thereof. That
29 is the notes of the conversation with Dr Warrell
30 concerning her earliest involvement with Hindmarsh
31 Island and women's issues.
32 A. No, I don't think I have.
33 Q. Looking at this document produced to you, do you
34 recognise the handwriting on that.
35 A. Yes.
36 Q. Do you recognise the handwriting on that document.
37 A. Yes, it's mine.

- 1 Q. The copy we have shows writing in high depth, if you
2 like -
- 3 A. Yes, they were two different pens.
- 4 Q. When did you make the notes in relation to the telephone
5 call.
- 6 A. 23 August 1995.
- 7 Q. By that, I mean was it contemporaneously with the call
8 or after.
- 9 A. Contemporaneously.
- 10 Q. I take it, by the use of the two pens, you added to the
11 note, did you.
- 12 A. Yes. There were in fact two phone calls. I phoned
13 Lindy and she phoned back.
- 14 Q. By reference to your note, can we take it that the phone
15 call was on 23 August 1995.
- 16 A. Yes, that's correct.
- 17 Q. Is it the case that you asked Dr Warrell whether or not
18 this could be the subject of some evidence in the
19 commission. Is that the position.
- 20 A. Yes.
- 21 Q. She was apprehensive about you deposing to what was
22 really a private telephone call, is that it.
- 23 A. Yes. She said she did not want this disclosed to the
24 commission.
- 25 Q. In any event, a telephone call came in to you from Dr
26 Warrell on 23 August 1995.
- 27 A. Yes.
- 28 Q. While this commission was, in other words, in short,
29 proceeding, is that the case.
- 30 A. Yes.
- 31 Q. By reference to the note, would you tell us what was
32 said.
- 33 A. I believe the intent of my phone call was to ask Lindy
34 some detail. She had previously said, in a telephone
35 conversation in June, that she didn't want it spoken
36 about. It was to be kept as our own information, but
37 she had received some information about some tapes `And
38 you'll hear about it later'. As a result of tapes

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1 having been introduced into the commission, and I assume
2 these were the Betty Fisher tapes, I phoned Lindy to
3 find out when she had learnt about those tapes and from
4 whom.

5 Q. This is not this phone call, or is it, when you phoned
6 to inquire about the tapes.

7 A. Yes, and it was in that phone call that Lindy also
8 volunteered some other - it might have been the second
9 phone call. Sorry, they were both within a very short
10 period of time, one upon the other.

11 Q. The telephone call between the two of you which touched
12 upon the topic of the tapes, which you assumed to be the
13 Betty Fisher tapes, when was that telephone call.

14 A. Sorry, the earlier phone call?

15 Q. Yes.

16 A. When she told us that she knew there were tapes, 10 June
17 1995.

18 Q. Dealing with that conversation, what was said in that
19 conversation between you and Lindy Warrell.

20 A. She said that she had been made aware that some taping
21 had been done in the 1960s, and that we would be hearing
22 more about them shortly, 'Don't say anything'.

23 Q. Did she name the source.

24 A. On the day of 23 August 1995, I asked her the source.

25 Q. Who did she name.

26 A. She named Mr Louis O'Brien, and said that he had given
27 her the information at a lunch on 9 June 1995.

28 Q. Mr Louis O'Brien being an elder of the Kurna tribe. Do
29 you know that.

30 A. I know he is a gentleman of the Kurna tribe and I know
31 he was referred to as giving consent for this commission
32 on the first day of sitting.

33 Q. So reference was made to that topic again on 23 August
34 in the telephone call.

35 A. Yes.

36 Q. Just dealing with that topic, what was said between you
37 and Dr Warrell about that topic of the Betty Fisher -
38 well, the tapes.

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- 1 A. She said that she had been made aware that allegedly
2 information had been taped in the 60s and that those
3 tapes were going to be used and we would hear more of
4 it, but we musn't talk about it. It was very
5 confidential.
- 6 Q. She named her source on that occasion, that is, in the
7 telephone call of 23 August, as Louis O'Brien.
- 8 A. Yes, and he told her at a lunch on 9 June.
- 9 Q. You have a note there `Lindy lunch, Louis O'Brien, 9
10 June'. Then you have got `2 June.'
- 11 A. Right. Lindy checked her diary so that she could be
12 sure of when she was given that information, and she in
13 fact had two appointments with Louis, because she is
14 working on another area of anthropology which required
15 meetings with Louis, and she confirmed categorically
16 that it was at the second meeting that she was given
17 this information.
- 18 Q. So she lunched with Louis O'Brien on 2 June 1995, or she
19 told you that.
- 20 A. Yes. She met with him from 10 till 3.
- 21 Q. She met with him from 10 till 3 and she lunched with him
22 on 9 June, that's what she told you.
- 23 A. Yes.
- 24 Q. That was all on that topic on 23 August.
- 25 A. Yes.
- 26 Q. Can I take you then to another topic that was, if your
27 note is any indication, a topic of conversation on 23
28 August. The question of Saturday, 26 March, Camp
29 Coorong, et cetera. Would you tell us what was said
30 about that between the two of you.
- 31 A. Lindy said that she was having some - and I think she
32 put it in the context of feelings of conscience and
33 there is something she wanted to clear with me, and that
34 is that on 26 - no, to begin with she said on a day in -
35 before all this women's business blew up - and I think
36 that's the way she put it - and subsequently confirmed
37 the date, she said `It was a beautiful day and I was
38 doing work up around Port Augusta' and she mentioned

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- 1 Wadlata, which is an Aboriginal interpretive centre
2 similar to Signal Point, and she had been advised to go
3 to Camp Coorong because she had never been there, and it
4 was considered that it would be very informative in the
5 light of the work that she was doing. So she said it
6 was a lovely day, and probably the first time she'd ever
7 done it in her life, she hired a car and took off. She
8 drove to Camp Coorong.
- 9 Q. Did she provide you with the date of that trip, and have
10 you made a note of it.
- 11 A. She phoned me back with the date when she found the
12 receipt, because she said 'I know exactly where I can
13 put my hand on it', and the date she read to me from the
14 receipt was 26 March 1994, and it was a Saturday.
- 15 Q. Your note says 'Saturday, 26 March, Camp Coorong
16 Trevorrows'.
- 17 A. She met with the Trevorrows. She told me she met with
18 the Trevorrows, and I gathered that she had not met them
19 before. She said that during the course of the
20 conversation, the subject of the Hindmarsh Island Bridge
21 was raised, and she had taken reasonable notice of it in
22 the media, and whilst she didn't enter into telling me
23 what the Trevorrows may have said to her, she said her
24 feelings of conscience attached to the fact that on that
25 day she said to the Trevorrows, and I'm assuming there
26 were two Trevorrows, 'Don't forget the women's business'
27 or something to that effect, and something about
28 'sacredness of waters'.
- 29 Q. She told that to you.
- 30 A. She told me that, and she said she was feeling uneasy
31 about perhaps her words having been remembered.
- 32 Q. Your note then shows 'Ab reconciliation meeting Monday'.
33 That's Aboriginal reconciliation meeting.
- 34 A. Yes. Lindy told me they were very busy at Camp Coorong
35 preparing for a reconciliation meeting to be held there
36 on the Monday. In fact, I gather the time that she
37 spent with the Trevorrows was lessened by virtue of
38 their workload.

- 1 Q. Looking generally at the note for a moment, there is
2 lighter print and darker print, isn't there.
- 3 A. Yes.
- 4 Q. Can you explain that. You had two conversations, didn't
5 you, with Lindy Warrell.
- 6 A. Yes. I think I could clearly say that the darker print
7 in fact was using a Pentel ink ball, and the lighter pen
8 was a biro, and I would suggest that the biro was the
9 first conversation, and the dark print is the fill-in of
10 the detail on - when Lindy phoned me back.
- 11 Q. So is it the case that the darker print is the second
12 conversation, or when Lindy phoned you back, or is there
13 a mixture there.
- 14 A. There could be a mixture, but I would favour that the
15 dark print is when Lindy phoned me back.
- 16 Q. Going to the lighter print, which is the next line, am I
17 correct in reading that as 'Talked to Steve about
18 another case'.
- 19 A. Yes. Lindy said that she had talked to our solicitor,
20 Steve Palyga, about another case, which was a genuine
21 claim.
- 22 Q. Then underneath that you have, in inverted commas,
23 'Onkaparinga River'.
- 24 A. Yes, and I was told no more.
- 25 Q. Who proffered Onkaparinga River.
- 26 A. Lindy.
- 27 Q. You didn't know what that indicated, or is that the -
- 28 A. No, I didn't ask questions and Lindy didn't offer
29 anything.
- 30 Q. Then the next topic canvassed in your note is
31 'Aboriginal women here tied up with another -'. Can you
32 explain that.
- 33 A. I would think it refers very much to the previous item.
34 The - no, because it is in the lighter pen 'Talked to
35 Steve about another case. Aboriginal women here tied up
36 with another -' case, and I would say those two lines go
37 together.

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- 1 Q. What Aboriginal women are being referred to there, do
2 you know. Did your conversation with Dr Warrell portray
3 what Aboriginal women were being discussed.
- 4 A. I can't recall specifics.
- 5 Q. If it is the case that the darker print is the second
6 conversation, did you ask Dr Warrell whether the other
7 case was a claim relating to the Onkaparinga River, or
8 something related to that.
- 9 A. It would seem very logical.
- 10 Q. But you can't help us much beyond that.
- 11 A. No, I would think not.
- 12 Q. You have then got a reference to 'Tickner had already
13 started' something. Can you explain that, with the
14 Tickner and the arrow.
- 15 A. 'Tickner had already started, worked with Tickner', but
16 it actually - I have Tickner and Draper, they are the
17 two names that I have there, and I have got an arrow,
18 'Tickner had already started, worked with Tickner', and
19 then under 'Draper' I have 'Has taken her words to use
20 for Hindmarsh Island'. I read that as Draper has used
21 Lindy's words, which she used at Camp Coorong, and those
22 words have been used for Hindmarsh Island, and Lindy was
23 feeling extremely uncomfortable, and that's why she
24 spoke to me about it.
- 25 Q. In your conversation, was there any elaboration on that
26 mention of Dr Draper.
- 27 A. No.
- 28 Q. Then we come down and we are into the darker print
29 again, an asterisk, 'Information copyright. Whose
30 copyright in envelope?'
- 31 A. Yes. Lindy was very concerned that in fact there was
32 being wrongful - no, I won't use that word -
33 questionable use of material in envelopes, and she said
34 'Don't forget copyright. Whose copyright is it in the
35 envelopes?' I said 'Well, I will pass your message on.
36 I'm not a copyright expert'.
- 37 Q. You didn't offer this evidence on the first occasion
38 that you gave evidence on Friday, I think it was.

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1 A. No, I didn't.

2 Q. That was because, I take it, Dr Warrell was reluctant -

3 A. Yes. Dr Warrell specifically asked me not to use it.

4 Q. You sought her permission to do so.

5 A. I rang her and she responded by saying no, it was
6 inappropriate.

7 MR SMITH: I have no further questions. Because it
8 is really a new topic rather than the exploration of
9 existing evidence, I wouldn't resist a suggestion, if it
10 were made to you, that this matter could be explored
11 with this witness by other counsel.

12 COMSR: Yes, it certainly seems to involve Mr
13 Kenny's client, Mr Trevorrow.

14 MR KENNY: Yes. You will appreciate that this is
15 the first time that I have heard it. Whilst I did spend
16 yesterday talking with my clients, this was not a
17 conversation that was raised, or that I was aware of
18 until this moment.

19 So I can say I have no instructions in relation to
20 it, which I suggest is not surprising because it appears
21 to be perhaps a brief conversation, at best, with
22 someone who apparently, according to my clients, appears
23 to have no contact or involvement with this Royal
24 Commission. I am not surprised that they didn't raise
25 it before, or raise it with me. I am sure they speak to
26 lots of people on a daily basis.

27 MR SMITH: Does Mr Kenny want to defer his
28 cross-examination?

29 MR KENNY: I don't really want to. This witness is
30 not going to be able to tell me what my clients did or
31 didn't say.

32 COMSR: Will the luncheon adjournment be
33 sufficient for you to obtain instructions?

34 MR KENNY: I will certainly attempt to do so during
35 the luncheon adjournment.

36 COMSR: Ms Pyke, is this a matter that touches
37 on any issue concerning your client?

38 MS PYKE: I wouldn't imagine so.

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- 1 COMSR: On the face of it, it doesn't appear so.
2 MS PYKE: I might ask if it is proposed to call Dr
3 Warrell to give evidence?
4 MR SMITH: Perhaps I will speak to my friend
5 privately about that.
6 COMSR: My Meyer?
7 MR MEYER: No, I don't wish to embark again.
8 EXHIBIT 174 Note of telephone conversation between
9 Lindy Warrell and Wendy Chapman dated
10 23 August 1995 tendered by Mr Smith.
11 Admitted.
12 MR SMITH: At the risk of having witnesses in and
13 out of the box, the questioning of Mr Palyga is not
14 complete yet. Perhaps counsel might be asked whether
15 they have any questions of him because we could use the
16 10 minutes to finish Mr Palyga's evidence.
17 COMSR: Are you proposing to cross-examine?
18 MR KENNY: No.
19 MS PYKE: No.
20 MR MEYER: I am just getting some instructions from
21 Mr Palyga. I don't act for him.
22 MR KENNY: Perhaps it might be useful to use this
23 time to get those instructions, and for me to get the
24 instructions on the conversations.
25 MR MEYER: If Mr Kenny is happy to have 10 minutes,
26 I am happy to have 10 minutes.
27 ADJOURNED 12.46 P.M.

1 RESUMING 2.21 P.M.

2 MR MEYER: Immediately before lunch there was a
3 discussion about producing the letter of 6 June which
4 was the letter which was attached to the letter to Mr
5 Wooley, and that letter is produced.

6 LETTER DATED 6 JUNE ATTACHED TO LETTER TO MR WOOLEY NOW
7 INCLUDED TO FORM PART OF EXHIBIT 160.

8 BY CONSENT, MR KENNY SEEKS LEAVE TO FURTHER CROSS-EXAMINE
9 WITNESS WENDY CHAPMAN. LEAVE GRANTED.

10 FURTHER CROSS-EXAMINATION BY MR KENNY

11 Q. On Friday when you gave evidence, you made no mention of
12 this telephone conversation of 23 August 1995 with Lindy
13 Warrell; that is correct.

14 A. Correct.

15 Q. I take it that that was as a result of the discussions
16 that you had with Lindy Warrell previously; is that
17 correct.

18 A. It was as a result of an answer to a question
19 specifically.

20 Q. I take it that the effect of that question and answer
21 was that Lindy Warrell made it quite clear to you that
22 she didn't want this discussion that you mentioned to
23 the Royal Commission.

24 A. Yes.

25 Q. You didn't mention it on Friday out of respect of Lindy
26 Warrell's wishes; is that correct.

27 A. Yes.

28 Q. Have you spoken to Lindy Warrell since you gave evidence
29 on Friday.

30 A. No.

31 Q. On 23 August 1995, you were aware of that in the Royal
32 Commission because you were in here every day.

33 A. Yes.

34 Q. You were aware of the allegation that the women's
35 business was a fabrication.

36 A. Pardon?

37 Q. You were aware of the allegation that the women's
38 business was a fabrication.

- 1 A. I was aware that one of the Terms of Reference of the
2 Royal Commission was to look into the fabrication of the
3 women's business.
- 4 Q. It is also fair to say that you were aware that George
5 Trevorrow at least was involved in some way.
- 6 A. I was aware that you were representing Mr Trevorrow.
- 7 Q. You were aware, I take it, of the allegations that he
8 was present at the Mouth House and the meeting in May
9 1994.
- 10 A. Yes, I was aware of that. Well, it had been alleged
11 that he was there. I can't recall if that evidence had
12 been given to the Commission at that stage or not, I'm
13 sorry.
- 14 Q. You were also aware that, at that time, the Commission
15 was interested in any evidence pointing to a
16 fabrication. I think you have answered that, but it was
17 also, I might say, in your own interests to bring
18 forward evidence of a fabrication. Would that be a fair
19 comment.
- 20 A. Information which I was aware of that would be of
21 importance.
- 22 Q. You knew all of these things at the time you had the
23 conversation with Lindy Warrell on 23 August 1995.
- 24 A. I'm sorry, knew which things?
- 25 Q. The matters I previously mentioned: the allegations,
26 George Trevorrow's involvement, the Terms of Reference
27 of the Royal Commission.
- 28 A. Those three, yes.
- 29 Q. Despite knowing all of that, I note that in your
30 handwritten notes of that telephone conversation, you
31 make no mention of what Lindy Warrell's alleged to have
32 said to the Trevorrows.
- 33 A. I have a very clear mental recall of what she said to
34 me.
- 35 COMSR
- 36 Q. Of what she told you.
- 37 A. Of what she told me she had said.
- 38

1 XXN

2 Q. My question was: You made no note.

3 A. That is evident by the piece of paper. I have a very
4 clear mental recall. It is very recent.

5 Q. In your note though, you did make a mention of the
6 Onkaparinga River; is that correct.

7 A. Yes.

8 Q. Did you or any company associated with you have any
9 financial interest in any development on the Onkaparinga
10 River.

11 A. No.

12 NO FURTHER QUESTIONS

13 MS PYKE: I don't have any further questions
14 subject to what I mentioned earlier, depending on the
15 status of the report of Dr Lucas as to whether anything
16 might arise out of that that is to be admitted into
17 evidence. It may well be that nothing does arise, but I
18 don't want to be seen as closing my right to
19 cross-examine.

20 COMSR: I will release Mrs Chapman subject to
21 the possibility that something might arise out of the
22 Lucas report and you may require to be called at a later
23 stage.

24 WITNESS STANDS DOWN

1 WITNESS STEPHEN MICHAEL PALYGA CONTINUING
2 CROSS-EXAMINATION BY MR MEYER

3 Q. You have indicated that you're the solicitor for the
4 Chapmans via the firm of Michell Sillar Lynch & Meyer.

5 A. I am.

6 Q. I show to you a letter dated 7 July 1994 addressed to
7 Professor Saunders. Is that a letter written by you.

8 A. Yes, it is.

9 Q. Forwarded to Professor Saunders.

10 A. Yes, it was.

11 Q. That letter attaches to it another letter from Ms
12 Lenehan.

13 A. That's correct.

14 Q. Dated.

15 A. 26 August 1992, written by Ms Lenehan the Minister for
16 Environment and Planning.

17 Q. Can you explain what that letter is.

18 A. That letter is a revived approval for the marina and
19 bridge development. My recollection is that it was
20 issued due to the fact that the original approval was
21 due to expire.

22 Q. In that letter of April 1992, is there any reference to
23 any matter relating to consultation.

24 A. With Aboriginal persons?

25 Q. Yes.

26 A. No, it attaches a two-paged statement of the conditions
27 of approval. It's dated 11 August 1992 which has no
28 such recommendation or no such condition.

29 Q. In the letter to Professor Saunders, have you traversed
30 the issues referred to this morning in evidence of the
31 receipt of development approval in 1990.

32 A. Yes. Professor Saunders forwarded to Wendy Chapman the
33 previous evening that on 6 July 1994, a three-paged
34 document consisting of the original letter of approval
35 dated 12 April 1990 and two pages which was headed up
36 'Conditions'. My recollection is that the copy she had
37 was unsigned and the pages of conditions were dated 11
38 April 1990, not 12 April 1990, as in the same date as

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REXN (MR SMITH)

- 1 the letter of approval. And I took instructions from
2 the Chapmans and wrote this letter setting out those
3 instructions.
- 4 EXHIBIT 175 Letter of 7 July 1994 from the witness
5 to Professor Saunders and the annexure
6 thereto tendered by Mr Meyer. Admitted.
- 7 RE-EXAMINATION BY Mr SMITH
- 8 Q. In your evidence last week, you told us that in April
9 1994, you had had a number of conversations with Tim
10 Wooley, solicitor from ALRM, and Peter Walsh, from the
11 Australian Government Solicitor acting for ATSIC.
- 12 A. That's correct.
- 13 Q. And there were a number of discussions and then you came
14 to the topic of the meeting on 26 April with Matt
15 Rigney, amongst other people.
- 16 A. That's correct.
- 17 Q. Can I take you to a specific conversation which you had
18 with Tim Wooley. And I think you kept file notes
19 relating to such matters as conversations with other
20 solicitors, did you not.
- 21 A. Yes, I did.
- 22 Q. I want to ask you about a conversation in the middle of
23 April prior to the meeting with Matt Rigney. Can you
24 give evidence as to that matter, or do you wish to look
25 at your file note.
- 26 A. I would like to look at my file note if you wouldn't
27 mind.
- 28 Q. Looking at this file note produced, it consists of, I
29 think, four pages, doesn't it.
- 30 A. Yes, that's not -
- 31 Q. That page is not a relevant part.
- 32 A. That has nothing to do with it.
- 33 Q. So, it's three pages.
- 34 A. Yes.
- 35 Q. That's a note which relates to a telephone conversation
36 which you had with Tim Wooley of ALRM at about 11
37 o'clock, or 11.05 a.m., on 14 April 1994; is that right.
- 38 A. No, it's a note of a conversation I had with Tim Wooley

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- 1 at 2.13 p.m. on 14 April. The note you refer to is, in
2 fact, in the handwriting of my secretary. That is a
3 note that Tim Wooley called me and requested me to ring
4 him back.
- 5 Q. The note commences with a note by your secretary of the
6 incoming call from Tim Wooley.
- 7 A. Correct.
- 8 Q. That was 11.05 a.m. on 14 April 1994.
- 9 A. Correct.
- 10 Q. You returned that call then, is it the case, at 2.13 on
11 the same day.
- 12 A. Correct.
- 13 Q. By reference to your notes, could you tell us what was
14 said between yourself and Tim Wooley.
- 15 A. Well, Tim firstly outlined that he was acting for the
16 Directors of the Aboriginal Legal Rights Movement. I
17 have to confess, looking at this note, it's very
18 un-Palyga like, if I can call it that. It's a very poor
19 note of the conversation, but - and there's bits of it
20 that don't make sense to myself, such as the next bit
21 which says `acting for Aboriginal satisfactory'. I do
22 recall at the bottom of the first page where it says
23 `Matt Rigney consultation', that I referred to a
24 statement in the Advertiser of 12 April where Matt
25 Rigney had said that they weren't trying to stop the
26 bridge, they only wanted to see that there was adequate
27 consultation taking place.
- 28 CONTINUED

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- 1 I recall a discussion about that, because obviously that
2 statement from Mr Rigney was very interesting to us. We
3 talked about the need - as lawyers I guess we talked
4 about the need that each party needed to be careful in
5 what they were saying, because there was obviously a
6 question of preserving certain positions in the press
7 and that was in the context of us trying to organise a
8 meeting to negotiate a solution. I have then got a note
9 `Obviously grave thing crystalised more interested',
10 which I have no recollection what that is about at all.
11 Then another note `Sees the bridge legitimate concerns',
12 which I again don't have any recollection about, but I
13 assume it is Tim stating that he believed his clients
14 had legitimate concerns about the bridge. He then
15 referred to the fact that they were meeting Dr Armitage
16 the following day. And it wasn't for him, but it was up
17 to his clients if they wished to compromise their
18 heritage and come to some arrangement, because the State
19 Aboriginal Affairs Department was preparing for some
20 sort of alternative solution. And, in fact, Tim said
21 that they expected when they met Dr Armitage to be
22 presented with a number of alternative solutions.
- 23 Q. What do you mean by that, though. Alternative to what.
- 24 A. Alternative solutions which would satisfy the Aboriginal
25 concerns. And, as you see later on, we started to
26 discuss alternative sites for the bridge. But that
27 wasn't something that we could compromise on. We needed
28 the bridge in the location where it was, because an
29 alternative site would have to go through a completely
30 new EIS and that might delay the whole process for a
31 year or so and that would have been critical to our
32 clients.
- 33 Q. On p.3 of your notes where you have written `They
34 expected alternative solutions on the agenda.'
- 35 A. Yes.
- 36 Q. Was that dealing with an alternative bridge site there,
37 or some other -
- 38 A. No, that was Tim saying that they expected when they met

- 1 with Dr Armitage that he would have alternative
2 solutions that would lead to a satisfactory resolution
3 or compromise of the matter.
- 4 Q. Pausing there for a moment, again, does that mean you
5 and Tim Wooley were discussing some alternative which
6 presupposed the bridge construction at the particular
7 site it was approved for.
- 8 A. No, we later on came to discuss an alternative solution
9 in the sense of building the bridge at a different site.
- 10 Q. That is later on, though.
- 11 A. That is later on in the conversation, yes.
- 12 Q. You continue.
- 13 A. He then made reference to the fact that it might be
14 practical to get back to us after they had met with
15 Armitage, depending on the outcome of that meeting. And
16 all parties put their cards on the table to see if a
17 solution could be achieved and it is in that context
18 that we then discussed the possibility of moving the
19 bridge. And my recollection is that that was raised by
20 Tim because, as I say, it was not an option for us to
21 move the bridge. There had been suggestions at the
22 time that the bridge could be moved to Clayton or even
23 just around, you know, 100 or 200 metres upriver at this
24 time. But they weren't options that we could even
25 consider, because of the financial implications.
- 26 Q. You say at other times there had been suggestions of a
27 bridge at Clayton.
- 28 A. Yes.
- 29 Q. Who had suggested that.
- 30 A. The environmental interests of other people.
- 31 Q. Can you be a bit more specific.
- 32 A. No, I can't.
- 33 Q. Are you talking about the Conservation Council or The
34 Friends of Goolwa and Kumarangk.
- 35 A. No, in fact I don't think it is those bodies. I don't
36 recall. I know it was a suggestion at this time that
37 putting the bridge at Clayton had been floated by some
38 party. Whether it was the Government or others, I don't

- 1 know. And I think when you are talking to a lawyer it
2 always helps to get a bit of free legal advice. I asked
3 Tim whether or not he could tell me if s.37 (b) of the
4 Aboriginal Heritage Act had been proclaimed and he told
5 me it had.
- 6 Q. It had been.
- 7 A. Yes, it had.
- 8 Q. Going back then just to the beginning of your note, the
9 first entry by you is 'My directors - acting for
10 Aboriginal satisfactory.'
- 11 A. Yes.
- 12 Q. Any idea -
- 13 A. No, I have no -
- 14 Q. What that note -
- 15 A. The bit about 'My directors', that is Tim speaking of
16 what his directors had instructed him to do as his
17 directors of the ALRM, but I have no recollection of
18 what the next note refers to.
- 19 Q. Then you have got 'Try explore sites - transgressed.'
- 20 A. Yes, again, I can't recall that discussion.
- 21 Q. Then 'I don't glean', what about that.
- 22 A. That is meaningless to me as well.
- 23 Q. And 'Matt Rigney - consultation.'
- 24 A. That is a discussion that we had about the Tuesday's
25 Advertiser, the previous Tuesday's Advertiser where Matt
26 Rigney had said that it wasn't a matter of stopping the
27 bridge, it was a matter of carrying out some
28 consultation before the bridge proceeded.
- 29 Q. Then over the page you get back to 'There was a
30 suggestion by Wooley that negotiating positions weren't
31 closed off', is that -
- 32 A. That's correct, yes.
- 33 Q. You have got there, at p.2, 'Director - seeking legal
34 advice - position preserving.' What is that.
- 35 A. Yes, I can only say that my recollection of that passage
36 is that we had a discussion about how it was possible to
37 attempt to negotiate a settlement, but it was necessary,
38 from the political standpoint, to perhaps preserve or

1 maintain certain positions in the media.

2 Q. Then you have got 'Tim - obviously grave thing
3 crystalised more interested.'

4 A. Yes.

5 Q. Any idea what that conveys to you in terms of the
6 conversation.

7 A. No, I can't say. I can only assume it is a reference to
8 - I don't know.

9 Q. But from then on you have given evidence that the note
10 makes sense.

11 A. Yes.

12 Q. Was the next event so far as you can remember then the
13 meeting at North Adelaide between yourself, Tom Chapman,
14 on the one hand, and Matt Rigney and Peter Walsh from
15 the Australian Government Solicitor, on the other.

16 A. Yes, there was another telephone discussion with Tim and
17 then several telephone discussions with Peter Walsh, as
18 a result of which, that meeting was set up.

19 Q. The other conversation with Tim Wooley doesn't help you
20 to be clearer about this conversation.

21 A. No, it doesn't.

22 MR SMITH: They are all my questions. Mr Stratford
23 will have to be notified, he acts for Tim Wooley. And
24 perhaps so that he can preserve his position, the note
25 of the conversation should be tendered.

26 COMSR: Does it need to be admitted or just
27 marked for identification?

28 MR SMITH: It could be just marked for
29 identification just to preserve it so that Mr Stratford
30 can have access to it.

31 MFI 176 Note of telephone conversation between
32 Steve Palyga and Tim Wooley, dated 14
33 1994, marked 176 for identification.

34 MR MEYER: Except that we should note that it has
35 been identified as such as this witness's note. We do
36 know what it is. We don't need anyone else to come in
37 and identify it.

38 MR SMITH: No, so, subject to Mr Stratford's

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- 1 position, could you release Mr Palyga?
- 2 COMSR: Mr Palyga, you are released subject to
- 3 that requirement.
- 4 NO FURTHER QUESTIONS
- 5 WITNESS RELEASED

1 MR SMITH CALLS

2 THOMAS LINCOLN CHAPMAN SWORN

3 EXAMINATION BY MR SMITH

4 Q. Binalong Pty Ltd is one of the Chapman Group of
5 Companies, is it not.

6 A. That's correct, yes.

7 Q. Binalong Pty Ltd was liquidated on 8 August 1994, is
8 that not the case.

9 A. It was put in liquidation, it is not liquidated.

10 Q. Put into liquidation. It went into receivership on 8
11 April 1994 and was put into liquidation on 8 August
12 1994, is that so.

13 A. That's correct, yes.

14 Q. You were a director and shareholder in that company,
15 were you not.

16 A. Yes, that's correct.

17 Q. It being one of the Chapman Group of Companies.

18 A. That's correct.

19 Q. I think the Chapman Group of Companies had business and
20 financial interests, including interests on Hindmarsh
21 Island and, in particular, a marina and a tourist resort
22 there.

23 A. That's correct, yes.

24 Q. I think in connection with this Inquiry you have
25 provided a statement, have you not.

26 A. Yes, that's correct.

27 Q. Looking at the document produced to you, of 25 pages, do
28 you recognise that.

29 A. Yes.

30 Q. As the statement which you provided to the Commission.

31 A. That's correct.

32 Q. It is your signature.

33 A. Yes.

34 Q. And dated 26 September 1995.

35 A. That's correct, yes.

36 EXHIBIT 177 Statement of witness T.L. Chapman, dated
37 26 September 1995, tendered by Mr Smith.
38 Admitted.

- 1 Q. I think it is the case that that statement refers to an
2 extensive bundle of 60 documents.
- 3 A. Yes, I think it is 61 now.
- 4 Q. It is 61, is it.
- 5 A. You have got those extra notes.
- 6 Q. Just putting the notes aside, for the moment.
- 7 A. Yes.
- 8 Q. The bundle referred to in your statement amounts to some
9 60 documents, is that right.
- 10 A. That's correct, yes.
- 11 Q. Looking at the bundle produced to you and indexed, is
12 that -
- 13 A. That's correct, yes.
- 14 Q. Not the documents which you provided to the Commission
15 and have referred to in your statement, Exhibit 177.
- 16 A. That's correct.
- 17 EXHIBIT 178 Bundle of documents tendered by Mr
18 Smith. Admitted.
- 19 Q. You have a copy of both the bundle, Exhibit 178.
- 20 A. Yes.
- 21 Q. And your statement, Exhibit 177, in front of you.
- 22 A. That's correct.
- 23 Q. Starting at the beginning, it was, was it not, in the
24 mid 70s that you became aware of the Outer Metropolitan
25 Development Plan and the fact that it had zoned portion
26 of the western end of Hindmarsh Island for residential
27 development.
- 28 A. That's correct.
- 29 Q. I think you decided, via Binalong Pty Ltd, to purchase
30 land on Hindmarsh Island, with a view to creating a new
31 business, a marina and tourist resort.
- 32 A. That's correct.
- 33 Q. It is correct, is it then, that that area on the western
34 end of Hindmarsh Island had been zoned rural deferred
35 living and earmarked for expansion of the township of
36 Goolwa.
- 37 A. That's correct.
- 38 Q. Binalong purchased that land and I think, in the ensuing

- 1 years, you planned the marina and tourist resort.
- 2 A. That's correct.
- 3 Q. On 30 April 1980, you applied for approval for a marina
4 and tourist development, is that not so.
- 5 A. That's correct, yes.
- 6 Q. Your application is, in fact, document no.1 in Exhibit
7 178.
- 8 A. That's correct.
- 9 Q. The bundle of documents.
- 10 A. Yes.
- 11 Q. I think that application featured in a newspaper article
12 of 11 June 1980, is that right.
- 13 A. Yes, that's correct. It was in The Advertiser, p.3.
- 14 Q. The plan for that development, which was the - what do
15 you call that. That is the marina, isn't it.
- 16 A. Yes, that was our first idea of what we were going to do
17 there, yes.
- 18 Q. The map featured in the Advertiser article of 11 June
19 1980 features a - what would we call it, a marina basin.
- 20 A. Yes, it was a large almost lake-like development with
21 various structures around the outer edge. A basin that
22 was for canoeing or whatever and landscaping, which
23 later was proposed to be a 9-hole golf course. There
24 were various stages that we walked through. In fact,
25 the article outlines a number of things. Horse riding
26 tracks, tennis courts, squash courts, you know.
- 27 Q. But is it the case that the open area there shown in the
28 plan, it is a lake, as you said, was that to be
29 excavated.
- 30 A. Yes, that's correct, yes.
- 31 Q. And that is presently there, isn't it.
- 32 A. That's correct - well, not in that form, but over that
33 area, yes.
- 34 Q. Not exactly in that form, but, in fact, a lake has been
35 excavated approximately in that area shown there in the
36 plan.
- 37 A. That's correct.
- 38 Q. The pre-existing situation was that was just part of the

1 island.

2 A. That's right.

3 Q. Am I right then that that excavation was a substantial
4 alteration to the landscape.

5 A. That's correct.

6 Q. In that part of Hindmarsh Island.

7 A. What we were doing in both cases we were taking
8 naturally occurring depressions and digging them out. In
9 fact, it was very close to river level so you weren't
10 carrying - you weren't having to dig out a substantial
11 amount of overburden before you actually got down into
12 digging a water basin.

13 Q. As your statement makes plain, on 10 March 1981, the
14 State Planning Authority approved that development in
15 accordance with that application which you lodged,
16 document 1.

17 A. That's correct.

18 Q. That approval was constituted by a letter dated 20 March
19 1981, is that so.

20 A. That's correct.

21 Q. That occurs in the bundle of documents, Exhibit 178, as
22 document 3.

23 A. Yes.

24 CONTINUED

- 1 Q. That approval, however, required you - you, being
2 Binalong Pty Ltd really, isn't it.
- 3 A. Yes.
- 4 Q. So where I refer to 'you' in that sense, you will
5 understand that to mean Binalong Pty Ltd.
- 6 A. Yes.
- 7 Q. The approval required you to obtain the consent of the
8 River Murray Water Resources Advisory Committee, to cut
9 into the bank of the River Murray and divert water into
10 that marina proposed.
- 11 A. That is correct. That was one of a number of approvals
12 that we had to get, but, however, they took the longest
13 to give approval.
- 14 Q. Having made your application and having been given
15 approval on the basis of a number of conditions, you
16 went about satisfying those conditions.
- 17 A. Yes, that is correct.
- 18 Q. Looking at document number 4, which is a letter from
19 yourself to the State Planning Authority, dated 16 March
20 1982 -
- 21 A. That's correct.
- 22 Q. That letter speaks for itself, but it raises, amongst
23 other things, vehicular access and the ferry and that
24 sort of thing onto the island.
- 25 A. Yes. What had happened, in the consequence of looking
26 at, you know, having a major development in the area, I
27 had looked at sites over near the Federal Paddle Steamer
28 and also at Latham's Point, but both those sites, for a
29 variety of reasons, were not suitable for what I had in
30 mind, and were not suitable so far as the authorities
31 were concerned as they had various detriments to them.
32 So, having gone through that, and still pushing on with
33 the proposal on Hindmarsh Island, the council then made
34 it very clear that they wanted the development on
35 Hindmarsh Island in that area that had been set aside
36 for future urban development. I then made the point:
37 What is going to happen with access to the island?

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- 1 That's what prompted this letter of 16 March, after
2 attending a full meeting of the council the day before.
- 3 Q. Following the chronology through, you had obtained State
4 Planning Authority approval, subject to conditions -
- 5 A. Yes.
- 6 Q. In March 81.
- 7 A. That was an in-principle approval, shall we say.
- 8 Q. The next document is March 1982. A year has passed.
9 That is right, isn't it.
- 10 A. Which - 16 March, are you talking about?
- 11 Q. Yes. We are now looking at your letter to the State
12 Planning Authority of 16 March 1982, aren't we.
- 13 A. Yes.
- 14 Q. You have had an approval, in principle, subject to
15 conditions from March 1981, hadn't you.
- 16 A. That's correct, yes.
- 17 Q. What had been going on in that twelve months.
- 18 A. I had been endeavouring to get the necessary conditions
19 complied with that I had got in the approval in
20 principle. As I said a few minutes ago, I had
21 investigated alternative sites at Latham's Point and
22 over near the Federal, and got to the point where
23 finally I think I got it - I brought it to a head
24 eventually, when there was a meeting of three Cabinet
25 Ministers in Parliament House to try and resolve getting
26 the necessary approvals - the in-principle approval
27 needed from various Government departments and it had
28 taken a year to do that. So all that happened at about
29 the same time, I think.
- 30 Q. If we move on then. The documents in Exhibit 178, being
31 documents 4, 5, 6, 7 and 8, are all documents - apart
32 from the 'Advertiser' article, document 7 - indicating
33 you getting on with the business of satisfying the
34 conditions for the approval in principle.
- 35 A. Yes. I think the important letter is 16 July 1982,
36 where the Development Management Division, Department of
37 Environment and Planning, had become involved in it.
38 They were to prepare an environmental impact assessment,

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- 1 and, to do that, they needed more information. They
2 sent out some guidelines - which, I am sorry, I can't
3 find at the moment - which needed to be covered, and
4 that was responded to with the introductory information
5 from Binalong, Hindmarsh Island Marina Development, with
6 reference to the letter of 16 July 1982 from the
7 Department of Environment and Planning. I think it is
8 also interesting to note that, in the consequence of
9 that environmental impact assessment done by the
10 department, they had to investigate the Aboriginal
11 heritage aspects of that under the 1975 Aboriginal
12 Heritage Act.
- 13 Q. 1979.
- 14 A. 1975. I believe it is 75.
- 15 Q. You are now looking at what document.
- 16 A. 16 July 1982.
- 17 Q. Which is document number 5 of Exhibit 178.
- 18 A. Yes. Excuse me, would it be possible for me to get
19 another copy of this front part so I can then follow it?
- 20 Q. Yes. Dealing with the letters one by one, the first
21 letter, number 4, is your letter to the State Planning
22 Authority concerning -
- 23 A. Access.
- 24 Q. Vehicular accesses and the ferry.
- 25 A. Yes, correct.
- 26 Q. Then document number 5, which is a letter from the
27 Department of Environment and Planning to you.
- 28 A. That's correct.
- 29 Q. And your response to it.
- 30 A. That's right.
- 31 Q. Dated 16 July.
- 32 A. Yes. That runs into some pages.
- 33 Q. Can you tell us the thrust of your response there.
- 34 A. It gave a more detailed view of what we had in mind. It
35 covered a number of facilities that, at the time, I
36 proposed to put on the site. It gave a history of
37 marinas which, at that time, were not known of really in
38 South Australia, not talked of. It talks about how the

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1 area of the lakes is a most interesting area for boaties
2 and that, by developing destinations, which is important
3 in any marina development, that a very successful
4 development could be had on the area. The proposed
5 marina was situated on the exposed area of the island,
6 therefore taking in land that didn't have much value.
7 It talks about moorings, extensive tree planting. It
8 then went into the various physical aspects of it as far
9 as a boat maintenance facility, what else might be done,
10 bottle shop, future development, the proposals that were
11 thought of - I had at the time. And it really just
12 talks about the preferred option that we had at that
13 time was to duplicate the existing ferry. By
14 'duplicating' I mean putting one in front of the other,
15 not side by side.

16 Q. So that document, which is really further and better
17 particulars, as it were, of your proposed development -

18 A. That's right.

19 Q. Went, amongst other places, to the District Council of
20 Port Elliot and Goolwa.

21 A. That's correct.

22 Q. By then, of course, you had written about vehicular
23 access, hadn't you.

24 A. That's correct.

25 Q. Therefore, the sixth document in your bundle, Exhibit
26 178, is a response from the council.

27 A. That's correct.

28 Q. Do we take it that the council had a copy of that
29 response to the Department of Environment and Planning
30 at that stage.

31 A. I can only assume they did. I can't imagine that they
32 wouldn't have.

33 Q. The letter from the district council to you of 7
34 September, made it clear that they supported your
35 contention that there should be a duplication.

36 A. Yes, that's correct.

37 Q. For the extra ferry to Hindmarsh Island.

38 A. That's correct.

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- 1 Q. The letter, just to emphasize it, from the council also
2 emphasized that the council had been pressing for this
3 measure to be taken for a number of years.
- 4 A. That's correct, and I believe prior to that they'd also
5 been trying to get a bridge built. They were desperate
6 to increase or to improve the access to the island, and
7 this was one of the proposals that they had.
- 8 Q. Then on 17 December there was an article in the
9 'Advertiser'; of 17 December, p.1, which featured your
10 proposed development.
- 11 A. That's correct.
- 12 Q. Again, it showed a plan of your development, including
13 the lake or the marina as proposed by you.
- 14 A. That's right. That's correct.
- 15 Q. As your statement indicates then, it was in December of
16 1982 that there was approval - that is, final approval -
17 for the original Marina Goolwa basin development.
- 18 A. That's correct, yes.
- 19 Q. Just to make it clear, that contained 600 boat berths,
20 is that right.
- 21 A. Yes, and a number of other facilities.
- 22 Q. That approval was given by the South Australian Planning
23 Commission.
- 24 A. That's correct.
- 25 Q. To be clear, you then were in a position to go straight
26 ahead with that development.
- 27 A. I think there were some conditions. It may be it was
28 then I had to get the River Murray Water Resources
29 clearance, or I finally got it I think at that stage.
30 So it was a matter of getting the approvals in place and
31 I think we started digging about six months later.
- 32 Q. Looking at the next document, document 8, which is a
33 letter from you to the Planning Commission of 8 February
34 1984, it indicates there -
- 35 A. Agreement with the Water Resources Department.
- 36 Q. Late last year, which was late 1983.
- 37 A. That's correct.

- 1 Q. So it wasn't until late 83 then that the River Murray
2 Water Resources Advisory Committee gave you, in effect,
3 the green light to cut into the bank of the river and
4 divert water into the marina.
- 5 A. That's right.
- 6 Q. As your statement shows, it was on 1 August 1984 that
7 work began on the digging of the marina basin.
- 8 A. Yes.
- 9 Q. That was largely complete by April 1985.
- 10 A. That's correct.
- 11 Q. When the first boats commenced using the facility.
- 12 A. Yes.
- 13 Q. By that stage, as your statement shows, other
14 infrastructure was in place, et cetera.
- 15 A. Yes.
- 16 Q. By that time - that is, by April 1985 - there were
17 problems with traffic getting on and off the island,
18 were there.
- 19 A. Yes. In fact, that was the case much earlier too, that
20 three hour or longer delays were quite common on certain
21 weekends of the year, and we had delays witnessed - or I
22 have witnessed delays with cars banked up along Randall
23 Road beyond Captain Sturt Drive, which is, I guess, a
24 kilometre and a half back from the ferry itself on some
25 occasions, and they have wrapped themselves around the
26 town as they were coming over. It is just chaotic, to
27 say the least.
- 28 Q. You make the point delays of about three hours were
29 experienced at peak times.
- 30 A. Peak hours it would be three hours plus, and you would
31 have an hour or more delay on numerous occasions.
- 32 Q. At that time, were you living on the island.
- 33 A. No, but we had the business there so we were going
34 backwards and forwards.
- 35 Q. You say that in early 1987 a significant event occurred.
36 What was that.
- 37 A. At that time, the - at the instigation, as I understand
38 it, of the ferry operators, the Government moved to

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1 disallow or remove the regulations which provided for
2 the issue of priority permits to certain people who
3 either live on the island or have business on the
4 island, or whatever the criteria is, and that was going
5 to happen on 22 January 1987. That caused a tremendous
6 fury on the island, because a number of aged people
7 found that they would be caught in the long queues.
8 They couldn't get medical attention in a hurry, their
9 privilege had been taken away, something that made it
10 convenient for them, so they got upset. For businesses,
11 you had the problem that you maybe would have a staff
12 member sitting three hours, paying for him while he just
13 sat and moved up a ferry queue. Just a chaotic
14 situation for anybody in that situation. So moves were
15 made. There was a joint party committee set up in
16 Parliament to review the situation, and finally -

17 Q. Can I just interrupt you there, 'Ferry priority permit
18 system comes to an end' was featured in an 'Advertiser'
19 article on 4 February 1987, didn't it.

20 A. That's correct, yes.

21 Q. That is document number 9.

22 A. That's correct. I think the important thing with this
23 is that it finally brought to the attention of the large
24 retired community on Hindmarsh Island, at least, that
25 unless they had the priority permit, then their days on
26 the island were numbered or they had to have a bridge,
27 and there was considerable debate at the time on the
28 island and off the island. As I say, it got to
29 Parliament, and that was really the genesis where the
30 government, in particular, said there would be no
31 further development on the island unless there is a
32 bridge, or, as they termed it, 'better access', but they
33 meant a bridge I believe. The council said the same
34 thing and so did the majority of people on the island.
35 So you have then, of course, the situation that the
36 permits were reinstated so the pressure came off, but,
37 nevertheless, by mid that year - or before then, you had
38 people coming up with designs of bridges. And on 5 June

- 1 1987 you have an article, a substantial article, in the
2 `Victor Harbor Times' pointing out a bridge. As I said
3 earlier, that's not the first time a bridge had been
4 raised in the area.
- 5 Q. That is document number 10 in your bundle of documents,
6 Exhibit 178.
- 7 A. That's correct, yes.
- 8 Q. A `Victor Harbor Times' article, featuring a bridge for
9 Hindmarsh Island, as it were.
- 10 A. That's correct. I think that was significant that it
11 was not only being driven by the council, but also by a
12 joint committee of the council, and the State
13 Government, called the Goolwa Foreshore Development
14 Committee or Waterfront Development Committee - I forget
15 which it was called - which really also discussed the
16 whole issue as well.
- 17 Q. That was all happening while you were getting on with
18 your development.
- 19 A. That's correct, yes.
- 20 Q. In about 1988, I think, as you make clear in your
21 statement, you decided to expand the marina.
- 22 A. That's correct, yes.
- 23 Q. You planned on an extension of the marina, as you say in
24 your statement, by a lagoon development, is that right.
- 25 A. That's correct, yes. That was a residential lagoon
26 development and an extension of the marina itself and
27 other facilities. It was a comprehensive development.
- 28 Q. By that time, that is by mid 1988 or thereabouts, there
29 had been further infrastructure constructed at the
30 marina, had there not.
- 31 A. Yes, we had extensively extended the base and other
32 facilities.
- 33 Q. I think, amongst other things, a tavern and a bottle
34 shop was opened in 1989, for instance.
- 35 A. That's correct, yes.
- 36 Q. Going back in May 1988, a planning application document
37 for stages 1 to 6 of the marina extensions had been

1 prepared by you, and they were ready to lodge with the
2 State Planning Authority.

3 A. That's correct. That included the marina itself, as
4 well as the lagoon development. It was the
5 comprehensive proposal.

6 Q. You didn't lodge that, I don't think -

7 A. No.

8 Q. You didn't lodge that immediately, did you.

9 A. No. They didn't want us to lodge it until such time as
10 a supplementary development plan was ready to go on
11 public display, which they told us would have been in
12 May. So we worked to May to have our documents ready at
13 the same time. In fact, it didn't get lodged until, I
14 don't know, some very considerable time later, and we
15 just held our document aside while we tried to get them
16 to get on with getting the supplementary development
17 plan.

18 CONTINUED

1 Q. By this time - and we are talking of May/June of 1988 -
2 had talk about a bridge increased around the place.

3 A. Yes, it had. As I say, it was subject to newspaper
4 articles.

5 Q. Documents 11 and 12 - 11, first of all, is again another
6 article in the Victor Harbor Times.

7 A. Yes. That's the one I referred to just a moment ago.

8 Q. Was that an article which indicated inter alia that 'The
9 District Council of Port Elliott and Goolwa had
10 requested the Minister of Transport to pay any design
11 fees for the bridge'.

12 A. No, that one didn't, but I think the next one did.

13 Q. Have a look at the last paragraph of document no.11, the
14 last paragraph of the newspaper article.

15 A. No.11 does, I'm sorry.

16 Q. Then, document no.12 is a July document dated Friday, 1
17 July 1988.

18 A. Yes.

19 Q. I think that features a minute of the council, does it
20 not.

21 A. That's correct. 'Following a number of telephone
22 conversations, further advice is now been received by Mr
23 Jeff Benny of John Connell & Associates in the matter.
24 Mr Benny expects to visit Goolwa for discussions with
25 the council's engineer on Thursday, 16th June. It was
26 moved the council seek the support of the Minister of
27 Transport, the Honourable Mr Kenneally, and the meeting
28 proposed consultants fees to carry out detailed design
29 work on Hindmarsh Island Bridge or, alternatively,
30 asking the Highways Department for the bridge design
31 section to carry out such design work at the
32 department's costs'.

33 Q. I think that document 12 there is an extract from the
34 Victor Harbor Times newspaper which sets out the council
35 minute.

36 A. Yes; and they do that regularly and still do today.

37 Q. That is what you have read from.

38 A. That's correct.

1 Q. At about this time - and we are just beyond the middle
2 of 1988 - your planning application for the marina
3 generally, and in particular the residential lagoon, was
4 still waiting, still awaiting the development plan.

5 A. That's correct.

6 Q. What was happening while that was going on.

7 A. In the meantime, a competing development was being
8 worked on, much to our consternation, because it had
9 somehow got hold of our plans from somewhere and had a
10 copy of them. And that culminated in Mr Jolly having
11 some and a group of people with him were proposing to
12 develop a similar type of development on the north
13 shore. That was lodged, I think, in November, but
14 somebody told me it could have been October. At that
15 time, we then lodged our application the next day.

16 Q. I want to go back a bit earlier than that for a minute.

17 A. I think - sorry, what happened was to bring you up to
18 speed, was that because these were known by the
19 Government authorities that they were going on and there
20 was a third one, a Mr Lucas further on the north coast,
21 the planning department had then spoken to the
22 Aboriginal Heritage Branch, because there was while
23 getting the material ready for the Supplementary
24 Development Plan, and the heritage branch then engaged
25 Vanessa Edmonds to carry out the 1988 report, what we
26 now call. That is how they got involved in it.

27 Q. The survey then which Vanessa Edmonds was commissioned
28 to carry out included the marina.

29 A. Yes.

30 Q. It was carried out in September 1988.

31 A. That's correct.

32 Q. I think you, for instance, as you made clear in your
33 statement, discovered a possible midden site.

34 A. Yes. Well -

35 Q. And reported that to Vanessa Edmonds, did you.

36 A. Yes. I took an interest in what she was doing and, in
37 fact, we made an effort to be as co-operative as we
38 could, making, I think, plant and equipment available

- 1 for her, giving her maps and whatever else could be
2 done. And I asked her to explain to me and show me what
3 she was actually looking for, because it seemed to me
4 that this was an interesting subject and, you know, I
5 guess being who I am, I was keen to find out a bit about
6 it. Subsequently the next day or so, I found or
7 remembered a place I thought could be worth looking at,
8 and I showed it to her and she confirmed, yes, it was a
9 pretty small midden. I think it's worth pointing out
10 without disclosing where they are. That all of the
11 midden sites shown in this report and the following
12 report are all now inside a buffer zone, a reserve area,
13 and it's not part of the development.
- 14 Q. I think in connection with the assistance you gave to
15 Vanessa Edmonds, you wrote to her on 23 August 1988.
- 16 A. Yes, that's correct.
- 17 Q. I think you enclosed in that letter an old admiralty
18 chart.
- 19 A. That's correct.
- 20 Q. And that's, I think, document no.13.
- 21 A. That's correct.
- 22 Q. In Exhibit 178.
- 23 A. Yes - no, that's not the chart. The letter is 13.
- 24 Q. The chart is enclosed in the letter.
- 25 A. Right, okay.
- 26 Q. Is it not.
- 27 A. Yes, it is. But I would point out that is not what we
28 have now got in here, in that she got a smaller scale
29 version of it which covered a bigger area. And what you
30 have here is what we, in fact, later on developed for
31 submission to Professor Saunders. But it covers exactly
32 the same - hers covers a bigger area than these two
33 plans do. The significance that is to be drawn out of
34 it, they were drawn - or the actual works was carried
35 out in 1876 before the barrages were put in place. What
36 her interests was, it showed clearly the areas that were
37 subject to drying. And you will see in an area what is
38 now opposite South Lakes is an area marked `drying' in

1 the second stage of the chart. You can see the old
2 causeway which is half the length of the existing one
3 and those soundings are all taken at low water and they
4 are in feet, which is unusual for an admiralty chart
5 which you would normally expect to be in fathoms.

6 Q. Would you hold that up and indicate that to the
7 Commissioner.

8 A. Yes.

9 Q. You're referring to the second page of that.

10 A. The first page is only put in for your information to
11 show where it comes from. That gives you information at
12 the bottom of what is a large chart and gives you the
13 Murray River Mouth as at 1876, and it was done by Philip
14 Colin Lieutenant, and says 'soundings in feet' and then
15 the actual chart itself shows this area here 'drying'.
16 You can just make it out. And there are other areas you
17 can tell - and you can see the small bit of the
18 causeway, the ferry causeway, there and then opposite
19 the wharf in Brooking Street and see where the deeper
20 water is, and so on, and it shows the entrance that we
21 have since dug out for the marina.

22 Q. A document like that was the document sent to Vanessa
23 Edmonds; it was a larger document, was it.

24 A. Yes, covered a larger area.

25 Q. In brutal terms, that showed, if you like, as at 1876
26 that area around the causeway and the township site, the
27 river area at least was underwater.

28 A. That's correct. Just to give you the history of that, I
29 got these particular, or got the chart together with a
30 whole lot of other historical information from the Royal
31 Navy's hydro-photographical office in Taunton in England
32 in 1984 or 1985 and it was useful in one of our
33 submissions to Professor Saunders - because, jumping
34 ahead, when we heard about the Rocky Marshall issue, he
35 was trying to say that at that time other people were
36 saying, I think more correctly, that there could be
37 skeletal remains below the line of the bridge, and this
38 chart, of course, conclusively proved that this is not

1 possible, they would not have buried bodies underwater
2 and that the whole ferry crossing was underwater at low
3 tide.

4 Q. You sent Vanessa Edmonds a chart similar to that.

5 A. That's correct, yes.

6 Q. Under cover of that letter of 23 August, 1988.

7 A. Yes.

8 Q. Document 13.

9 A. Yes.

10 Q. Can I just then take you back to what you said earlier.

11 What happened then was that in late 1988, there was a
12 planning application for a rival development by Michael
13 Jolly.

14 A. That's correct, yes.

15 Q. Michael Jolly is a person known to you.

16 A. Yes, certainly is.

17 Q. Were you familiar at that time with a body called the
18 Coorong Consultative Committee.

19 A. No, I wasn't at that time, but I've seen, of course, the
20 Coorong draft management plan which refers to that
21 committee, so I'm aware of its existence now.

22 Q. You now know that that existed at the time.

23 A. Yes, I'm now know that.

24 Q. You now know that back in those days George Trevorrow
25 and Henry Rankine were on that committee.

26 A. As Michael Jolly has told me, he took the two planning
27 applications down to a committee meeting to table them
28 so they could see what was going on. You will find in
29 the Coorong National Park Draft Management Plan there is
30 talk of these developments. So, the matter was raised.

31 Q. So, those rival developments meant that you were not
32 prepared to wait for the Supplementary Development Plan.

33 A. No.

34 Q. You lodged your application.

35 A. For commercial reasons.

36 Q. In December 1988, as you tell us at p.3.8 of your
37 statement, Exhibit 177, your application was put on
38 public display.

1 A. That's correct, together with the Jolly one.

2 Q. And comment as invited from the public.

3 A. That's correct.

4 Q. At that time, was there continuing ground swell for a
5 bridge to Hindmarsh Island.

6 A. Yes. There was a public meeting held in the hall on
7 Hindmarsh Island on 18 January 1989 to discuss the
8 issue, and that resolved itself, yes, and clearly found
9 the fact that people wanted a bridge.

10 Q. The next document in your bundle is document 30A, which
11 is the Victor Harbor Times article headed, the headline
12 'Island residents discuss SDP'.

13 A. Supplementary Development Plan, yes. And you will see
14 there 'Meeting overwhelmingly favoured a bridge between
15 the island and Goolwa to cope with the extra traffic if
16 development were to occur.' Then, it goes on about
17 other questions given by the reporting, you can see that
18 it was the issue of greatest significance.

19 Q. Were you at that meeting.

20 A. Yes, I was.

21 Q. You would say that article is accurate, is it.

22 A. Yes, I believe so.

23 Q. Was there pressure then for a bridge to be incorporated
24 in the new proposed Supplementary Development Plan.

25 A. Well, I think it was perhaps, but the other way if there
26 was to be any change in the development on Hindmarsh
27 Island or to zoning on Hindmarsh Island, then the matter
28 of access to the island had to be resolved; and in terms
29 of access, people meant the bridge, a bridge rather.

30 Q. The local council, did this continuing enthusiasm for a
31 bridge, was that embraced by the council.

32 A. Yes, it was.

33 Q. You had come to know by that time the Mayor Mr Mills,
34 had you.

35 A. That's correct. He wasn't the Mayor at that time, he
36 was the local councillor for the Hindmarsh Island Ward,
37 which I think he was for 12 years or so, may have been
38 ten years, and then Mayor for five.

- 1 Q. I think you, by reason of a set of minutes of the
2 council and by reason of speaking to Vic Mills, you came
3 to know that the council made a request of the Minister
4 of Transport for a bridge to replace the ferry; is that
5 right.
- 6 A. That is correct, yes. You got a copy of the Victor
7 Harbor Times where it says 'Deputation', this is the
8 Mayor's report, 'Deputation to Minister of Transport
9 access to Hindmarsh Island', and that was held in
10 Adelaide, I think, on 2 March.
- 11 Q. You're looking at document no.14.
- 12 A. That's correct.
- 13 Q. In Exhibit 178.
- 14 A. Yes.
- 15 Q. That's a page from the Victor Harbor Times newspaper.
- 16 A. That's correct.
- 17 Q. Which again sets out a copy of the council minutes for 6
18 March, 1989.
- 19 A. That's correct.
- 20 Q. In very small print in the top left-hand corner; is that
21 right.
- 22 A. That's correct.
- 23 Q. Can we just identify there on the document where
24 precisely the minute is.
- 25 A. It's under 'Mayor's report' and it starts off
26 'Deputation to Minister of Transport access to Hindmarsh
27 Island', and it was, I presume, held in Adelaide because
28 it's got in brackets '(Adelaide)'.
- 29 Q. In early 1989, you were taking advice from an engineer
30 Mr Wallace. You did go to a Mr Wallace.
- 31 A. No, he was the town planner.
- 32 Q. Who was giving you advice in relation to your 1988
33 planning application.
- 34 A. That's correct.
- 35 Q. Dr Harvey, Dr Nick Harvey of the Department of
36 Environment and Planning, was he advising you too.
- 37 A. No. He was the person within the department that Doug
38 Wallace and myself were liaising with at that time. It

- 1 had moved to the point where it was the Major Projects
2 Unit were looking at it.
- 3 Q. Dr Nick Harvey is from the Department of Environment and
4 Planning and in particular the Major Projects and
5 Assessment Branch of that department.
- 6 A. That's correct.
- 7 Q. Looking at document no.15 in Exhibit 178, that's a
8 letter from Dr Nick Harvey, isn't it.
- 9 A. Yes.
- 10 Q. Dealing with your application.
- 11 A. Yes, that's correct.
- 12 Q. That makes mention, does it not, of Aboriginal heritage.
- 13 A. That's correct. He writes in part in the letter 'I note
14 that the additional information regarding Aboriginal
15 heritage is still awaiting a reply from the Point McLeay
16 Community Council. I've drawn this to the attention of
17 the Aboriginal Heritage Branch of this department'.
- 18 Q. Was it your obligation to obtain a reply from the Point
19 McLeay Community Council.
- 20 A. No, it wasn't.
- 21 Q. Who was doing that.
- 22 A. The Department of Environment and Planning. His
23 responsibility, as I understand it, was to liaise with
24 numerous Government departments and units, of which the
25 Aboriginal Heritage Unit is but one, and co-ordinate
26 their responses to our ask for planning approval.
- 27 Q. During 1989, then going on into 1989 -
- 28 A. Sorry, before we leave that, I can say that I was aware
29 that they had had a great deal of difficulty getting a
30 response out of Point McLeay at the time and had asked
31 for it some time earlier, and this was one of the last
32 issues that needed to be resolved prior to consideration
33 by the State Planning Authority, I gather.
- 34 Q. It was holding things up.
- 35 A. Everybody else had answered within the required times,
36 but they hadn't had this response.
- 37 Q. During 1989, you say again in your statement at p.4.2
38 'There was continued demand for a bridge'.

1 A. That's correct.

2 Q. And a public demand, local public demand.

3 A. That's right.

4 Q. And you make the point in about April 1989 the council
5 called a meeting with yourself and the other two
6 developers, Robert Lucas and Mike Jolly.

7 A. That's correct.

8 Q. And a suggestion was put to you there. What was it
9 exactly.

10 A. Well, I think that this came after the deputations which
11 we talked about a few minutes ago. The council were
12 told by the Government, the Government wasn't going to
13 spend money on a bridge and they would, I think,
14 probably contribute the amortised cost or the net
15 present value, whatever you like to work it out at, of
16 the running cost of the ferry and the council would have
17 to find the rest of its costs, and the council said they
18 would come to the three of us and find the money.

19 CONTINUED

- 1 Q. The Council put a suggestion to you.
2 A. Yes.
3 Q. Lucas and Jolly.
4 A. That's correct.
5 Q. That you should agree to pay part of the cost of the
6 bridge.
7 A. That's correct.
8 Q. In August 1989, you had a meeting with the Minister for
9 Environment & Planning.
10 A. That's correct.
11 Q. Who was that, at that time.
12 A. Dr Hopgood. Prior to that, we had a meeting with the
13 Department, itself, with - anyway, the senior people in
14 the Department. And it was then decided that, to move
15 things along, we would - they would suggest that we have
16 a meeting with the Minister, which they then got a time
17 for it. And we had a meeting with the Minister and, at
18 that meeting, we were told that we would need to do an
19 environmental impact study.
20 Q. That was the first you learned that you would have to do
21 that.
22 A. We had been told by the Department privately before
23 then, but, yes, at the beginning of August we were
24 formally told by the Minister or by the Department we
25 would need to.
26 Q. You make the point that the environmental impact study
27 was required to cover the bridge to Hindmarsh Island.
28 A. That's correct.
29 Q. As well as the extensions to your existing marina.
30 A. That is correct, yes.
31 Q. There was no doubt about that.
32 A. No doubt about that.
33 Q. You needed to engage, I take it, then the consultant to
34 help you do such a study.
35 A. Yes, in fact, we had used the services of Nadia McLaren
36 earlier than that in our putting together our
37 application to the State Planning Authority in the year
38 earlier and she had put in quite a bit of effort into

1 that. So, she wasn't completely new to the project, put
2 it that way.

3 Q. And she was an independent consultant, was she not.

4 A. Yes, well, that was her expertise. She was doing these
5 sort of things and environmental reports for the
6 Government, companies like Santos and the like, on a
7 continuing basis. And she was held in particularly high
8 esteem.

9 Q. You make the point in the middle of p.4 that you
10 appreciated that your environmental impact study had to
11 deal with issues of Aboriginal heritage.

12 A. Yes, once we got down to the issue of an EIS, the Major
13 Projects Unit or whatever they were called, Major
14 Projects and Assessments Branch, gave us a list of
15 things that they felt needed to be covered, of which
16 Aboriginal heritage was one of many, many issues which
17 we had to cover within the EIS process.

18 Q. Were you, as your statement indicates, indeed having
19 discussions with the Aboriginal Heritage Branch of the
20 Department, at that stage.

21 A. Yes, they were, in fact, the floor below the - I think,
22 from memory, the Major Projects and Assessments Branch.
23 And I - they introduced me to the people who - I can't
24 remember who it was now, but I was - and I was told then
25 that I would have to, you know, put considerable effort
26 into this issue, which we did. And the first - their
27 suggestion was that we would need to go and talk to Jean
28 and Henry Rankine. I knew Henry, in particular, through
29 other issues for over quite, you know, some period of
30 time. So, that wasn't a difficulty.

31 Q. You don't remember who it was that told you they were
32 the people you needed to consult with.

33 A. No, but it came out of the Branch.

34 Q. The Aboriginal Heritage Branch.

35 A. The Aboriginal Heritage Branch, yes.

36 Q. You recall you had had previous contact with Henry
37 Rankine.

38 A. Yes, and Jean, but more particularly Henry, yes.

- 1 Q. What, in connection with your development on Hindmarsh
2 Island.
- 3 A. No, I was the Chairman of the committee that put
4 together the bicentennial project at Signal Point and in
5 that there was or there is a substantial Aboriginal
6 component of which Henry Rankine was the main informant
7 of putting that together. So, through that, I had
8 become very aware of what going on in the area.
- 9 Q. As a result of being referred to the Rankines, you
10 telephoned Henry Rankine at Point McLeay.
- 11 A. Yes, Point McLeay, yes.
- 12 Q. I think you made, as your statement makes clear, you
13 made arrangements to meet him at Murray Bridge on
14 Saturday, 2 September.
- 15 A. That's correct. He was taking the football team - or he
16 and Jean were taking the football team to Karoonda. And
17 he said 'Don't come down to Point McLeay. It will be
18 much easier, I will be in Murray Bridge driving
19 through.' So, it was at his instigation we met at
20 Murray Bridge. It was a convenient stop on his way to
21 Karoonda. We met. He had the boys at a park just
22 adjacent to the main street. And I had Nadia McLaren
23 with me and we met with Henry and Jean for at least an
24 hour, possibly longer, at which we discussed, not only
25 our extensions on Hindmarsh Island, but also the
26 bridge. We talked about numerous other subjects, like
27 Granite Island and its feeling or Jean's feeling on
28 that. A site behind what is now known as Raukkan. He
29 was very forthcoming.
- 30 Q. So you met in a park, I think, did you.
- 31 A. That's correct, yes.
- 32 Q. Whilst the football team were frolicking around
33 elsewhere, were they.
- 34 A. It wasn't a football-type park. It was a garden-type
35 park. I think it had a toilet block in it and that was
36 probably the main reason.
- 37 Q. That was quite an informal meeting then, was it.
- 38 A. Yes, it was informal. Certainly it was outside, sitting

1 on a park bench, having, you know, an hour plus
2 discussion.

3 Q. You make the point, at the bottom of p.4, that you told
4 or advised Henry and Jean of the nature of the marina
5 extensions and the bridge proposal.

6 A. That's correct, yes.

7 Q. So, there is no doubt that you conveyed then to the
8 Rankines that the bridge was in the offering at
9 Hindmarsh Island.

10 A. Absolutely none whatsoever, because I talked about the
11 fact that we had decided to deflect the bridge to
12 Crystal Street, or what was known then as the Crystal
13 Street alignment with the view that it would take it
14 further away from the wharf for a variety of reasons.
15 In my view, I thought that was a better point, a better
16 place for it to go to. And, as I say, we discussed the
17 matter. And, as I say, he had been backwards and
18 forwards to Goolwa. I had met him there and so on, but
19 his primary concern was, and I still think it is by
20 listening to the evidence, that of skeletal remains.

21 Q. And what of Hindmarsh Island itself: apart from skeletal
22 remains, were there any other concerns.

23 A. He didn't speak very likely of Hindmarsh Island, at the
24 time. He thought that was a fairly barren area, but he
25 was more concerned about Granite Island, which, as I
26 understand, is a registered site. And he was concerned
27 that there wouldn't be any development on Granite
28 Island. And therefore it amazes me that there is now
29 development on Granite Island.

30 Q. Already, of course, Vanessa Edmonds had done her
31 archaeological survey, hadn't she. At least, the first
32 one.

33 A. Yes, she had done the first one.

34 Q. I think you told Henry Rankine that you would get a copy
35 of it and send it to him.

36 A. That's correct, yes.

37 Q. Was there talk of tourism.

38 A. Yes.

1 Q. Benefits to Point McLeay.

2 A. That's right. Henry was concerned about the fact that
3 Point McLeay was - wasn't getting anywhere, as he saw
4 it, in commercial terms, but he saw they had an
5 interesting possibility there. There had been a jetty
6 there. The paddle steamers came and went from there, on
7 a regular basis, but that it had been destroyed in a
8 storm many years earlier and never been replaced. And
9 he said 'The white advisers keep us at a point where we
10 can never become self-funding and self-reliant and
11 therefore become a true freestanding commercial
12 operation in its own right.' And he felt that there was
13 great scope for people to come in once again and see
14 what they had at Point McLeay to offer. Together with,
15 I presume, artefacts and other things that they would
16 sell.

17 Q. And a marina such as you were proposing already - it was
18 already under way, of course, the marina, wasn't it.

19 A. Yes.

20 Q. Would facilitate something like that, as you saw it.

21 A. It would, because we would be providing the necessary
22 back-up services that you need for boaties. They need
23 to know that there is an adequate radio network covering
24 the geographic area that people wanted to sail in or
25 back-up rescue boats. People get into trouble. Bear in
26 mind, a lot of people who go into a commercial marina
27 buy a boat possibly on impulse or probably without much
28 experience and, for them to feel their way around, they
29 need to know that there is a very adequate back-up
30 operation available to them. So, not many people, at
31 that time, would like to go sailing into Lake
32 Alexandrina, less into Lake Albert, because they were
33 seen as being difficult waters, because there was no
34 back-up, if you got into trouble.

35 Q. Would it be the case that the marina would offer
36 encouragement for boaties -

37 A. Yes.

38 Q. To yachtspeople or whatever to go to destinations such

1 as Point McLeay.

2 A. That's correct. And, for a marina to be successful, you
3 need destinations.

4 Q. How do you get there from your marina.

5 A. It is around there (INDICATES), past Point Sturt and you
6 head off in an east-northeasterly direction from Point
7 Sturt and it is about, I don't know, 3 miles, something
8 like that.

9 Q. Would you show me.

10 A. You would get out of the marina here (INDICATES), come
11 around here (INDICATES), following around here
12 (INDICATES), past Clayton (INDICATES), down the channel
13 (INDICATES). These are all beacons (INDICATES), so you
14 can easily follow it. And then Point McLeay is just
15 about here (INDICATES). So, it is not far away.

16 Q. In favourable wind, you could get there and back in day,
17 or not.

18 A. You might get favourable wind one way, yes. You would
19 easily do it in a day and back again, if you chose to,
20 given the right conditions, yes.

21 Q. Was that the sort of thing you discussed with Henry
22 Rankine in the park in Murray Bridge.

23 A. Yes, very much so. I think he had seen that - with his
24 involvement at Signal Point, that there was a good, you
25 know - he could do much the same sort of things. That
26 he had the wherewithal to build on a
27 tourist-cum-commercial development.

28 Q. I think, subsequent to that meeting, you sent a letter
29 to Henry Rankine, dated 4 September 1989.

30 A. That's correct.

31 Q. Which is document no.16.

32 A. That's correct.

33 Q. That enclosed the Vanessa Edmonds report.

34 A. Yes.

35 Q. The first one.

36 A. Yes.

37 Q. But you needed a follow-up meeting, if that letter is a
38 reliable indicator.

1 A. That's correct. And that is the meeting that Wendy gave
2 evidence on this morning.

3 Q. Why was a follow-up meeting necessary.

4 A. Nadia wanted to follow up more information on the
5 Aboriginal heritage issue. She also was trying to get
6 more general information on the lakes. What they were
7 like. This was all part of getting her background
8 material necessary for the EIS. And she also had
9 another job to do for us, which took her via that area,
10 anyway.

11 Q. And you mention in that letter, don't you, the tourism
12 points that you have just made to us.

13 A. Yes, precisely.

14 Q. You didn't attend that meeting on the 14th, did you.

15 A. No.

16 Q. I think Nadia McLaren, after that meeting, went ahead
17 and prepared the draft EIS.

18 A. That's correct.

19 Q. In which she included a section, namely, 6.5.1, on
20 Aboriginal heritage issues.

21 A. That's correct.

22 Q. In October 1989, there was a move relating to the
23 bridge, wasn't there.

24 A. Yes, I think things had moved along to the point where
25 the Government said they would be prepared to help fund
26 the bridge. Providing the bridge was taken over by the
27 Distinct Council of Port Elliot and Goolwa, who would
28 take over the ownership and the maintenance of the
29 bridge, the Government agreed to build it. In other
30 words, I think part of the rationale behind that was
31 that the bridge is not connected to a highway and
32 therefore it was going to be an isolated piece of road,
33 as far as the Highways Department were concerned, in
34 relation to the rest of the road system, because it -
35 that is only a local road that comes to the bridge and
36 it is a local road that goes beyond the bridge.

37 Q. So, it was a question of maintenance.

38 A. Yes.

1 Q. And ownership.

2 A. Yes.

3 Q. But had the question of who was to finance and the erect
4 the bridge been settled, at that stage.

5 A. This was one of the considerations of cabinet and
6 cabinet was taking it on the basis that they would fund
7 half the cost of the bridge.

8 Q. I think documents 17 and 18 are a combination of
9 articles.

10 A. That's correct.

11 Q. In the Southern Argus, the Victor Harbor Times.

12 A. That's correct.

13 Q. In October, and the News and the Victor Harbor Times.

14 So, there are four articles there in documents 17 and
15 18. There is an article there, isn't there, 'Boating
16 industry finds world markets.'

17 A. That's correct.

18 Q. That is not really relevant to our investigation here,
19 is it.

20 A. No.

21 Q. At that time, that is late 1989, what was your position
22 in relation to the bridge.

23 A. We were doing the EIS for the bridge. The Government
24 was, at that stage, still trying to work out how the
25 bridge was going to be funded, if I remember correctly.
26 They had indicated they would pay half the cost of the
27 bridge and, right at the last minute, they said to us
28 'You will have to pay the other half of the cost of the
29 bridge.' And then they went further than that later on
30 and they said 'You will have to take all the risk for
31 the bridge.' So, there were fundamental changes.

32 Q. Was your position that you weren't pushing very hard for
33 a bridge, in the light of that, at the end.

34 A. Our traffic figures that we had done for the EIS showed
35 that a bridge wouldn't be necessary straight away. That
36 there were alternative means that would have meant that
37 a bridge wouldn't have had to be considered at the
38 beginning of the development. Because I think you have

1 to concern yourself about the costs of infrastructure
2 stuck on to the front of a development, as far as the
3 funding model is concerned. And it was necessary to
4 create a cash flow before you took it on. And there
5 were ways and means to do that. As we saw it, you could
6 have had a wider ferry. There were a number of
7 suggestions that we had canvassed, at that point in
8 time. But because of, I believe, the issue in 1987 over
9 the permit issue, the Government was absolutely fixed on
10 the issue of the bridge.

11 Q. So that paragraph in your statement at p.5, about .8.

12 A. Yes.

13 Q. `At this time, we were not pushing for a bridge.'

14 A. That's correct.

15 Q. Is that correct.

16 A. That's correct.

17 Q. And we are talking about late 1989, are we.

18 A. Yes, we were still talking about the possibilities of a
19 wider ferry, a tandem ferry and things like that.

20 Q. As that paragraph continues `We, in fact, told the
21 Government that a tandem ferry could cope and a bridge
22 was not going to be needed for several years.'

23 A. That's correct.

24 Q. And you came up with a range of alternative suggestions.

25 A. Yes.

26 Q. But not a second ferry.

27 A. No, a second ferry makes it very difficult for boating.

28 It would be just chaotic. It was one of the reasons why
29 the people who have suggested it obviously haven't
30 really considered the issue. It would just be
31 illogical.

32 Q. You would always have a ferry in the middle of the
33 river, as it were.

34 A. Yes, you would never get any boats through. You don't
35 need to be Einstein to work that out.

36 CONTINUED

- 1 Q. At about this time, late 1989, you received formal
2 notification of what you already well knew, namely, that
3 you would have to come up with an environmental impact
4 study.
- 5 A. That's correct.
- 6 Q. Document number 19 is in fact the draft environmental
7 impact statement, it being a large document.
- 8 A. Yes.
- 9 Q. The document just sets out its front page and then 6.5,
10 being the canvassing of heritage issues and, in
11 particular, Aboriginal heritage issues.
- 12 A. That's correct, yes.
- 13 Q. In early November of 1989, that draft environmental
14 impact statement was placed on public display and
15 advertised in the 'Advertiser' and the 'Victor Harbor
16 Times', is that correct.
- 17 A. That's correct, yes.
- 18 Q. Documents 20, 21 and 22 show that, don't they.
- 19 A. Yes.
- 20 Q. So we have the 'Advertiser' of 4 November 1989, which is
21 document 20.
- 22 A. Yes.
- 23 Q. We have got articles in the 'News'.
- 24 A. Yes.
- 25 Q. Of 6 November and the -
- 26 A. 'Southern Argus'.
- 27 Q. Is it the 'Southern Argus'.
- 28 A. Yes.
- 29 Q. Showing an artist's impression, or whatever you like, of
30 the bridge going across the river.
- 31 A. Yes.
- 32 Q. In both papers, is that right.
- 33 A. Yes, that was out of EIS. It was a simulated
34 photograph. That, by the way, is showing it on the
35 Crystal Street alignment, not on the Brooking Street
36 alignment.
- 37 Q. Then 8 November, what paper is that, the 'Victor Harbor
38 Times'.

- 1 A. Yes.
- 2 Q. Again featuring an artist's impression of the bridge.
- 3 A. That's right.
- 4 Q. And how it would span the river between Goolwa and
5 Hindmarsh Island.
- 6 A. Yes.
- 7 Q. So we have the `Advertiser', the `Argus', the `News',
8 all showing pictures of it. Is that right.
- 9 A. That's correct, yes.
- 10 Q. The next event, as is shown in document 23, is a public
11 meeting on Tuesday, 5 December 1989 at the Centenary
12 Hall in Goolwa.
- 13 A. That's correct. That's a draft of the advertisement
14 that was placed.
- 15 Q. So document 23 is a draft advertisement for that public
16 meeting.
- 17 A. That's correct.
- 18 Q. That was a public meeting called to discuss the proposal
19 to build the bridge to Hindmarsh Island in association
20 with the marina extensions.
- 21 A. That's correct.
- 22 Q. And the waterfront development.
- 23 A. Yes.
- 24 Q. It gave the public, as it were, an opportunity to come
25 and express their views about the proposal to build the
26 bridge, and to expand the marina and create 880
27 allotments.
- 28 A. That's correct, yes. That's part of the accepted
29 process by the State Government with any EIS.
- 30 Q. That public notice also featured a mention of the draft
31 environmental impact statement being on public display.
- 32 A. Yes.
- 33 Q. And the public having until 18 December to put in their
34 views about the proposal.
- 35 A. That's correct.
- 36 Q. Did you go to that meeting on 5 December 1989.
- 37 A. Yes. I spoke, together with Steven Haines, who was the
38 Director of Planning at that time.

- 1 Q. Was that well attended.
- 2 A. At least 300 people, so I am told.
- 3 Q. Did the public have some input into the meeting.
- 4 A. Yes. The local people were very concerned in Goolwa
5 that the bridge was going to come inland, on the Goolwa
6 side, at Crystal Street. That would then put traffic in
7 that part of the town around Crystal Street, and there
8 was considerable objection to that. In fact, really the
9 whole night was taken up, you could say, 90 per cent or
10 more concerned the Crystal Street alignment and very
11 little else was discussed.
- 12 Q. Can you tell us whether you can recall any Aboriginal
13 people being at that meeting.
- 14 A. I don't remember any being there. With that number of
15 people, I couldn't.
- 16 Q. By this time, had you embraced the notion of a bridge
17 yourself, as the developer.
- 18 A. Well, we had no alternative, we had to embrace it.
- 19 Q. Remember you told us that in late 1989, that is around
20 about October, November 1989, you were not pushing for a
21 bridge yourself.
- 22 A. No, we certainly weren't, but we were being pushed for
23 it. The only way it was going to go ahead was with us
24 being involved building the bridge.
- 25 Q. Why do you say that.
- 26 A. That was the government's proposal in October.
- 27 Q. We know that some six weeks was allowed for public
28 response to the draft EIS, that is, until 18 December
29 1989.
- 30 A. That's correct.
- 31 Q. Were there any public responses.
- 32 A. Yes. There were 77 public responses, together with the
33 Government department and agency responses, and it
34 became our responsibility, in which Nadia obviously
35 played the largest part, of analysing all those
36 responses, and each issue raised in the responses,
37 whether they be public or government, had to be answered
38 in the supplement, and that was attended to. We were

1 advised by the department, their assessment of the
2 responses from the public were interesting in that 35 of
3 the 77 were in favour of the bridge; a further 12 wanted
4 the bridge alignment to be moved, that is from Crystal
5 Street; a further 12 didn't mention the bridge; and out
6 of the 77, only 18 voiced any objection to the bridge.
7 So I think that clearly shows there was very small
8 public opposition to the bridge.

9 Q. In December 1989, Aboriginal skeletal remains were
10 discovered by a boat owner near an unused and landscaped
11 area of the marina at Goolwa.

12 A. That's correct.

13 Q. The skeleton was exposed as a result of wave action by
14 the river.

15 A. Only part of it.

16 Q. When you found out about it, you notified the local
17 police, the Rankines and Aboriginal Heritage Branch.

18 A. That's correct. A portion of the bone was taken back to
19 Adelaide, and I believe it was dated, and it was of a
20 female they thought about 25 years of age, and had been
21 buried for 300 or 400 years.

22 Q. You received advice from the Aboriginal Heritage Branch.

23 A. Yes.

24 Q. And that advice was to cover the remains with sand.

25 A. That's correct.

26 Q. And to protect the site from further erosion.

27 A. Yes. As it was on the outer edge, on the river
28 frontage, they asked us to stone it up in such a way
29 that it wouldn't be eroded again, and then to backfill -
30 the piece of bone was replaced by Vanessa, and after
31 that it was back-filled with sand, and I think today it
32 would be impossible for anybody to identify exactly
33 where it is if they want to. It is just merged into the
34 cliff face.

35 Q. As you make clear in your statement, you were
36 subsequently given, by Vanessa Edmonds, a note about the
37 matter which had been given to her by Dr Neale Draper of
38 the Aboriginal Heritage Branch.

1 A. That's correct, yes.

2 Q. Just disposing of that topic, in late 1993, Dr Draper
3 again inspected this site with members of the Lower
4 Murray Aboriginal Heritage Committee.

5 A. That's correct, yes.

6 Q. They were very much satisfied with the work that you had
7 done and the state of the area.

8 A. He came back into the marina office and told us that,
9 yes, they had been there, they had looked at it and they
10 were happy with the situation, and it had completely
11 grown over and I don't think, once again, you could
12 exactly tell where it was.

13 Q. In late 1989, after the Aboriginal Heritage Branch of
14 the Department of Environment and Planning had received
15 the draft EIS, you were advised that you needed to get
16 another archaeological report and an anthropological
17 report.

18 A. That's correct, yes.

19 Q. I think Vanessa Edmonds was recommended to you, was she.

20 A. That's correct, yes.

21 Q. And Rod Lucas was recommended to you.

22 A. Yes.

23 Q. Both by the Aboriginal Heritage Branch.

24 A. Yes. That was verbally and then later on we got a
25 letter confirming it, which we come to shortly.

26 Q. You engaged Vanessa Edmonds in late December 1989.

27 A. That's correct, yes.

28 Q. Looking at document number 24 of Exhibit 178, that shows
29 your letter to Vanessa Edmonds dated 21 December 1989.

30 A. That's correct, yes.

31 Q. You enclosed a plan for Vanessa Edmonds.

32 A. Yes.

33 Q. You also made mention of the skeletal remains that had
34 been discovered.

35 A. Yes. I think the important issue was Mr Draper also
36 raised the matter investigating the area of the river on
37 the Goolwa side between Brooking Street, and that is the
38 existing ferry crossing, and to the north to the

- 1 shipyard, as our proposed bridge will cross the bank on
2 line with Crystal Street'. So they gave an instruction
3 to look at quite a wide area on the other side.
- 4 Q. So that letter of 21 December 1989, which is item number
5 24 of the Exhibit, makes mention of the fact that Draper
6 at least alerted himself to the need for investigating
7 the area on the Goolwa side.
- 8 A. That's correct.
- 9 Q. Is that right.
- 10 A. Yes.
- 11 Q. I think the requirement to have an archaeologist and an
12 anthropologist was repeated to you in the Government
13 comments on the draft EIS.
- 14 A. That's correct, yes.
- 15 Q. Is that document number 25 and dated January 1990.
- 16 A. Yes, that's correct. That was a series of questions on
17 various subjects and it was a consolidation, I presume,
18 of all Government departments, it was done by the major
19 assessments branch.
- 20 Q. On p.2 we have the government comments relating to
21 Aboriginal heritage.
- 22 A. That's correct.
- 23 Q. You spoke, I think, personally with Vanessa Edmonds
24 about her brief, didn't you.
- 25 A. That's correct, yes.
- 26 Q. Her brief wasn't really from you, was it.
- 27 A. No.
- 28 Q. It was from.
- 29 A. The department.
- 30 Q. And, in particular.
- 31 A. I think from Dr Neale Draper. That's what she led me to
32 believe, but, you know, I am not in a position to know
33 how you brief an anthropologist or an archaeologist or
34 anybody. The same as you couldn't brief a doctor, I
35 suggest. You have got to rely on somebody who is expert
36 in that field.
- 37 Q. What did she tell you about that briefing.

- 1 A. She had been told, as she confirmed in my letters, that
2 she had to look at both sides of the river with the
3 bridge approaches and confirm that area. She told me
4 that Dr Draper, who she had spoken to, said that she was
5 to contact Jean and Henry Rankine about the burial of
6 the skeletal remains, and bear in mind that she brought
7 back down a bone from the skeleton that had been found a
8 week earlier and needed to work out - confirm that it
9 was properly dealt with. He then said at that stage
10 that he advised her that Rod Lucas would be doing an
11 anthropological report, so there was no need for her to
12 work or talk directly with the Aboriginal people. That
13 surprises me when you perhaps reflect on it now, because
14 we didn't talk to Rod Lucas until some weeks later, two
15 weeks later.
- 16 Q. So, in effect, Vanessa Edmonds told you that Draper had
17 deflected her from -
- 18 A. Yes.
- 19 Q. Consulting with Aboriginal people other than in
20 connection with the skeletal remains.
- 21 A. Absolutely, and that there was going to be an
22 anthropological report done, and he was advising her it
23 would be Rod Lucas.
- 24 Q. Who paid for Vanessa Edmonds' report.
- 25 A. We paid for it.
- 26 Q. She therefore sent her report to you under cover of her
27 letter dated 23 January 1990.
- 28 A. Yes.
- 29 Q. We have leapt ahead there. That is document 29.
- 30 A. Yes, it is.
- 31 Q. Letter from Vanessa Edmonds to you dated 23 January
32 1994.
- 33 A. Yes. She says 'I have sent one copy to Neale Draper,
34 Aboriginal Heritage Branch; another to Point McLeay
35 Community Council; and one to Mr George Trevorrow at the
36 Ngarrindjeri Lands and Progress Association, Camp
37 Coorong; and I have kept one copy for my own records'.

- 1 Q. We are not looking at the report at the moment of
2 Vanessa Edmonds. Do you recall whether, at least in its
3 introductory pages, it is set out that there was,
4 amongst other proposals, a proposal for a bridge. If
5 you don't know, don't worry.
- 6 A. No, I can't. I don't think it matters. That is covered
7 with her instructions from us. That's covered in her
8 discussions from Neale Draper. And the very fact that
9 she was over on the other side of the river doing it,
10 she must have known, otherwise she wouldn't have been
11 there. She was there because of the Crystal Street
12 alignment.
- 13 Q. Copies of the report, her report, went to you, to
14 Draper, to the Port McLeay Community Council, went to
15 George Trevorrow of the Ngarrindjeri Lands Progress
16 Association and Camp Coorong.
- 17 A. No, not Camp Coorong, that should be at Camp Coorong.
- 18 Q. I think as your statement makes plain in the middle of
19 p.7, you were told by the Aboriginal Heritage Branch
20 that you needed to lodge an application under s.12 for
21 clearance to carry out - that is s.12 of the Aboriginal
22 Heritage Act.
- 23 A. Yes.
- 24 Q. For clearance to carry out work on the site.
- 25 A. Regardless of what happened with our planning authority,
26 we had to get an Aboriginal heritage determination
27 pursuant to s.12 and we lodged that on 3 January 1990.
- 28 Q. Looking at document 26, that is your application under
29 the Aboriginal Heritage Act.
- 30 A. That's correct.
- 31 Q. That had enclosed in it your plan for the development.
- 32 A. That's correct.
- 33 Q. You then, of course - you have made the point before
34 that you were told you had to get not only an
35 archaeological report, but also an anthropological
36 report, and so you set about engaging Rod Lucas.
- 37 A. Yes. We - well, the department had told me previously
38 that the consultant they are suggesting to me was Rod

- 1 Lucas. And I don't know now whether I rang him and
2 asked him, talked to him about it and he came out to
3 North Adelaide or our office, or how that happened.
4 Anyway, the point was that we met him in North Adelaide
5 on 9 January.
- 6 Q. He provided you, I think, with a working brief.
7 A. That's correct.
- 8 Q. Which was in the form of a letter to you.
9 A. Yes.
- 10 Q. And that letter is dated 10 January 1990.
11 A. That's correct.
- 12 Q. If the letter is any indication, it appears that he sent
13 a copy of that letter to Suzie Hutchins of the
14 Aboriginal Heritage Branch.
- 15 A. That's correct, yes.
- 16 Q. Suzie Hutchins is an Aboriginal lady, I think, is she
17 not.
18 A. That's correct, yes.
- 19 Q. And she also is - do you know whether she has any
20 professional qualifications.
21 A. I think she does, but I'm not sure.
- 22 Q. That document sets out, as it were, the brief of Rod
23 Lucas, doesn't it.
24 A. Yes. I think the important thing is that he says he is
25 doing an anthropological report, a report on the
26 anthropological issues relating to Hindmarsh Island in
27 the mouth of the River Murray, or the River Murray
28 Mouth.
- 29 Q. Additionally, he set himself the task of consulting with
30 the community.
31 A. That's correct.
- 32 Q. In particular the community at Raukkan.
33 A. Yes.
- 34 Q. The traditional owners, descendants and the significance
35 in - contemporary significance of use of Hindmarsh
36 Island.
37 A. Of Hindmarsh Island, that's correct, yes. He is also
38 going to take to the Ngarrindjeri Tendi in Meningie and

- 1 he went to the South Australian Museum's family history
2 project staff and talked about genealogies. And I think
3 there is reference there where he met Doreen Kartinyeri.
4 At that time, she was working on the Rankine genealogies
5 at the time.
- 6 Q. I think we have, there is also Mr Lucas's invoice.
7 A. That's correct, yes.
8 Q. For his work.
9 A. Yes. I think the date - that the date's different. It
10 was 1990, not 1989.
11 Q. On 30 January 1990, Rod Lucas delivered his report to
12 you, did he not.
13 A. That's correct.
14 Q. His invoice makes it clear, I think, that or indicates
15 that he lodged a copy of his report with the Aboriginal
16 Heritage Branch.
17 A. That's correct.
18 Q. Indeed, the invoice seems to have written on it Tom
19 Trevorrow's name.
20 A. Yes.
21 Q. Do you know why that is the case.
22 A. No. The only thing I can think of, he gave me, amongst
23 the copies he gave me one that was unbound with a view
24 that it could be photostated and whether we wanted to
25 send another copy down to Trevorrow, I don't know.
26 Q. You are unable to say whether or not Tom Trevorrow
27 received a report of Lucas.
28 A. No, I can't.
29 Q. You read Lucas's report on receipt.
30 A. Yes.
31 Q. Amongst other things, he concluded that there were no
32 mythological or cultural issues relating to Hindmarsh
33 Island.
34 A. He says that there is no mythological extant in relation
35 to Hindmarsh Island.
36 Q. I've actually jumped a topic. Can I take you back to
37 document 28. Document 28, I think, is a letter from Mr
38 Ware, the manager of the Aboriginal Heritage Branch to

1 your company dated 12 January 1990.

2 A. That's correct, where he talks about the proposed
3 development as outlined in the draft Hindmarsh Island
4 Bridge marina extension of waterfront development EIS
5 and goes on later to say that 'I've enclosed a copy of
6 the branch register of consultants for your convenience.
7 The branch recommends, Mr Rod Lucas anthropologist and
8 Miss Vanessa Edmonds archeologist as suitable
9 consultants for this project. Any site reports for this
10 area held by the branch will be made available to the
11 consultants engaged'.

12 Q. That is a bit late in the day as you had already engaged
13 these people.

14 A. That's right.

15 Q. On the basis of the oral indication from the branch.

16 A. Correct. That's correct. In fact, that they'd received
17 the briefs and everything else by the time that letter
18 came out.

19 Q. You make the point at the bottom of p.7 of your
20 statement that from the Lucas report you noted that the
21 Ngarrindjeri people would arrange a meeting of
22 Aboriginals with an interest in Hindmarsh Island and
23 after some debate amongst themselves they were going to
24 arrange a meeting with you on Hindmarsh Island.

25 A. Yes. I think it's clear that what they said in respect
26 to Hindmarsh Island the Tendi resolved to contact all
27 those families with an interest in the island and to
28 facilitate a meeting in which those people had made
29 debate amongst themselves the issues of the development.
30 A second meeting would then be arranged with the
31 developer to take place on Hindmarsh Island itself.
32 Now, it's very clear from when you have an opportunity
33 of reading the Lucas report that that meeting was not in
34 any way to do with Aboriginal heritage issues, it was
35 more to do with trying to find out what were the
36 families which had some interest historically in the
37 island and might be interested in it in the future. In
38 fact, Mr Lucas's report gives at the back a list of

1 Aboriginals that they could start following up,
2 following in - he's used a list by Taplin, the Goolwa
3 and Port Elliot clans of 1876, and these came from Steve
4 Hemming, and suggested they are ordered by family or
5 resident groups. Then, presumably, the Tendi was going
6 to follow those up. So, we are still waiting for them.

7 Q. So, no Aboriginal people contacted you.

8 A. No. Well, in reading the report, the important issue is
9 that Rod Lucas says there is no extant mythology which
10 specifies mythological sites on Hindmarsh Island. A
11 clear-cut direction. Then, it goes on to say 'Burial
12 sites are subject to the provisions of the Aboriginal
13 Heritage Act of 1988. The Aboriginal Heritage Branch
14 has statutory responsibility over all action in regard
15 to Aboriginal skeletal remains. Relevant Aboriginal
16 communities or representative bodies should be consulted
17 on any activity in respect to skeletal remains and they
18 should also receive a follow-on report of any such
19 activity'. Which we did and came across the issue and
20 that is what we did.

21 Q. We have got sections of that. Is it the case, as you
22 make clear at the top of p.8, that you understood that
23 these meetings were focusing upon facilitating the
24 Aboriginal people who are having a say in the island.

25 A. Quite correct. You know, by the time this report came
26 out, we'd got our planning approval, we'd already got
27 the approval under the Aboriginal Heritage Act, so
28 events had overtaken them.

29 Q. Taking into account all the reports received and the
30 submissions made, you there produced a supplement to
31 your draft environmental impact statement.

32 A. That's correct.

33 Q. In January 1990.

34 A. That's correct.

35 Q. Was issued in early February 1990.

36 A. Yes.

37 Q. That included a section on Aboriginal heritage.

38 A. Yes.

1 Q. Is that document no.30 in the book.

2 A. Yes, that's right. And in there it says under 13.1: `A
3 determination must be sought under s.12 of the
4 Aboriginal Heritage Act which was the document that we
5 lodged on 3 January, or the request we lodged on 3
6 January'.

7 Q. The major concern expressed in the public meeting of 5
8 December was the question of the bridge alignment.

9 A. That's correct.

10 Q. And that was addressed in the supplement by proposing
11 the alternative bridge alignment along Brooking Street.

12 A. That's right. If that was done as at the instigation of
13 the local council.

14 Q. In March 1990, an assessment report on the draft EIS and
15 the supplement was released by the Department of
16 Planning and Environment and that included comments on
17 Aboriginal heritage issues.

18 A. That's correct.

19 Q. And the assessment report included recommendations in
20 para.2.5 which were, in effect, a repeat of Rod Lucas's
21 recommendations, weren't they.

22 A. Yes. But I think it's important to go back a bit
23 further in that assessment report to 4.6, p.25, where it
24 talks about Aboriginal heritage issues. And it says
25 `The anthropological study of Lucas 1990 is also to the
26 satisfaction of the Aboriginal Heritage Branch'. Then,
27 it goes on to say `It's necessary for the proponent to
28 consult with the Aboriginal Heritage Branch about
29 implementing these recommendations with regard to
30 burial, skeletal remains and the discovery of other
31 material during excavation'. Further, it goes on to -

32 Q. You don't need read all of that out. The two paragraphs
33 there are something which were significant.

34 A. I think the other point was the archaeological study was
35 done to the satisfaction of the department as well.

36 ADJOURNED 4.30 P.M. TO WEDNESDAY, 27 SEPTEMBER 1995 AT
37 10.15 A.M.

