

Our ref: Doc 1848497

9 February 2012

Mr Brett Solomon
Partner, Dibbs Barker
By email: [REDACTED]

Dear Mr Solomon

John Tibaldi

The following points should inform the preparation of your closing submissions:

1. The Manual requires the engagement by a Flood Operation Engineer of a Strategy (W1, W2, W3 or W4) at all times when the dam is being operated during a flood event.
2. The Manual requires the application of strategy W3, at the latest, when the lake level reaches 68.5 m, a point reached by 8am on 8 January 2011.
3. There is evidence that strategy W3, subsequently identified in the March 2011 report as applied from 8am on 8 January 2011, was not applied during the January 2011 flood event, or at the least, not during the period from 8am on 8 January until 3.30pm on 9 January 2011.
4. To the extent that the materials contemporary with the Flood Event (including the situation report of 5.53pm on 8 January 2011 created by Mr Ayre) and prepared in the two weeks after it (including the 'Strategy Summary Log' sent by email by 'Rob' to Mr John Tibaldi at 6.57pm on 15 January 2011 and from Mr Tibaldi to the Duty Engineer account at 7:51pm on 15 January 2011, and the Summary of the Manual prepared by Mr Terrence Malone) do indicate that regard was had to any strategy during that period, they indicate that Strategy W3 was not engaged at 8am on 8 January 2011.
5. All four engineers participated in a conference at 3.30pm on 9 January 2011 in which the current strategy was described as 'operating at the top end of W1 and the bottom end of W2'.
6. Mr Tibaldi was the primary author of the 'Event Decision Making' section of the 'January 2011 Flood Event Report' which formed part of the Ministerial briefing note for the 17 January 2011 emergency cabinet meeting. He had the opportunity to make comments, edits or additions to later drafts of that document.

7. Mr Tibaldi's methodology for the creation of the March 2011 report was to reconstruct what strategies were applicable at different times during the flood event by reference to the data. Mr Tibaldi did not seek the other flood engineers' personal recollections of which strategies they thought they had been in at different times during the flood event. The other three engineers were aware of, and agreed as to, the process which was adopted to prepare the March 2011 report, and knew that it was a post facto reconstruction.
8. Mr Tibaldi was the primary author of sections 2, 10 and 19 of the March 2011 report
9. Mr Tibaldi had a conversation with Mr Ayre, during the period over which Mr Tibaldi was writing the report, about how he might resolve a 'dilemma' he had as to whether the flood engineers had been operating the dam in strategy W2.
10. Having regard to all of the above, all four engineers must have known that the March 2011 report, to the extent that it conveyed the impression that it was an accurate record of the strategies adopted and when they were adopted, was misleading.
11. The Commissioner will be invited to draw the inference from the preceding that there was agreement between all four flood engineers that the March 2011 report would present an account of strategies used, which account they must have known not to be true.

This information may, of course, be amended or added to as a result of the evidence yet to be heard.

Yours sincerely



Kyla Hayden
Executive Director