

# Statement of Keith Roger Davies

Volume 1A  
(1a1 – 1a3 (part))

QFCI

Date:

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Exhibit Number:

921

QUEENSLAND FLOODS  
COMMISSION OF INQUIRY

**STATEMENT OF KEITH ROGER DAVIES**

I, **Keith Roger Davies**, of c/- Level 5, Executive Building, 100 George Street, Brisbane in the State of Queensland, Coordinator-General, solemnly and sincerely affirm and declare:


1. I was appointed to hold the office of Coordinator-General as from 31 January 2011.
2. In response to item 1(a) and (b) of the requirement of the Queensland Floods Commission of Inquiry dated 24 August 2011 addressed to me (*Requirement*), **Annexure 1A**:
  - outlines the Coordinator-General's decision-making process having regard to flood risk in declaring the Abbot Point State Development Area (*APSDA*) and in developing and implementing a development scheme for the APSDA; and
  - includes copies of relevant documents.
3. I was not the Coordinator-General at the time of the declaration of the APSDA or the development and implementation of the development scheme for the APSDA. In the short time available to respond to the Requirement, I have not had the opportunity to review and consider in detail all relevant documents, actions and decisions made. Consequently, I am not in a position to make comment or provide an opinion on the appropriateness of the decisions or actions with respect to these matters.
4. The APSDA has been used as an example in response to the Requirement because the APSDA was affected by the 2010/2011 flood events. Further, during my time as Coordinator-General:
  - a State development area has not been declared; and
  - a development scheme for a State development area has not been approved.

5. In response to item 1(c) and (d) of the Requirement, **Annexure 1B**:
  - outlines the Coordinator-General's decision-making process having regard to flood risk, in declaring the Wandoan Coal project to be a significant project and in assessing that project; and
  - includes copies of relevant documents.
  
6. I was not the Coordinator-General at the time of the declaration of the Wandoan Coal project as a significant project or the assessment of that project. In the short time available to respond to the Requirement, I have not had the opportunity to review and consider in detail all relevant documents, actions and decisions made. Consequently, I am not in a position to make comment or provide an opinion on the appropriateness of the decisions or actions with respect to these matters.
  
7. The Wandoan Coal project has been used as an example in response to the Requirement because the Wandoan Coal project is a significant project located in a flood declared area following the 2010/2011 flood events. Further, during my time as Coordinator-General:
  - I have not declared a project located in the flood declared areas, as a significant project; and
  - I have not completed an assessment of a significant project located in the flood affected areas and issued an evaluation report.
  
8. **Annexure 2** contains my response to item 2 of the Requirement.
  
9. **Annexure 3** contains my response to item 3 of the Requirement. The Coordinator-General's decisions relating to the Ensham Mine Flood Recovery Project were made by a former Coordinator-General, Colin Jensen. In the short time available to respond to the Requirement, I have not had the opportunity to review and consider in detail all relevant documents, actions and decisions made. Consequently, I am not in a position to make comment or provide an opinion on the appropriateness of the decisions or actions with respect to these matters.


10. The information provided in Annexures 1A, 1B and 3 is sourced from the files and records of the Office of the Coordinator-General. Some of this information is publicly available.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1867*.

Signed .

  
**Keith Roger Davies**

Taken and declared before me, at Brisbane this <sup>2<sup>nd</sup></sup> day of September 2011.

  
...  
Connie Patricia Seeto  
Solicitor

**Statement in relation to items 1(a) and 1(b) of the Requirement - Decision-Making process for the Coordinator-General (having regard to flood risk) in declaring a state development area and developing a development scheme for a state development area**

**Background**

- 1 An example of the process of the Coordinator-General's decision making (having regard to flood risk) in declaring a state development area (*SDA*) and developing a development scheme for an SDA is set out below. The example focuses on the decision making process having regard to flood risk for the Abbot Point State Development Area (*APSDA*) which was declared in 2008.
- 2 The process of assessment for a proposed SDA may differ slightly where the SDA is for an infrastructure corridor or specified essential project. However, a general overview of the decision making process having regard to flood risk is as follows:
  - (a) The need for a proposed SDA is identified by Queensland Government policy imperatives to establish areas for industry or essential services.
  - (b) Following the identification of the general location of the proposed SDA, the extent and scope of the proposed SDA is determined through a planning assessment. The assessment reviews the suitability of area of land for the range of activities envisaged for the SDA and defines potential infrastructure requirements.
  - (c) The planning assessment includes amongst other things an examination of flooding constraints of the land in the proposed SDA and the suitability of the land for the proposed use such as heavy industry.

(d) Following identification of the proposed boundaries of the SDA, a development scheme is prepared. In some circumstances the declaration of the SDA and the approval of the development scheme are progressed concurrently however the development scheme, may not be developed until after the SDA is declared. The development scheme, amongst other things, identifies land use precincts and specifies the purpose of the precinct. The process for preparing a development scheme for a SDA involves:

- i. Relevant land use studies including flooding and consideration of environmental, cultural heritage and community values; and
- ii. preparing a land use plan for the SDA including:
  - A. taking the relevant studies into account in deciding future land use;
  - B. identifying the land use precincts including development areas that are largely above specified flood levels;
  - C. identifying the purpose of the precincts;
  - D. specifying the performance standards to which development must apply (does not include flood immunity levels from development as this is taken into account in the precinct designation); and
  - E. articulating the land development assessment process for applications for changes of use.

3 The Coordinator-General then undertakes consultation on the draft SDA and development scheme seeking submissions from the public and from government. These submissions can include comments on flood impacts or risk.

4 The Coordinator-General considers all submissions received and the results of any further planning work undertaken and finalises the draft mapping and development scheme.

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- 5 Where the Coordinator-General then determines it is appropriate, a recommendation is made by the Coordinator-General to the Minister to recommend to the Governor in Council that the SDA is declared and the development scheme is approved. As noted above, in some circumstances, the approval of the development scheme may occur at a date subsequent to the declaration of the SDA.
- 6 The Coordinator-General's decision making process considers flood risk when determining the boundaries of the proposed SDA, as well as when drafting land use precincts within an SDA development scheme. The Coordinator-General relies upon expert reports and planning assessment studies when considering this flood risk.

**Example - Abbot Point State Development Area – consideration of flood risk**

**Background**

- 7 The APSDA was declared in direct response to the *Northern Economic Triangle Infrastructure Plan 2007-2012 (Northern Economic Triangle Infrastructure Plan)* [see **Attachment 1A-1**]. The Northern Economic Triangle Infrastructure Plan is a commitment by the Queensland Government to foster sustainable economic, social and community growth through the emergence of Mount Isa, Townsville and Bowen as a triangle of mining, mineral processing and industrial development. Strategies 19 to 26 of the plan involve establishing an area near Bowen for large scale industries.
- 8 The APSDA is approximately 16,230 hectares and provides for the establishment of industrial development, including infrastructure corridors and essential services.
- 9 The APSDA was declared by the Governor-in-Council on 19 June 2008 under section 77 of the *State Development and Public Works Organisation Act 1971*. The development scheme was developed contemporaneously and was also approved on 19 June 2008.

**Declaring the APSDA and developing APSDA Development Scheme**

- 10 The Northern Economic Triangle Infrastructure Plan identified land adjacent to the Port of Abbot Point as a potential new industrial precinct.

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- 11 A steering committee (comprised of representatives of the Coordinator-General, former Bowen Shire Council, former Ports Corporation of Queensland, SunWater, Queensland Rail, Bowen Collinsville Enterprise Inc and the Mackay State Development Centre) engaged consultants to undertake more detailed studies of the relevant land and assess the suitability of the land for a range of medium to heavy industry.
- 12 In June 2007, the *Bowen-Abbot Point Industrial Land Concept Plan and Infrastructure Plan* [see **Attachment 1A-2**] was completed by Worley Parsons. The objective of the study was to obtain sufficient information for the government on which sound, informed decisions can be made by government and the private sector regarding the land's potential future use.
- 13 The report included an assessment of the potential demand for the land including assessment of existing industry, local resources, competitive advantages and market potential. The report also included a land suitability assessment (in light of potential industrial uses identified by the demand analysis) which included an assessment of various constraints over the land including a review of geology, hydrology, air quality and flora and fauna.
- 14 The report strategically identified a range of potential industries suitable for the area and highlighted constraints to development. One of the recommendations of the report was to undertake further flood modelling and storm surge investigations.
- 15 The Coordinator-General utilised the report to draft an initial development scheme for consultation, identifying potential uses and constrained land.
- 16 As part of decision making process, the Coordinator-General then undertook consultation in relation to the proposed state development area.
- 17 On 24 October 2007, a public notice was placed in the Bowen Independent and The Courier-Mail newspapers announcing the proposed APSDA and draft development scheme. The public notice called for submissions on the proposed APSDA and draft development scheme before 14 November 2007 and advised how and where further information could be obtained. In addition to the public notice, officers of the former Department of Infrastructure and Planning (DIP) engaged with the public through several mechanisms listed below.



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- (a) Letters were sent to stakeholders and land owners within and in the vicinity of the proposed state development area boundary.
  - (b) 250 information brochures were distributed to stakeholders and other interested parties at displays or upon request.
  - (c) Information was placed on the DIP website.
  - (d) Public information sessions were held at the then Bowen Shire Council offices and at the local community shopping centre, Centrepoint Plaza, where over 40 people spoke to representatives from DIP.
  - (e) Information displays were placed at the Bowen and Collinsville Libraries and in the foyer of the Executive Building, 100 George Street, Brisbane.
  - (f) Meetings were held with individual land owners.
  - (g) Meetings were held with Councillors from the then Bowen and Whitsunday Shire Councils.
  - (h) A free call number and general email address were established for public queries. Approximately 20 people contacted the DIP via the free call number or email address during the consultation period.
  - (i) A number of submissions raised concerns about flooding, particularly in the area around Euri creek [see **Attachment 1A-3**].
- 18 In addition to public consultation, a government review was conducted on the proposed APSDA and draft development scheme. Comments from government agencies were sought during the public notification period. Additionally, further comments were sought between January and April 2008 by inviting government agencies to make formal submissions on the proposed APSDA and draft development scheme. A meeting was held on 24 January 2008 with 11 government agencies to ensure a coordinated approach toward the management, future use and potential impacts of industrial development at Abbot Point. Meetings were also held with the former Ports Corporation of Queensland [see **Attachment 1A-3**].

- 19 Maunsell Aecom's *Bowen Abbot Point Flood Modelling Study* [see **Attachment 1A-4**] was completed in March 2008 and included a hydrological model assessment over the proposed APSDA and a land suitability assessment in relation to flooding and flood impacts. The study also investigated the effects of additional runoff from potential development.
- 20 In particular, the study undertook to identify land suitable for proposed industrial development having regard to various flood events. The study noted that the following were critical to industrial development of the area with respect to flooding:
- (a) Large flood free areas for major industrial sites
  - (b) High flood immunity access between industrial sites and port; and
  - (c) Reasonable flood immunity for access between industrial sites and waste disposal areas.
- 21 The study identified some of the study area as not suitable for industrial development due to flooding. In particular, the flood modelling of the proposed APSDA identifies significant flooding east of the Mount Little range. The study also identified suitable locations for industry based on hydrological modelling and flooding constraints.
- 22 This information, together with other findings in the study, findings from the *Bowen-Abbot Point Industrial Land Concept Plan and Infrastructure Plan* and submissions on the proposed SDA and development scheme resulted in an amendment to the proposed APSDA boundary to exclude land east of Euri creek from APSDA.
- 23 The studies also resulted in the identification of areas suitable for industrial development, infrastructure services and access corridors and informed the preparation of the development scheme, including the location of land use precincts.
- 24 The studies and flood modelling undertaken informed the location of land use precincts and the greater APSDA boundaries.

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- 25 The land use precincts in the development scheme, as approved, acknowledge the findings and recommendations of these studies and the need to protect future industrial development from flooding and flood impacts. Accordingly, land in the Industry Precinct is predicted to be flood free in a 1 in 500 year flood event. Furthermore, significant watercourses have been included in the Environmental Management/Materials Transportation Precinct to protect future industrial development from the potential impact associated with flooding, and to manage and protect the ecological function of these watercourses.
- 26 Following the finalisation of the APSDA boundary and the development scheme, the Coordinator-General considered that the public interest or general welfare of persons resident in any part of the State required the declaration of the APSDA.
- 27 On 13 June 2008, the then Coordinator- General, Colin Jensen, approved the progression of the proposed APSDA and proposed APSDA development scheme and made a recommendation to the Deputy Premier, and Governor in Council to declare the area [see **Attachment 1A- 5**]. The Deputy Premier and Minister for Infrastructure and Planning, the Honourable Paul Lucas MP, agreed that the declaration of the APSDA should proceed and approved the development scheme for APSDA [see **Attachment 1A-6 and 1A-7**]. On 19 June 2008, Governor in Council declared the APSDA and approved the development scheme for the APSDA [see **Attachment 1A-8**].
- 28 Since declaration further work has been undertaken to identify the most appropriate location for, and sizing of, indicative development parcels within the central portion of the APSDA, taking into account the opportunities and constraints of the land including flooding. The details of this work are documented in the *Land and Infrastructure Planning Study for the Central Portion of the Abbot Point State Development Area*, completed in November 2010 [see **Attachment 1A-9**]. The study has identified, albeit indicatively, further ecological corridors (including watercourses) to be maintained and others for potential redirection. This more detailed work may be used to assist in the assessment of future development.



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- 29 The Coordinator-General is also responsible for assessing and determining material change of use (MCU) applications for development within SDAs. This process enables the Coordinator-General to consider matters relevant to each MCU which includes flooding.
- 30 To assist the Coordinator-General assessing MCU's in the APSDA, policies similar to those in place for the Gladstone State Development Area are currently being developed. These policies will provide proponents with advice about the studies the Coordinator-General will have regard to when assessing and determining development applications in for MCU within the APSDA. As a result of these policies, proponents will be expected to:
- (a) consider the reports where relevant in the preparation of the development application; and
  - (b) undertake detailed site investigations where necessary to build upon the findings and recommendations in the reports, and demonstrate how the proposal will mitigate potential adverse impacts, including those relating to flooding.

The Office of the Coordinator-General has identified the following relevant documents from its files and records.

<b>No.</b>	<b>Description</b>	<b>Date</b>
1A-1	Northern Economic Triangle Infrastructure Plan 2007-2012	August 2007
1A-2	Bowen Abbot Point Industrial Land Concept Plan and Infrastructure Plan	18 June 2007
1A-3	Proposed Abbot Point State Development Area – Coordinator-General Consultation Report	2008
1A-4	Bowen Abbot Point Flood Modelling Study	March 2008
1A-5	Briefing Note to Coordinator-General – Progression of Abbot Point State Development Area	12 June 2008
1A-6	Briefing Note to Deputy Premier and Minister for Infrastructure and Planning – Declaration of Abbot Point State Development Area	18 June 2008

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1A-7	Briefing Note to Deputy Premier and Minister for Infrastructure and Planning – Approval of Development scheme for Abbot Point State Development Area	18 June 2008
1A-8	Gazette Notice declaring Abbot Point State Development Area and approving the Development Scheme for the Abbot Point State Development Area	20 June 2008
1A-9	Land and Infrastructure Planning Study for the Central Portion of the Abbot Point State Development Area	November 2010

**Statement in relation to item 1(c) and 1(d) of the Requirement**

**Decision-Making process for the Coordinator-General (having regard to flood risk) in declaring a project to be a significant project and in assessing a significant project**

1. An example of the process of the Coordinator-General's decision-making (having regard to flood risk) in declaring a project to be a significant project and in assessing a significant project is provided below.
2. The example focuses on the decision-making process having regard to flood risk for the proposed mining operation on the mining lease application areas and surrounds for the Wandoan Coal project.

**Process of declaring and assessing a significant project**

3. The process of declaring a significant project and assessing a significant project is set out in Part 4 of the *State Development and Public Works Organisation Act 1971 (SDPWO Act)*. It involves the following steps:
  - (a) The proponent applies to the Coordinator-General for the declaration of a project as a significant project. Under s.27AB of the SDPWO Act, the application is required to include an Initial Advice Statement (*IAS*) and certain other information, including information about the potential environmental effects of the project. The Coordinator-General has prepared guidelines for preparing an IAS (last revised June 2011) to outline the expected contents of an IAS [see **Attachment 1B-1**]. Under the guidelines flooding is considered within the management of water resources in section 5.12 (Description of the existing environment - Water) and in section 6.1 (Potential impacts of the project – Natural environment).

- (b) The Coordinator-General considers the proponent's application and, if approved, makes a declaration the project is a significant project under s.26 of the SDPWO Act. The declaration may provide that an Environmental Impact Statement (*EIS*) is required or that an EIS is not required. The Coordinator-General may only make a declaration an EIS is not required if satisfied that appropriate environmental assessments under another Act will be carried out in relation to the project. The Coordinator-General must not make a declaration that an EIS is not required if undertaking the project will result in broad-scale clearing for agricultural purposes.
- (c) If an EIS is required, the Coordinator-General prepares Terms of Reference (*TOR*) for the EIS. The TOR sets out the requirements, both general and specific, that the proponent must address in preparing the EIS. The TOR is prepared through a public process allowing public and government agency comment. The Coordinator-General has developed a generic TOR (last revised 18 July 2011) which is used as a starting point in the development of TORs [see **Attachment 1B-2**]. Flooding and flood impacts are specifically addressed in the generic TOR in section 5.1. (Climate, natural hazards and climate change), in particular in section 5.1.1 (Flood plain management) which requires a comprehensive flood study to be prepared depending on the location of site, and in section 5.4 (Water resources), in particular section 5.4.2 (Potential impacts and mitigation measures).

- (d) The proponent prepares an EIS to address the TOR. Once the EIS has been prepared to the satisfaction of the Coordinator-General, it is released for public and government agency comment. These submissions may relate to flood impacts or flood risks in relation to the project. All properly made submissions and other submissions accepted by the Coordinator-General are forwarded to the proponent, unless confidential. Issues raised in submissions are analysed by the Coordinator-General with specific directions for the proponent to either respond, address through additional work, or note. Proponents may be requested by the Coordinator-General to prepare a supplementary report to the EIS that addresses matters raised in submissions on the EIS.
- (e) The Coordinator-General prepares a report which evaluates the EIS. The Coordinator-General's report will reach a conclusion about the environmental effects of the project and any other related matters, taking into account all of the relevant material including: the EIS and any Supplementary EIS; submissions on the EIS; and other relevant material, such as comments and advice from advisory agencies, technical reports on specific components of the project, and legal advice. Under s.35 of the SDPWO Act, the Coordinator-General may in the report:
- state conditions to apply to approvals under other legislation;
  - make recommendations for approvals under other legislation;
  - impose conditions for the undertaking of the project under the SDPWO Act.

Such conditions and recommendations may relate to flood risks associated with the project, and the measures to be adopted in response to those risks.



### Example - Wandoan Coal project

#### Background

4. The Wandoan Joint Venture (*Proponent*) is proposing a new open cut thermal coal mine with the capacity to produce around 30 million tonnes per annum of run of mine coal, over a 30 year period (*Project*). The Project also includes water and energy supply arrangements for the mines and coal wash plant.
5. The Project is situated in the Surat Basin, immediately west of the township of Wandoan - located in the Western Downs Regional Council area (formerly Dalby Regional Council), in central Queensland. The mine would be located approximately 350 kilometres north-west of Brisbane and 60 kilometres south of Taroom.
6. The Project was declared a significant project in 2007 and was assessed in 2008 and 2009 with a Coordinator-General's report being completed in 2010.

#### Initial Advice Statement

7. The Proponent lodged an initial advice statement (IAS) in December 2007, requesting that the project be considered for declaration as a significant project under Part 4 of the SDPWO Act [see **Attachment 1B-3**].
8. The IAS (s.4.2, Hydrological impacts) noted that "due to the preliminary nature of studies for the proposed Project, a water management system has not yet been developed". This is typical of projects in this early stage of development, during conceptual design, and highlights the need for a full assessment of the issues when preparing the EIS.
9. The Coordinator-General considered the information contained in an IAS prepared by the proponent; relevant planning schemes and policy frameworks; infrastructure impacts; employment opportunities; environmental effects; complexity of local, state and federal requirements; level of investment; and the project's strategic significance in order to determine whether the Project should be declared [see **Attachment 1B-6**].
10. On 21 December 2007, the Project was declared by the Coordinator-General to be a significant project for which an environmental impact statement (EIS) is required pursuant to s.26(1)(a) of the SDPWO Act.[see **Attachment 1B-4**]

**Terms of reference (TOR)**

11. The draft ToR for the EIS were made available for public and advisory agency comment from 16 August 2008 until 15 September 2008 [see **Attachment 1B-5**].
12. Twenty-seven submissions on the draft ToR were received, including one from the Australian Government; fifteen from state government advisory agencies, one from local government, four from local area interest groups and six from members of the public.
13. Four submissions on the draft TOR included comments on flood management. [see **Attachment 1B-7**]. Submissions on the draft TOR were considered and, where appropriate, incorporated in the TOR to ensure flooding was adequately considered in the hazard risk assessment and emergency management plan for the project. The TOR were finalised on 11 November 2008 [see **Attachment 1B-8**].
14. The TOR required the proponent to respond to provide details in relation to various aspects of flood risk and management [see **Attachment 1B-9**].

**Environmental Impact Statement (EIS)**

15. The Proponent prepared an EIS to address the TOR which included baseline studies to establish the qualities of the existing environment (natural, social, economic and built environments) and specific studies to determine the potential impacts of the proposed development on these environmental factors
16. The Proponent submitted its EIS to the Coordinator-General [see **Attachment 1B-10**].
17. The Proponent's response to the flooding elements of the TOR for the Project is set out in the EIS. The EIS was presented in four volumes, including 3 volumes (v.2-4) assessing water supply options:
  - (a) Volume 1, Mining Lease Application (MLA) areas and surrounds;
  - (b) Volume 2, Southern coal seam methane (CSM) water supply pipeline;
  - (c) Volume 3, Western CSM water supply pipeline; and
  - (d) Volume 4, Glebe [weir and dam] option.

18. A detailed *Flood Study Technical Report* was prepared by Parsons Brinkerhoff Australia Pty Ltd, dated November 2006 and provided in support of the EIS.
19. The EIS commits to a creek diversion strategy developed for all creek diversions (EIS, V1, s.11.6.1), as part of the Plan of Operations, a mine site water management system (EIS, V1, s.11.6.2), and a system of proposed diversions and levees on upstream and downstream flood conditions as described in detail in the EIS Flood Study Technical Report (TR 11-2-V1.5).
20. The then Coordinator-General determined that the draft EIS, prepared by the proponent, was substantially in accordance with the TOR and on 1 December 2008 approved its release as the project EIS [see **Attachment 1B-11**]. The EIS was made publicly available for comment from 8 December 2008 until 2 February 2009.
21. Sixty-two submissions were received on the EIS, including: one from the Australian Government, twelve from state government advisory agencies, two from local governments, twenty-three from local area interest groups and twenty-four from members of the public.
22. Nineteen submissions on the EIS included comments on flood management [see **Attachment 1B-12**]. These comments related to the water supply option of raising the Glebe Weir; local vehicle access restrictions during high rainfall and flood events due to road closures or realignments; water quality management at the mine site, especially as it relates to releases of water; levees and creek diversions, especially of Juandah, Woleebee and Mud Creeks (these activities are regulated by the Department of Environment and Resource Management in accordance with the *Water Act 2000* and the *Sustainable Planning Act 2009*) and the application of State Planning Policy 1/03 *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*.

**Supplementary Environmental Impact Statement (SEIS)**

23. In response to public and government agency submissions on the EIS, on 28 August 2009, the Coordinator-General requested the proponent, under s.35(2) of the SDPWO Act to provide additional information about the EIS in the form of a supplementary EIS (SEIS) [see **Attachment 1B-13**]. The request for additional information included a request for further comment on flooding.
24. The Proponent submitted the SEIS [see **Attachment 1B-14**]. The SEIS responded to the submissions relating to flooding and noted that further work had been undertaken by the Proponent in relation to flood modelling. The SEIS also addressed submitter's concerns about maintaining access during flood events by providing that a new two way road crossing would be constructed to improve carriage way width and flood immunity. [see **Attachment 1B-14**]
25. On 15 November 2009, the Coordinator-General invited comments on the SEIS from advisory agencies until 18 December 2009 [see **Attachment 1B-15**] and provided copy of SEIS to persons who lodged submissions for the EIS. A total of 34 submissions on the SEIS were received, consisting of 20 from members of the public and local community stakeholders and 14 from advisory agencies.
26. The issue of flood management was raised in 14 submissions to the SEIS, primarily in relation to local vehicle access restrictions during high rainfall and flood events due to road closures or realignments. [see **Attachment 1B-16**].

**Coordinator-General's Report**

27. Following the receipt of submissions on the SEIS, the Coordinator-General finalised the Coordinator-General's report [see **Attachment 1B -18**].
28. The Coordinator-General's report includes an assessment and conclusion about the environmental effects of the project and the proposed mitigation measures. The report evaluated the EIS, the issues raised in submissions, the SEIS, and the advice received from state and local government agencies and the then Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA—now the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (SEWPaC)) as well as other relevant material, such as comments and advice from advisory agencies, technical reports on specific components of the project and legal advice.

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29. The Coordinator-General considered the management of flood risks for the Project and determined that they could be managed through existing statutory and policy requirements without the need for additional conditions imposed by the Coordinator-General.
30. The consultative process, between the Proponent, the community, the Office of the Coordinator-General and advisory/approval agencies, undertaken during all stages of the EIS process demonstrates the coordinated approach to identify and solve potential environmental issues.
31. On 12 November 2010, the Coordinator-General decided that the project could proceed subject to conditions contained in the Coordinator-General's report [see **Attachment 1B -17**]

The Office of the Coordinator-General has identified the following relevant documents from its files and records.

No.	Description	Date
1B-1	Guideline for Preparing an Initial Advice Statement	June 2011
1B-2	Generic Draft Terms of Reference for an Environmental Impact Statement	18 July 2011 (last revision)
1B-3	Wandoan Coal Project Initial Advice Statement	December 2007
1B-4	Coordinator-General Briefing Note - Declaration of the Wandoan Coal Project as a 'Significant Project'	Signed – 21 December 2007
1B-5	Deputy Coordinator-General Briefing Note - Release of Draft Terms of Reference	Signed – 12 August 2008
1B-6	Wandoan Coal Project Draft Terms of Reference	August 2008
1B-7	Public and Advisory Agency Submissions on the Wandoan Coal Project Draft TOR, relating to flood issues	Various
1B-8	Coordinator-General Briefing Note - Release of Final Terms of Reference	Signed – 5 November 2008
1B-9	Wandoan Coal Project Final Terms of Reference	November 2008
1B-10	Extracts from Environmental Impact Statement	
1B-11	Coordinator-General Briefing Note - Release of Environmental Impact Statement	Signed – 1 December 2008
1B-12	Public and Advisory Agency Submissions on the	Various

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	Wandoan Coal project EIS, relating to flood issues	
1B-13	Deputy Coordinator-General Briefing Note - Request for Supplementary EIS	28 August 2009
1B-14	Extracts from Supplementary Report to the Environmental Impact Statement	
1B-15	Deputy Coordinator-General Briefing Note - Release of Supplementary Report to the Environmental Impact Statement	Signed – 15 November 2009
1B-16	Public and Advisory Agency Submissions on the Wandoan Coal project Supplementary EIS, relating to flood issues	Various
1B-17	Coordinator-General Briefing Note - Release of Coordinator-General's Environmental Impact Statement Evaluation Report	Signed – 12 November 2010
1B-18	Wandoan Coal Project Coordinator-General's Environmental Impact Statement Evaluation Report	12 November 2010

Annexure 2 to the Statement of Keith Roger Davies dated 2 September 2011

**Statement in relation to item 2 of the Requirement – the relationship of an approval granted by the Coordinator-General for a significant project, to the *Sustainable Planning Act 2009* development assessment process.**

### **Background**

1. An overview of the relationship between the Coordinator-General's evaluation report (**CG's report**) for a significant project under section 35 of the *State Development and Public Works Organisation Act 1971* (**SDPWO Act**) and the development assessment process under the *Sustainable Planning Act 2009* (**SPA**) is outlined below.
2. This relationship will be relevant where a significant project involves development requiring an application for a development approval.
3. I have outlined below the potential implications of a CG's report for a significant project on:
  - (a) the integrated development assessment system (**IDAS**) under SPA;
  - (b) the conditioning of development approvals under SPA; and
  - (c) decisions on development applications under SPA.
4. There may be different implications applying to development in a wild river area. I have not covered these in this Statement.

### **Implications for IDAS**

5. To the extent a development application for a significant project is for a material change of use, or requires impact assessment, under SPA:
  - (a) the information and referral stage and the notification stages of IDAS do not apply;
  - (b) there are no referral agencies, however the CG's report is taken to be a concurrence agency response under IDAS; and
  - (c) a properly made submission about an EIS is taken to be a properly made submission about the application under IDAS (unless the application is for a material change of use requiring code assessment)<sup>1</sup>.

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<sup>1</sup> Section 37 SDPWO Act.

**Annexure 2** to the Statement of Keith Roger Davies dated 2 September 2011

6. The decision stage for a development application for a significant project does not start until:
  - (d) if the Coordinator-General is the assessment manager, the Coordinator-General gives the proponent a copy of the CG's report; or
  - (e) if the Coordinator is not the assessment manager, the Coordinator-General gives the assessment manager for the application a copy of the CG's report<sup>2</sup>.
7. Attached is a flowchart illustrating the IDAS process for a development application for a significant project.

**Implications for conditioning of development applications**

8. The CG's report may state conditions that must attach to a development approval for the project<sup>3</sup> (**stated conditions**).
9. The assessment manager must not impose conditions on a development approval that are inconsistent with the Coordinator-General's stated conditions<sup>4</sup>.
10. To the extent the significant project does not involve a material change of use that is impact assessable under SPA, the CG's report may impose conditions for the undertaking of the project<sup>5</sup> (**imposed conditions**).
11. Imposed conditions will prevail to the extent of any inconsistency with a condition imposed on a development approval or other approval that applies to the project<sup>6</sup>.
12. Imposed conditions are treated as if they are a development approval so that a contravention of an imposed condition constitutes an offence under SPA<sup>7</sup>.

**Implications for decisions on development applications**

13. The CG's report may state that, for a development application for a significant project:
  - (a) a development approval must only be granted for part of the development; or
  - (b) a development approval must be a preliminary approval only<sup>8</sup>.

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<sup>2</sup> Section 38 SDPWO Act.

<sup>3</sup> Section 39(1) SDPWO Act.

<sup>4</sup> Section 39(3) SDPWO Act.

<sup>5</sup> Section 54B SDPWO Act.

<sup>6</sup> Section 54E SDPWO Act.

<sup>7</sup> Section 54D SDPWO Act.

<sup>8</sup> Section 39(1) SDPWO Act.



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14. Alternatively, the CG's report may state that the development application must be refused, provided the Coordinator-General is satisfied there are environmental effects that cannot be addressed adequately<sup>9</sup>.

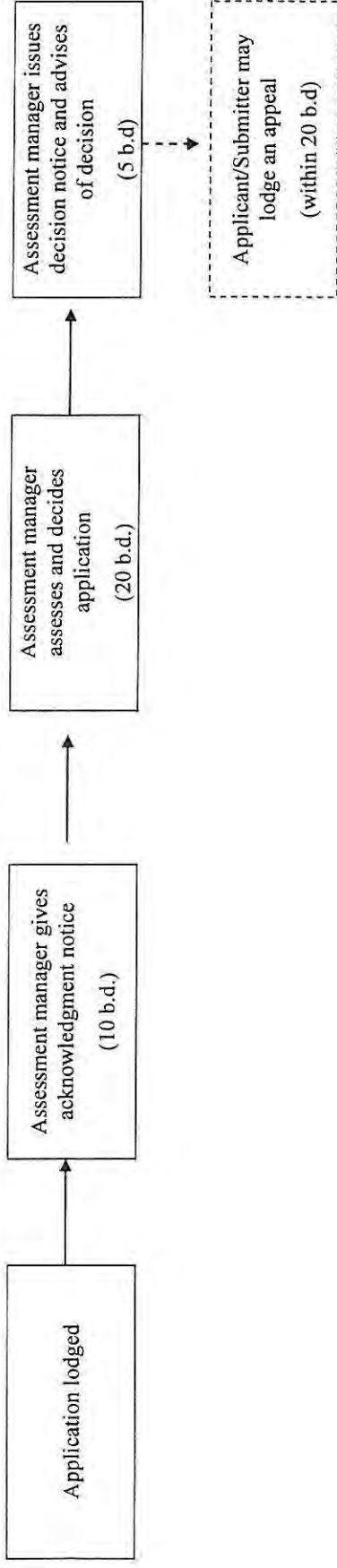
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<sup>9</sup> Section 39 SDPWO Act.

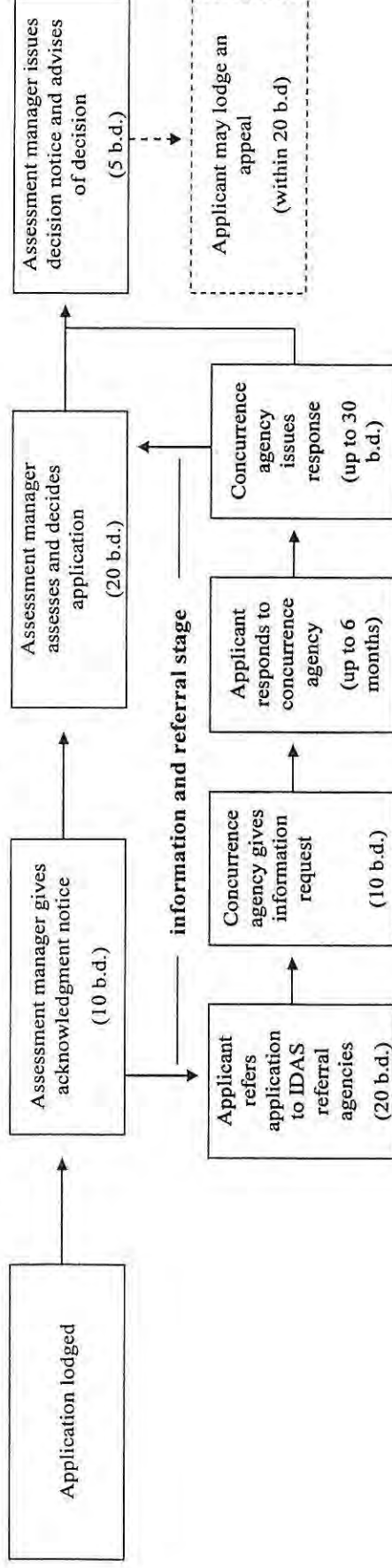


**IDAS process for a development application for a significant project under SDPWO Act\***

**1.1 Applications for material change of use or applications requiring impact assessment**



**1.2 Applications requiring code assessment (other than for a material change of use)**



\* Note that timeframes may differ in certain circumstances (eg. certain timeframes can be extended)

**Annexure 3** to the Statement of Keith Roger Davies dated 2 September 2011

**Statement in relation to item 3 of the Requirement - Decision-Making process for the Coordinator-General issuing Levee Bank Permits to Ensham Resources Pty Ltd**

**Preliminary matters**

1. The Requirement contains the following inaccuracies:
  - (a) the levee bank permit referred to in item 3(a) of the Requirement was issued by the Coordinator-General in August 2008, and not June 2008;
  - (b) the levee bank permit referred to in item 3(b) of the Requirement was issued by the Coordinator-General in October 2008 and not in September 2008, and over Lot 31 CP864573 not Lot 31 CP864513;
  - (c) the Coordinator-General did not issue any levee bank permits to Ensham Resources Pty Ltd (*Ensham Resources*) in August 2010, as referred to in item 3(c) of the Requirement.

**Background**

2. Ensham Resources Pty Ltd (*Ensham Resources*) is the operator of an open cut export coal mine located approximately 30 kilometres east of Emerald in Central Queensland.
3. The mine and surrounding area was inundated by extensive flooding following breaches of the levee banks surrounding the mine on 19 and 20 January 2008.
4. On 15 November 2007, Ensham Resources lodged two applications with the Nogoa River Flood Plain Board (*Board*) for flood levee bank permits under the *Nogoa River Flood Plain Board Local Law (Levee Banks) No 1 1997 (Levee Banks Local Law)* to extend the levee banks at the mine site [see **Attachment 3-5**]. The applications were made as part of the Ensham Mine Flood Recovery Project to reinstate the mine and to reinstate or reconstruct replacement flood protection levees for the mine.
5. The applications related to the following land:
  - (a) Lot 31 CP864573 (*northern levee bank permit application*);
  - (b) Lot 30 CP 864574 and Lot 32 RP 908643 (*southern levee bank permit application*).

**Declaration as Prescribed Project**

6. By letter dated 9 April 2008 [see **Attachment 3-5**], Ensham Resources advised the Deputy Premier and Minister of Infrastructure and Planning (*Minister*) it was experiencing difficulty in obtaining the flood levee construction permits from the Board. Ensham Resources requested assistance from the Minister to expedite the necessary approvals, including the declaration of the Ensham Mine Flood Recovery Project as a prescribed project under Part 5A of the *State Development and Public Works Organisation Act 1971 (SDPWO Act)*.
7. On 14 April 2008, the Minister declared the Ensham Mine Flood Recovery Project to be a 'Prescribed Project' under section 76E(1)(e)(i) of the SDPWO Act. The materials considered by the Minister in making the decision are contained in the briefing note dated 11 April 2008 [see **Attachment 3-5**].
8. The declaration of the Ensham Mine Flood Recovery Project as a 'Prescribed Project' was gazetted on 18 April 2008 in Queensland Government Gazette No. 97 [see **Attachment 3-6**].

**Progression Notices and Notices to Decide**

9. Under the Levee Banks Local Law, the Board was unable to make a decision in relation to Ensham Resources' levee bank permit applications until a report had been prepared by the Director of Engineering Services.
10. On 7 May 2008, Damien Gould, as delegate of the Coordinator-General, issued a 'progression notice' and a 'notice to decide' to the Board pursuant to sections 76I and 76J of the SDPWO Act in respect of the northern and southern levee bank permit applications. The materials considered by Mr Gould in making the decisions are contained in the briefing note dated 30 April 2008 [see **Attachment 3-7**].
11. The progression notices required the Board to arrange for preparation of a report by its Director of Engineering Services about the northern and southern levee permit applications within 20 business days [see **Attachment 3-7**].
12. The notices to decide required to Board to make a decision in relation to the northern and southern levee permit applications within 20 business days [see **Attachment 3-7**].

**Step in Notice**

13. The Board failed to comply with the progression notices and notices to decide.
14. On 1 July 2008, the Coordinator-General, with the approval of the Minister, issued 'step in notices' to the Board under section 76K of the SDPWO Act in relation to the northern and southern levee bank applications. The materials considered by Minister in granting approval to the Coordinator-General to issue the step in notices are contained in the briefing note 19 June 2008 [see **Attachment 3-8**].
15. The step-in notices advised the Board that the Coordinator-General was to make assessments and decisions about the northern and southern levee bank applications.

**Director of Engineering Report**

16. Following the issue of the 'step in notices', the Coordinator-General caused Mr Rob Ayre from Sunwater to prepare a report (*Sunwater Report*) in lieu of the Director of Engineering Services' report.
17. The Sunwater Report was provided to the former Department of Infrastructure and Planning by letter dated 28 July 2008 [see **Attachment 3-13**]. It recommended the Coordinator-General issue the levee bank permits to Ensham Resources, subject to the conditions stated in the report.

**Permit for Southern Levee bank**

18. On 4 August 2008, the Coordinator-General issued a levee bank permit to Ensham Resources for the southern levee bank application. In accordance with s.76Q of the SDPWO Act, a statement of reasons was prepared in relation to the issue of the permit. The materials considered by the Coordinator-General in making the decision to issue the permit and the statement of reasons are contained in the briefing note dated 1 August 2008 [see **Attachment 3-14**].

**Permit for Northern Levee Bank**

19. During the Coordinator-General's assessment of the northern levee bank application, it became apparent the Board had not included the description of the land for the northern bank permit application in its advertisements of the applications [see **Attachment 3-12** and **3-14**].

20. On 4 August 2008, the Coordinator-General approved the re-advertising of the northern levee bank application and on 8 August 2008 advised contiguous landowners of the application and the need to re-advertise the application by letter. The materials considered by the Coordinator-General in making this decision are contained in the briefing note dated 1 August 2008 [see **Attachment 3-14**].
21. On 3 October 2008, the Coordinator-General issued a levee bank permit to Ensham Resources for the northern levee bank application. In accordance with s.76Q of the SDPWO Act, a statement of reasons was prepared in relation to the issue of the permit. The materials considered by the Coordinator-General in making the decision to issue the permit and the statement of reasons for the decision are contained in the briefing note dated 2 October 2008 [see **Attachment 3-18**].

#### **Report Tabled in Parliament**

22. In accordance with s.76R of SDPWO Act, the Coordinator-General prepared a report about the step in notices issued to the Board. The comprehensive report includes statements of reasons for the decisions to issue the permits and the relevant considerations, information and reports taken into account.
23. The Minister tabled the report in the Legislative Assembly on 13 November 2008 [see **Attachment 3-20**]. The report can be accessed from the Queensland Parliament web page at the following addresses:
  - (a) <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2008/5208T4583.pdf>
  - (b) <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2008/5208T4584.pdf>
24. The briefing note dated 3 November 2008 [see **Attachment 3-19**] includes materials considered by the Minister in approving the report and a copy of the report to Parliament.

**Annexure 3** to the Statement of Keith Roger Davies dated 2 September 2011

The Office of the Coordinator-General has identified the following relevant documents from its files and records.

No.	Description	Date
3-1	Power point presentation – Mining the Ensham Resource (Ensham Resources Pty Ltd)	12 March 2008
3-2	Power point presentation – Critical Issues Preventing Ensham Mine Flood Recovery (Ensham Resources Pty Ltd)	28 March 2008
3-3	2008 Flood Recovery Interim Project Execution Plan (Ensham Resources Pty Ltd)	March 2008
3-4	Recovery Cost Estimate (Ensham Resources Pty Ltd)	7 April 2008
3-5	<p>Briefing Note to Deputy Minister and Infrastructure and Planning – Declaration of Ensham Mine Flood Recovery Project as a prescribed project under s.76E of the <i>State Development and Public Works Organisation Act 1971</i> (Ref TN129928)</p> <p>Contains copies of:</p> <ul style="list-style-type: none"> <li>• Levee Bank Permit application for Lot 31 CP864573 (northern levee bank)</li> <li>• Levee bank permit application for Lot 30 CP864574 and Lot 32 RP 908643 (southern levee bank)</li> <li>• Letter from Ensham Resources Pty Ltd to Deputy Premier and Minister for Infrastructure and Planning dated 9 April 2008 enclosing submission for declaration of Ensham Mine Flood Recovery Project as a prescribed project</li> <li>• Action Plan for Ensham Mine Flood Recovery prepared by Ensham Resources Pty Ltd</li> </ul>	11 April 2008
3-6	Queensland Government Gazette notice of prescribed project declaration - Queensland Government Gazette No. 97	18 April 2008
3-7	<p>Briefing Note to Delegate of the Coordinator-General – issue of progression notices and notices to decide to the Nogoia River Flood Plain Board under s.76I and s76J of the <i>State Development and Public Works Organisation Act 1971</i> (Ref TN129928)</p> <p>Contains copies of:</p> <ul style="list-style-type: none"> <li>• Progression notices issued to the Nogoia River Flood Plain Board</li> <li>• Notices to decide issued to the Nogoia River</li> </ul>	30 April 2008

**Annexure 3** to the Statement of Keith Roger Davies dated 2 September 2011

	<p>Flood Plain Board</p> <ul style="list-style-type: none"> <li>Letter to Chairman of the Nogoia River Flood Plain Board</li> </ul>	
3-8	<p>Briefing Note to Deputy Minister and Infrastructure and Planning – Approval to Coordinator-General to issue step-in notices under s.76E of the <i>State Development and Public Works Organisation Act 1971</i> (Ref TN132507)</p> <p>Contains copies of:</p> <ul style="list-style-type: none"> <li>Step in notices issued to the Nogoia River Flood Plain Board</li> </ul>	19 June 2008
3-9	<p>Letter Sunwater to Department of Infrastructure and Planning – review of KBR Pty Ltd report “Ensham Mine Proposed Levee Banks, January 2008 Flood Event Assessment”</p>	20 June 2008
3-10	<p>Letter from Ensham Resources Pty Ltd to the Coordinator-General</p>	2 July 2008
3-11	<p>Letter from Ensham Resources Pty Ltd to the Coordinator-General</p>	3 July 2008
3-12	<p>Emails between James Ottaway (Department of Infrastructure and Planning) and Central Highlands Regional Council</p>	21 July 2008 – 25 July 2008
3-13	<p>Letter Sunwater to Department of Infrastructure and Planning enclosing:</p> <ul style="list-style-type: none"> <li>Sunwater’s Report “Ensham Mine – Rehabilitation of Flood Levees July 2008”</li> </ul>	28 July 2008
3-14	<p>Briefing Note to the Coordinator-General – issue of permit for Lot 30 CP864574 and Lot 32 RP908643 (southern levee bank) and readvertising of northern levee bank application (TN132562)</p> <p>Contains copies of:</p> <ul style="list-style-type: none"> <li>Permits issued by the Coordinator-General for the southern levee bank</li> <li>Statement of reasons for the issuing of the southern levee bank permit</li> <li>Decision notices for the southern levee bank permit</li> <li>Advertisement for the northern levee bank permit application</li> <li>Letters to owners of contiguous land affected by the northern bank permit application</li> </ul>	1 August 2008



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3-15	Letter GL & WL Dickson to the Coordinator-General	2 September 2008
3-16	Letter from Kemp Strang to the Coordinator-General	18 September 2008
3-17	Letter Ensham Resources Pty Ltd to Department of Infrastructure and Planning	22 September 2008
3-18	<p>Briefing Note to the Coordinator-General - issue of permit for Lot 31 on CP 864573 (northern levee bank) (Ref TN136097)</p> <p>Contains copies of:</p> <ul style="list-style-type: none"> <li>• Permits issued by the Coordinator-General for the northern levee bank</li> <li>• Statement of reasons for issuing of the northern levee bank permit</li> <li>• Notices of decision for northern levee bank permit</li> </ul>	2 October 2008
3-19	<p>Briefing note to the Deputy Premier and Minister for Infrastructure and Planning – Tabling of report in the Legislative Assembly about the step in notices issued by the Coordinator-General in relation to the applications by Ensham Resources Pty Ltd under the <i>Nogoa River Flood Plain Board Local Law (Levee Banks) No. 1</i>.</p> <p>Contains copy of:</p> <ul style="list-style-type: none"> <li>• Report (as subsequently tabled in the Legislative Assembly)</li> </ul>	3 November 2008
3-20	Hansard record	13 November 2008

The attachments to this statement are too large to publish on the website.