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Private and Confidential

By Email

Ms Jane Moynihan
Executive Director
Queensland Floods Commission of Inquiry
Level 30
400 George Street
BRISBANE QLD 4001

7 September 2011

QFCI

Date:

21/09/11

Jm

Our ref 12376/80117397
Your ref 1697288

Exhibit Number:

568

Dear Ms Moynihan

Brisbane City Council (Council) - Queensland Floods Commission of Inquiry (Commission)

We refer to your letter of 6 September 2011 regarding the meeting between us on 5 September 2011.

1. Background

- 1.1 Brisbane City Council is Australia's largest local government, extending to some 2116 square kilometres, incorporating 1,067,279 residents, employing 9,153 individuals spanning numerous branches and technical divisions, controlling assets to the value of 24 billion dollars, and with an annual budget of \$2.92 billion. Given this context, each of the topics covered by the Requirements (many of which extend back many years) necessitate a large scale factual investigation and search for relevant documents (many of which are archived).
- 1.2 With this in mind, we have since mid-July requested a preliminary meeting with Commission staff to discuss the nature of the information and documents that the Commission may require in order that any preliminary work that could be undertaken by Council to reduce lead times was done as early as possible,
- 1.3 We note we have had two meetings with Commission staff since 19 August 2011. As stated during our meeting on 5 September, we have now sought to engage with the Commission on behalf of our client to endeavour to provide Commission staff with a clearer understanding as to the vast scope of the task required to be undertaken by Council to:
- (a) meet each of the 21 Requirements for Information and Statements (so far) issued by the Commission since 11 August 2011; and
 - (b) meet the proposed requirement to provide additional statements in respect of the 33 properties listed in the email from Ros Vickers dated 2 September 2011.
- 1.4 Of the 21 Requirements received from 11 August 2011 until 5 September 2011, there have been various dates for compliance ranging from 14 days to 24 hours.
- 1.5 To date:

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Queensland Floods Commission of Inquiry

7 September 2011

- (a) approximately 6,000 documents have been produced. (Overall, current indications are undoubtedly that many more thousands of documents will be required to be produced);
- (b) 3 substantial Statements have been produced (C. Jensen, M. Reason and R. Kelly);
- (c) for just Requirement 1 (Tennyson Documents) Tranche 1, we estimate:
 - (i) 26 legal/paralegal staff were involved;
 - (ii) there was approximately 660 hours of legal work;
 - (iii) there was approximately 163 hours of Council Officers work (excluding Management time);
 - (iv) this does not include external scanning/copying time or administrative/secretarial time; and
 - (v) approximately \$171,000 in legal costs were incurred.

1.6 As stated on numerous occasions, Council is committed to assisting the Commission in any reasonable way. However, Council also considers it is important for Commission staff to understand that the extent of the resources working on this matter is not infinite. By way of example:

- (a) Council officers (especially Water Resources and Development Assessment teams) need to continue their day to day role including the important work associated with completing Flood Recovery, implementing Council's Flood Action Plan, and the assessment of Development Applications for Brisbane City;
- (b) we are advised by the external providers of scanning services in Brisbane that they are unable to cope with the demand generated by the Commission (not just for Council, but for other parties responding to Commission requests). This delay results in some documents not being able to be physically scanned and uploaded (let alone coded or reviewed) in sufficient time to meet the deadlines imposed by the Commission.

1.7 Council is concerned that with less than 2 weeks until the first hearings in Brisbane, unless there is some careful planning and focus applied at this stage, there could be a lack of efficiency in providing the Commission with relevant information that can be reasonably produced by Council and reviewed by Commission staff.

2. Clarification

2.1 In light of the above, we sought to engage with the Commission to, at least, clarify the request for Development Assessment files (DA Files) and any Statements associated with those files.

2.2 We invited the Commission to prioritise which DA Files (say 4 or 5) that were most relevant in order that information could be provided to the Commission in circumstances where it was not

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

Queensland Floods Commission of Inquiry

7 September 2011

physically possible (given the issues outlined above) to provide all information requested in the time frames imposed.

- 2.3 We appreciate the Commission's attempt (by the letter from the Commission dated 6 September 2011) to assist this process by:
- (a) identifying categories of documents within DA Files which, if produced, would constitute satisfactory compliance;
 - (b) making Ms Kefford of Counsel available to attend at our offices to:
 - (i) review a sample of the types of documents (flagged by us) which could be produced;
 - (ii) review the DA Files generally;
 - (c) allowing us to prepare a draft pro-forma statement for those Council officers nominated to provide a statement in relation to DA Files .
- 2.4 We note that the Commission does not consider any of the DA Files to be of priority and requires each of those files to be produced progressively.
- 2.5 With respect, if there is no reduction in the number of DA Files to be produced in the short term there is little efficiency gained in Council seeking to extract only the relevant material (in the categories suggested by the Commission). This is because the majority of the DA Files have now been retrieved and collated by Council and are in the process of being scanned.
- 2.6 In the circumstances, we intend to:
- (a) produce DA Files progressively (as soon as they are available) in a number of tranches. To the extent there are obvious components of the files which fall outside the categories mentioned above, we will exclude them from disclosure. Otherwise, we intend to disclose the entire file;
 - (b) make available the hard copies of the DA Files for inspection by Ms Kefford. We welcome Ms Kefford to attend at her convenience to inspect the DA Files generally; and
 - (c) produce a draft pro-forma statement as soon as possible for review by the Commission. This process is to be undertaken with a view to agreeing on the format of a statement to reduce the scope of the issues required to be canvassed by any individual assessment officer.
- 2.7 Please let us know:
- (a) when it is convenient for Ms Kefford to attend at our offices (if she still wishes to do so); and
 - (b) if the Commission does not agree with the above proposed course of action.

CLAYTON UTZ

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Queensland Floods Commission of Inquiry

7 September 2011

2.8 We reserve our client's right to bring this letter to the attention of the Commissioner during the upcoming hearings should it be necessary to protect the position of Council or any of its officers.

Yours faithfully



Scott Sharkey, Partner



Mark Sammut, Partner



Our ref: 1705184

8 September 2011

Mr Scott Sharry and Mr Mark Sammut
Partners, Clayton Utz
GPO Box 55
BRISBANE QLD 4001

Dear Mr Sharry

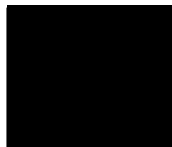
Please find enclosed a Requirement to Provide Information to the Commission addressed to Mr Martin Reason, Brisbane City Council, which will supplement his statement dated 1 September 2011.

The material is returnable to the Commission no later than by 5 pm, Wednesday, 14 September 2011. The Commission recognises that this timeframe is short, however, it is necessary as Mr Reason may be called to give evidence in the first week of hearings starting 19 September 2011.

If you require further information or assistance, please contact Ms Ros Vickers on telephone [REDACTED] or Ms Susan Hedge on telephone [REDACTED]

We thank you for your assistance.

Yours sincerely



Jane Moynihan
Executive Director

Encl.

Our ref: Doc 1701661

8 September 2011

Mr Martin Reason
Acting Planning Manager
Brisbane City Council
C/- Clayton Utz
Attn: Scott Sharry & Mark Sammut
GPO Box 55
BRISBANE QLD 4001

REQUIREMENT TO PROVIDE STATEMENT TO COMMISSION OF INQUIRY

I, Justice Catherine E Holmes, Commissioner of Inquiry, pursuant to section 5(1)(d) of the *Commissions of Inquiry Act 1950* (Qld), require Mr Martin Reason to provide a written statement, under oath or affirmation, to the Queensland Floods Commission of Inquiry, in which the said Mr Reason provides:

1. a full chronology of flood studies, reports (both drafts and final versions) and reviews of those reports or studies between 1 January 1996 and 31 December 2003, including by attaching documents that set out:
 - a. any instructions and input parameters provided by the Brisbane City Council
 - b. any reasons for choosing those instructions and input parameters
 - c. any concerns held by the Brisbane City Council about any study or report and reasons for those concerns;
2. actions and decisions taken by the Brisbane City Council, or any officer of it, in response to those reports or studies in 1, above.

In addressing these matters, Mr Reason is to:

- provide all information in his possession and identify the source or sources of that information;
- make commentary and provide opinions he is qualified to give as to the appropriateness of particular actions or decisions and the basis of that commentary or opinion.

Mr Reason may also address other topics relevant to the Terms of Reference of the Commission in the statement, if he wishes.

The statement is to be provided to the Queensland Floods Commission of Inquiry by 5pm, Wednesday 14 September 2011.

The statement can be provided by post, email or by arranging delivery to the Commission by emailing info@floodcommission.qld.gov.au.



Commissioner
Justice C E Holmes

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By Email

8 September 2011

Ms Jane Moynihan
Executive Director
Queensland Floods Commission of Inquiry
Level 30
400 George Street
BRISBANE QLD 4001

Our ref 12376/80117397
Your ref 1697288

Dear Ms Moynihan

Brisbane City Council (Council) - Queensland Floods Commission of Inquiry (Commission)

We refer to our discussions with Ms Kefford of Counsel last evening. We also refer to the discussions between Mr Dunning SC and Ms Wilson of Counsel earlier today.

1. We refer to the matters set out in our letter of 7 September 2011. With the issues raised in that letter in mind, we confirm that we will continue to provide Development Assessment files (DA Files) to the Commission as and when they become available in accordance with the timing nominated in the Schedule provided to the Commission by email on 7 September 2011 (but before then if possible).
2. As discussed, we consider there is real benefit in the Commission reviewing the relevant DA Files prior to issuing any Requirements to provide Statements (in relation to those files) in order that Council can address the matters of specific concern to the Commission in the limited time available before the hearings commence on 19 September 2011.
3. However, we note the Commission's desire to commence the process of receiving statements on the DA Files as soon as possible. We are instructed to seek to assist the Commission, to the extent reasonably possible, to achieve its objectives.
4. In the circumstances, we consider that (in addition to compliance with the existing 21 Requirements issued to our client) Council would be able to deliver a pro-forma statement in relation to the DA Files for the following 10 properties:
 - (a) 105 Ryan Street, West End;
 - (b) 1773 Ipswich Road, Rocklea;
 - (c) 61 Ashover Road, Rocklea;
 - (d) 37 Duncan Street, West End;
 - (e) 26 Hyde Road, Yeronga;
 - (f) 220 Montague Road, West End;

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

Queensland Floods Commission of Inquiry

8 September 2011

- (g) 330 Coronation Drive, Milton;
 - (h) 312 and 316 Long Street East, Graceville;
 - (i) 1477 Ipswich Road, Rocklea; and
 - (j) 43 Hyde Road, Yeronga.
5. We attach the draft pro-forma statement we intend to use to address each of the DA Files for the properties listed above. The officers nominated to provide information in relation to the DA Files have been chosen by Council as the individuals best placed to comment on the file. However, as discussed, due to change of employees and the length of time since some of the assessments have been completed, these officers are not necessarily those who had the day-to-day carriage of the file. The inevitable result is that these officers (in the main) can offer no more than a review of the main aspects of the DA File as opposed to a commentary on the detail of the Development Assessment. In addition, the individual nominated will not have any particular expertise relating to hydrology or hydraulics.
6. We anticipate that we will be able to deliver statements (following the pro-forma attached) in relation to the 10 properties identified progressively and, in any event by Friday 16 September 2011.
7. To the extent the Commission:
- (a) requires any additional matters to be addressed (by way of statement) in relation to the nominated properties;
 - (b) requires statements in respect of properties other than those nominated above; or
 - (c) issues additional Requirements to Provide Information or Statements to Council on topics other than the 10 properties listed above,
- the time frame set out in paragraph 6 above is subject to change.
8. Please confirm as soon as possible whether the Commission agrees with the proposal set out above in order that work on the statements can commence as soon as possible.

Yours faithfully


Scott Sharry, Partner

Mark Sammut, Partner


Statement of [insert name]

I, [insert name], [insert position description] of [insert address], [state on oath/affirm] as follows:

Introduction

1. Attachment [insert] is a copy of a notice from the Commissioner of the Queensland Floods Commission of Inquiry (Commission) dated [insert] requiring me to provide information to the Commission in the form of a statement by [insert date] (Notice). This Statement is provided in response to the Notice.
2. For the purposes of preparing this Statement the only source of information I have reviewed is the Development Assessment file held by Council. This Statement is not based on any personal recollection of any matters associated with this Development Assessment.
3. In addition, as part of this preparing this Statement I have not, in the time available, made any assessment as to the merits of any steps taken by the officers involved in the Development Assessment.

The Property

Address

4. (a) [insert real property description];
(b) [insert street address] (Property).

Level of Assessment

5. (a) [Is it Impact, Code or Other?]
(b) [if the application was impact assessable, insert details about the public notification period, the number of submissions and whether any submissions relate to flooding issues]

DFL

6. Prior to the January 2011 flood event, the Property had a defined flood level of [insert]m AHD.

Any surface flooding impacts?

7. Council's records indicate that the Property [was/was not] subject to surface flooding impacts during the January 2011 flood event.

Development Application¹

8. Development Application lodged [insert].

Name and position of assessment officer

9. (a) [insert name of assessment officer];
(b) [insert position of assessment officer].

¹ If more than one application since 2003 this will be designated Development Application 1 and paragraphs 5 – 14 will be repeated for each subsequent Development Application.

Referral Agencies

10. [list the referral agencies and their referral trigger]

Information Request/s

11. [insert the date of any information request, and highlight any requests relevant to flooding]

Information Response/s

12. [insert the date of the information response, and highlight any responses relevant to flooding]

Council Recommendation

13. [insert epitome of the officer's recommendation report - the decision recommended by the officer and any consideration of flooding impacts in the officer's report]

Decision Notice/s

14. (a) decision notice dated [insert date];
(b) decision maker – [insert identity];
(c) decision [insert what the decision was] (approve, refuse, approve with conditions, preliminary approval, part approval etc) and highlight any conditions relevant to flooding]

Post decision events

15. [include a description of any post decision steps that impact on the decision notice e.g. if a negotiated decision notice was issued, or there have been subsequent requests to change the development approval].

Identification of potential flooding impacts

16. In relation to potential flooding impacts, [insert a description as to how potential impacts were identified and what assessment process was followed specific to flood impacts]

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URGENT

9 September 2011

Ms Jane Moynihan
Executive Director
Queensland Floods Commission of Inquiry
Level 30
400 George Street
BRISBANE QLD 4001

Our ref 12376/80117397

Dear Ms Moynihan

Brisbane City Council (Council) - Queensland Floods Commission of Inquiry (Commission)

We refer to our recent correspondence with the Commission and, in particular to our letters of 7 September 2011 and 8 September 2011.

1. **How Council has met the Commission's Requirements to date**
 - 1.1 It appears that Commission staff misapprehend the work required to be undertaken by Council in order to comply with all 29 Requirements that have been issued to date (2 of which have been withdrawn) within, what we believe to be, the unrealistic timeframes sought to be imposed.
 - 1.2 Council has, to date, taken all steps it can reasonably take and applied all resources reasonably available to responding to requests and formal Requirements received from the Commission.
 - 1.3 We set out below a table which lists each of the Requirements issued by the Commission to Council and the current status of compliance.

BCC RPI No.	Commission Reference Number	Date of Notice	Date for Compliance	Request Type	Summary	Status
1.	1675337	10 August 2011	26 August 2011	Documents	Tennyson Documents	<ul style="list-style-type: none">• Tranche 1 delivered 26/8• Tranche 2 delivered 1/9 (total 5454 documents)• Emails to be delivered progressively - Tranche 3 proposed to be delivered 9/9

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Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

Queensland Floods Commission of Inquiry

9 September 2011

BCC RPI No.	Commission Reference Number	Date of Notice	Date for Compliance	Request Type	Summary	Status
2.	1675975	10 August 2011	1 September 2011	Documents	City Plan/CIDs /Pumping Stations etc	Complete: <ul style="list-style-type: none"> Tranche 1 delivered 1/9 Tranche 2 delivered 6/9
3.	1675963	10 August 2011	1 September 2011	Statement	Fifth Statement of Colin Jensen	Complete - delivered 31/8
4.	1675982	10 August 2011	1 September 2011	Statement	Statement of Martin Reason	Complete - delivered 1/9
5.	1675969	10 August 2011	NA	Statement	N/A (obsolete J Bannan Statement request)	NA
6.	1679383	16 August 2011	31 August 2011	Statement	Statement of Rory Kelly	Complete: <ul style="list-style-type: none"> Delivered 31/8 Supplementary Statement delivered 8/9
7.	1681996	19 August 2011	2 September 2011	Documents	Rocklea Markets/24 DA Files	<ul style="list-style-type: none"> Tranche 1 delivered 2/9 Tranche 2 (DA Files) to be delivered 9/9
8.	1681702	19 August 2011	7 September 2011	Statement	Statement of Jo Bannan	Complete - delivered 8/9
9.	1682705	22 August 2011	31 August 2011	Documents	Howard Smith Wharves	Complete - delivered 31/8
10.	1684664	24 August 2011	23 September 2011	Documents	SES Information	Due 23/9

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Queensland Floods Commission of Inquiry

9 September 2011

BCC RPI No.	Commission Reference Number	Date of Notice	Date for Compliance	Request Type	Summary	Status
11.	1683212	26 August 2011	5 September 2011	Documents	City Cat/Riverwalk	<ul style="list-style-type: none"> • Response delivered on 5/9 • Documents (as part of Tranche 1) delivered on 6/9 • Tranche 2 (DA Files) to be delivered 9/9
12.	1690283	30 August 2011	9 September 2011	Statement	Sixth Statement of Colin Jensen - local levees particularly Rocklea and the Brisbane Markets	Complete - delivered 8/9
13.	1685842	26 August 2011	7 September 2011	Documents	Levees at Rocklea	Complete - delivered 7/9
14.	1685865	26 August 2011	9 September 2011	Documents	Hazardous Materials	To be delivered 9/9
15.	1691262	1 September 2011	9 September 2011	Documents	DA Files Hyde Road/Allard Road	To be delivered 9/9
16.	1694413	2 September 2011	5 September 2011	Documents	List of all draft flood reports since 1990	Complete - delivered 5/9.
17.	1694293	2 September 2011	9 September 2011	Statement	Statement of C Beckley - Riverwalk	To be delivered 9/9
18.	1690380	2 September	9 September 2011	Statement	Statement of A Horneman -	Due 9/9

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Queensland Floods Commission of Inquiry

9 September 2011

BCC RPI No.	Commission Reference Number	Date of Notice	Date for Compliance	Request Type	Summary	Status
		2011			City Cat/Ferry stops	
19.	1693777	2 September 2011	Withdrawn	Documents	DA's for material change of use for an ERA since 2004 for Rocklea and Albion	Withdrawn
20.	1691249	2 September 2011	9 September 2011	Statement	Second Statement of M Reason - Flood Code/Flood Hazard etc	To be delivered 9/9
21.	1694636	5 September 2011	6 September 2011	Documents	1998 SKM Flood Study	Completed - delivered 6/9
22	1704964	8 September 2011	13 September 2011	Statement	R Kelly - 316 Long Street East	
23	1704972	8 September 2011	13 September 2011	Statement	R Kelly - Cansdale Street, Yeronga	
24	1704969	8 September 2011	13 September 2011	Statement	G Soole	
25	1701661	8 September 2011	14 September 2011	Statement	M Reason	
26	1705832	8 September 2011	14 September 2011	Statement	R Kelly - 1477 Ipswich Road	
27	1705848	8 September	14 September	Statement	R Kelly - 61 Ashover Road	

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Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

Queensland Floods Commission of Inquiry

9 September 2011

BCC RPI No.	Commission Reference Number	Date of Notice	Date for Compliance	Request Type	Summary	Status
		2011	2011			
28	1707274	9 September 2011	15 September 2011	Statement	R Kelly - 42 Ferry Road, West End	
29	1707259	9 September 2011	13 September 2011	Statement	C Sun - 108 Albert Street (89 Charlotte Street)	

- 1.4 We have on numerous occasions, in correspondence and in meetings with the Commission, sought to inform the Commission as to the magnitude of the task the Commission has placed on Council by its Requirements to produce Information and Statements.
- 1.5 As summarised in the table, Council has, to date, substantially complied with all outstanding Requirements (save for the 8 received after 5pm last evening and this afternoon). To the extent Requirements are due today, we intend to comply as soon as possible either today or over the weekend.
- 1.6 Council has worked with the Commission since the commencement of the Inquiry to provide the statements and documents the Commission has sought in the timeframes imposed. To date Council has:
- (a) in respect of the initial phase of hearings:
 - (i) disclosed some 6,242 documents;
 - (ii) provided 16 Statements; and
 - (iii) made 5 Submissions (3 of which included substantial detail and many attachments);
 - (b) since 11 August 2011 (as at the time of writing this letter):
 - (i) provided 6 further substantial statements covering issues spanning many decades and requiring input from numerous Council branches in respect of many diverse topics;
 - (ii) provided disclosure of 11,742 additional documents (with a further 4,441 to be delivered today) in respect of a wide and diverse range of topics. This entailed significant retrieval of archived records, both in hard copy and electronic form spanning decades and production of detailed maps. This disclosure was provided (and converted by scanning and coding where

necessary) in an electronic format, indexed, hyperlinked and displayed in chronological order categorised by the issues nominated by the Commission;

- (iii) incurred approximately 2,500 hours in time spent by its external lawyers (which is the equivalent of 312 eight-hour days undertaken during a real-time period of 21 business days). These hours do not include any administrative, secretarial, photocopying or scanning time which was (in the main) outsourced; and
- (iv) engaged approximately 70 Council officers (some on a full time basis) from various branches in retrieving and collating material and providing instructions to meet the Commission's Requirements.

2. Competing Finite Resources

2.1 At the same time as the above work was (and is) being undertaken by Council to meet the Requirements issued by the Commission, Council has:

- (a) continued to attend to the recovery from the January 2011 Flood Event in the context that Brisbane City Council:
 - (i) is Australia's largest local government;
 - (ii) extends to some 2,116 square kilometres;
 - (iii) incorporates 1,067,279 residents;
 - (iv) employs 9,153 individuals spanning numerous branches and technical divisions; and
 - (v) controls assets to the value of 24 billion dollars.

2.2 In addition, significant funds and other resources, which could otherwise have been applied to the day to day provision of Council services and infrastructure is instead being applied to Council's response to the Commission of Inquiry.

2.3 Notwithstanding the above, Council has continued to implement its comprehensive Flood Action Plan. Many of the actions proposed are intended to be completed prior to the upcoming Summer storm season.

3. Council's endeavours to accommodate the Commission's priorities

3.1 Council delivered its detailed Submission on Town Planning on 8 April 2011 (notwithstanding Council was in the midst of complying with Commission Requirements relevant to the initial phase of hearings). However, up until 11 August 2011 (some 4 months later) Council had received:

- (a) no feedback on the issues of priority arising out of Council's Town Planning Submission; and

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Queensland Floods Commission of Inquiry

9 September 2011

- (b) no indication of the Commission's priorities for issues to be addressed by Council arising out of other submissions received in relation to town planning (notwithstanding that those documents appear to be part of the genesis of the Requirements currently issued by the Commission).

3.2 With this in mind we have, since mid-July, requested a preliminary meeting with Commission staff to discuss the nature of the information and documents that the Commission may require in order to identify any preliminary work that could be undertaken by Council to reduce lead times and prioritise responses for the second phase of hearings.

3.3 Since 19 August 2011, we have been seeking clarification from the Commission as to various Requirements and to the Commission's priorities. This ultimately resulted in a formal proposal being made to the Commission on 8 September 2011 (relating to the Commission's then priority of statements relating to Development Assessment files (DA Files)).

4. The point Council has reached

4.1 Up until the evening of 8 September 2011, Council had diligently progressed the responses to the then current 21 Requirements issued by the Commission (as summarised in the table above).

4.2 Given our recent discussions with Commission staff and Ms Kefford of Counsel, it appeared that the current priority for the Commission related to the provision and review of DA Files. As a consequence, we had prioritised over the past few days (thereby delaying attention to other Commission Requirements) the provision of as much DA information as possible in the shortest timeframe possible. As a result we will, by the end of today, have produced all DA Files requested. This is ahead of the schedule provided by Council dated 7 September (which was requested by the Commission to be turned-around with 15 minutes).

4.3 Council has now received:

- (a) last evening, an additional 6 Requirements to provide Statements; and
- (b) this afternoon, 2 more Requirements to provide Statements.

There is no indication that the Commission will not send any further Requirements for Information or Statements.

5. The week ahead

5.1 Council intends to comply with the Requirements for statements issued to Martin Reason (second statement), Chris Beckley and Ashley Horneman by today or the end of the coming weekend.

5.2 In relation to the Requirement issued to Martin Reason for a third statement (relating to various historical flood studies):

- (a) the Commission's hearings commence in 6 business days time;
- (b) the Requirement necessitates consideration by the witness of events that occurred during a period commencing 15 years ago;

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

Queensland Floods Commission of Inquiry

9 September 2011

- (c) the Requirement seeks to canvass the broadest ambit of states of mind of *"the Council and any officer of it"* most of whom are no longer at the Council, including esoteric concepts such as:
- (i) *"any reasons for choosing"* instructions;
 - (ii) *"concerns held"* and the *"reasons for those concerns"*;
- (d) in addition, the Requirement, seeks to canvas equally broad concepts such as *"actions and decisions taken by any [unnamed] council officer"* over an 8 year period (commencing from 1996). This is an incredibly broad enquiry, particularly given the size of Council as set out above.

5.3 On any reasonable reading, a Requirement of this nature is so broad as to be oppressive.

5.4 In circumstances where:

- (a) there was a full Crime and Misconduct Commission (CMC) investigation and report into the very issues the subject of the Requirement. This investigation was carried out in the public domain and the report is freely available. In addition, we understand the Commission holds a copy of the CMC file as well as the CMC Report (which includes a detailed chronology of the relevant history); and
- (b) the Commission staff have previously advised (through Ms Lisa Hendy in late March 2011) that Brisbane River flood study information prior to the CMC report in 2004 was not required to be produced on the basis that she was aware of the matters that were the subject of the CMC Report,

Council has not applied resources to giving these matters consideration.

5.5 Notwithstanding this, the Commission has now, at 6.31pm on 8 September 2011 (being 6 business days prior to the commencement of the hearings) issued a Requirement for a statement relating to the above topic.

5.6 In the week remaining until the hearings, Council officers who have provided statements require access to Counsel and solicitors to prepare for their upcoming evidence. Further, we note that notwithstanding the proximity of the commencement of the hearings, the Commission has not provided Council with any witness statements or other evidence regarding town planning from parties with leave to proceed or complainants. Commission staff will appreciate that it will be an intense period of preparation for Council witnesses once that evidence is made available (whenever that may be).

Action

5.7 We respectfully request that the Commission:

- (a) immediately withdraw the Requirement for the third statement from Mr Reason dated 8 September 2011 (reference 1701661); and
- (b) confirm that the Commission will not issue any further Requirements to Council prior to the commencement of the hearings.

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

Queensland Floods Commission of Inquiry

9 September 2011

- 5.8 In relation to the 7 Requirements issued to Rory Kelly, Gillian Soole and Cassandra Sun (relating to various DA properties), we have not yet had time to consider Council's ability to comply. Therefore, over the weekend, we will give careful consideration as to what responses Council is able to provide (bearing in mind its own need to prepare). We will advise you of the outcome of that consideration over the weekend. Beyond the responses that we will confirm, Council will be unable to physically respond to any further Requirements.
- 5.9 We submit that to require Council to comply with the Commission's Requirements other than as proposed in 5.7 and 5.8 above is oppressive, prejudicial and unfair, amounting to a denial of procedural fairness and natural justice for Council and the officers concerned.
- 5.10 Please respond as a matter of urgency.

Yours faithfully,


Scott Sharry, Partner


Mark Sammut, Partner


Our ref: 1710974

9 September 2011

Clayton Utz
GPO Box 55
BRISBANE QLD 4001

Attention: Mr Scott Sharry and Mr Mark Sammut

Dear Sirs

I refer to your letter dated 9 September 2011, received late on that date and marked "Urgent".

I also refer to the subsequent telephone conversation between Ms Kefford of Counsel and Mr Sharry and Mr Sammut.

Thank you for your efforts to date in complying with the requirements sent by the Commission. I appreciate that your client has dealt with these within a tight timeframe. No doubt you would appreciate that the Commission has also had a tight timeframe within which to work.

In the continued spirit of co-operation, in relation to the 7 requirements issued to Rory Kelly, Gillian Soole and Cassandra Sun (relating to various DA properties) referred to in paragraph 5.8 of your letter, and the subsequent requirements sent today with respect to DA properties:

1. as discussed with Ms Kefford, a decision has now been made that Mr Kelly will not be called in the first week of hearings commencing 19 September 2011 and accordingly the Commission is prepared to extend the date for compliance with all outstanding requirements with respect to Mr Kelly to 12 noon on Monday 19 November 2011;
2. Ms Soole and Ms Sun will be called in the first week;
3. with respect to the scope of the statements produced in response to the requirements, the Commission continues to be willing to assist in helping and Ms Kefford is contactable on [REDACTED] should you wish to clarify any aspect of those requirements when preparing the statements.

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With respect to paragraph 5.7 of your letter:

4. Considering the tight time frames, the Commissioner does not require compliance with the 8 September 2011 requirement to Mr Reason. I advise, though, that the topics within the requirement may be traversed in oral evidence with Mr Reason. The Commission had considered that provision of a statement dealing with the issues set out in the requirement would have provided the Council with the opportunity to inform the Commission as to its rationale in respect of its approach to flood studies, reports and assessment. I extend an invitation to the Council to provide a statement from a person with direct knowledge of the issues set out in the requirement.
5. At this stage, the Commission does not intend to issue further requirements which are returnable prior to the commencement of the hearings, with the exception that the Commission will seek one document, namely 'The Early Floods of the Brisbane-Bremer River System, 1823-1867', Murdoch Wales (In association with Geoffrey Cossins and Robert Broughton), Brisbane City Council 1976 (Ref 2). If the Council is happy to provide this document without a requirement, please advise and also as to whether it could be provided by Tuesday 13 September 2011.

If you require further information or assistance, please contact Ms Nicole Kefford on telephone [REDACTED] or Ms Ros Vickers on telephone [REDACTED]

Thank you for your assistance.

Yours sincerely

[REDACTED]
Jane Moynihan
Executive Director

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

13 September 2011

By Email

Ms Jane Moynihan
Executive Director
Queensland Floods Commission of Inquiry
Level 30
400 George Street
BRISBANE QLD 4001

Our ref 12376/80117397

Dear Ms Moynihan

Brisbane City Council (Council) - Queensland Floods Commission of Inquiry (Commission)

1. We refer to your letter of 9 September 2011.
2. In particular we refer to paragraph numbered 4 of that letter in which the Commission withdrew the Requirement issued to Martin Reason to provide a third statement regarding historical flood studies (**Withdrawn Requirement**).
3. In addition to the withdrawal, your letter, relevantly, states:
"...that the topics within the requirement may be traversed in oral evidence with Mr Reason. The Commission had considered that the provision of a statement dealing with the issues set out in the requirement would have provided the Council with the opportunity to inform the Commission as to its rationale in respect of its approach to flood studies, reports and assessment."
4. As stated in our letter of 9 September 2011:
 - (a) there was a full Crime and Misconduct Commission (CMC) investigation and report into the very issues the subject of the Withdrawn Requirement;
 - (b) we understand the Commission holds a copy of the CMC file as well as the CMC Report (which includes a detailed chronology of the relevant history);
 - (c) Commission staff have previously advised (through Ms Lisa Hendy in late March 2011) that Brisbane River flood study information prior to the CMC report in 2004 was not required to be produced on the basis that she was aware of the matters that were the subject of the CMC Report.
5. To the extent the Commission wishes to, again, investigate those matters the subject of the CMC investigation, we are instructed that signed statements from a number of Council officers and Councillors involved in the matter at the time were provided to the CMC and ought be on its file. We do not see how Council could, after this passage of time, seek to advance the matter beyond what was placed in evidence before the CMC.
6. In addition, Council has taken the opportunity via its detailed Second Submission (dated 8 April 2011) and the comprehensive first Statement of Mr Reason, to outline for the Commission the

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13 September 2011

matters relevant to Council's approach to flood-related planning (including the history of that approach).

7. In the circumstances set out above we reserve our client's right to object to any examination, by Counsel assisting the Commission, of Mr Reason (or any other Council witness) about the topics referred to in the Withdrawn Requirement.

Yours faithfully


Scott Sharvy, Partner


Mark Sammut, Partner


Bertolin, Debra

From: Ros Vickers [redacted]
Sent: Friday, 16 September 2011 7:30 PM
To: Sammut, Mark
Cc: Admin Flood Commission; Nicole Kefford; Susan Hedge; Pacey, Kathryn; Sharry, Scott
Subject: RE: CD Received

Dear Mark

The CD contains documents that the Commission intends to tender through Martin Reason.

Regards,

Ros Vickers

From: Sammut, Mark [mailto:[redacted]]
Sent: Friday, 16 September 2011 6:20 PM
To: Ros Vickers
Cc: Admin Flood Commission; Nicole Kefford; Susan Hedge; Pacey, Kathryn; Sharry, Scott
Subject: CD Received

Ms Vickers

We have, this evening, received a CD that is labelled "Documents to be tendered - Martin Reason". That CD did not come with any covering letter.

Can you please advise what it is the Commission intends to do with this material?

Mark Sammut, Partner

Clayton Utz

Level 28, Riparian Plaza, 71 Eagle Street, Brisbane QLD 4000 Australia [redacted]

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Ms Jane Moynihan
Executive Director
Queensland Floods Commission of Inquiry
Level 30
400 George Street
BRISBANE QLD 4001

19 September 2011

Our ref 12376/80117397

Dear Ms Moynihan

Brisbane City Council (Council) - Queensland Floods Commission of Inquiry (Commission)

We refer to the email from Ms Vickers of 16 September 2011.

It remains unclear from your email as to what the Commission intends to do with the material provided. In particular, it is unclear whether Counsel assisting the Commission intends to:

- (a) cross-examine Mr Reason in relation to the documents referred to in that email; or
- (b) otherwise intends to seek to adduce evidence from Mr Reason as to the provenance of the documents; or
- (c) intends to simply seek to tender the documents during the evidence given by Mr Reason.

We confirm that Mr Reason is not familiar with the material in question and has no relevant expertise to comment on the historical flood studies.

As our previous correspondence makes clear, Council considers that the matters relating to the various studies leading up to the 2003 Independent Panel Report have been fully canvassed. To now suggest after this period of time that, despite the conclusions of that Report and the CMC Inquiry, Council had not followed proper process in reviewing the Q100, or that the Q100 was in some sense "erroneous" would be a suggestion of very grave concern to Council.

Council does not presently know what the Commission seeks to achieve by the tender of the documents referred to. No particulars have been given. If it is intended to make or imply the suggestion referred to in the previous paragraph, Council's expectation is that the Commission:

- (a) will firstly have fully considered all the material, including the CMC Report and the Independent Panel Report, both from a factual and hydrological perspective; and
- (b) will provide to Council, in advance, advice as to the particular issues or areas which are intended to be examined.

We refer to our letters of 7, 9 and 13 September 2011 (copies attached). We again draw the Commission's attention to the matters set out in our letter of 13 September 2011 and reserve our client's rights to object to any questioning of Mr Reason in relation to the topics the subject of the Withdrawn Notice (as defined in that letter).

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19 September 2011

In that regard, we also put the Commission on notice that our client reserves the right to bring the attached letters to the attention of the Commission and tender them at the appropriate time (should that be necessary).

Yours faithfully


Scott Sharry, Partner


Mark Sammut, Partner
