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From: McQueen, Cathy [REDACTED] on behalf of Conaghan, Tony
[REDACTED]
Sent: Thursday, 16 February 2012 3:23 PM
To: Info Flood Commission
Cc: Kyla Hayden
Subject: Closing Submissions
Attachments: img-216151925-0001.pdf.TXT


Dear Colleagues

Please find attached comments on Closing Submission for Counsel assisting the Floods Commission of Inquiry on behalf of Professor Colin Appelt.

Regards

Tony Conaghan
Partner

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**Comments on Closing Submission for Counsel assisting the Floods Commission of Inquiry
On behalf of Prof Colin Apelt**

The paragraph numbers referred to are those in the draft Closing Submission forwarded to Thomsons Lawyers by the Floods Commission of Inquiry on 14 February 2012

Para 433

"Professor Apelt attended the first meeting that was held about the preparation of the report (on 3 February 2011)."

Comment *Prof Apelt was there as an observer only. Prof Apelt made this clear in his evidence on 8th February 2012 – see lines 20-30 of page 89 of the transcript.*

Referring to the meeting on 8th February 2011 the submission states "A note Mr Ayre took at that meeting indicates there was some discussion about the flood event summary in Section 2 of the report and the need to show that the flood engineers had satisfied the Wivenhoe Manual".

Comment *This note was not referred to during Prof Apelt's appearance before the Commission on 8th February 2011. His recollection of that meeting is not complete. He recalls being shown some of the diagrams that were used, without change, in the Report. He does not recall discussion of the kind mentioned in Mr Ayre's note.*

Para 435 There is reference to "an email that Mr Pruss's assistant had sent Professor Apelt (on 7 February 2011) thanking him for his availability to 'assist Seqwater with the report and submission for the Commission of [Inquiry]'".

Prof Apelt's statement before the Commission on 8th February 2012 that "it would be quite ridiculous for me to help construct [the report] and then review it" is quoted. Nevertheless, later there is the statement "There was, at least, an unfortunate lack of clarity as to Professor Apelt's role".

Comment *Prof Apelt had no lack of clarity as to his role. It was always clear to Prof Apelt that he was to provide a truly independent review of the report and to do that he must make no contribution to the substance and contents of the report. Prof Apelt did not and does not regard his pointing out typos and lack of clarity in some sentences in the Draft as 'contributing to the writing of the report' or in any way affecting his independence. Prof Apelt made his understanding of his role clear in his evidence on 8th February 2012 – see lines 40-50 of page 90 of the transcript.*

Para 438 "Very little was done to ensure that the review process was independent."


Comment *We cannot comment on Seqwater's perspective. However, irrespective of the view about that, it did not impact upon the independence of Prof Apelt and his review. Prof Apelt took every precaution to ensure that his review was independent.*

Para 439 "c ensure sufficient time and resources are allowed for a thorough and meaningful review"

Comment *Prof Apelt agrees with this. It will require amendment to the Manual which currently requires, in its section 2.9, that "Seqwater must forward the report to the Chief Executive within six weeks of the completion of the Flood Event."*

But, in fairness, it is noted that Seqwater had no control over the time available between the completion of the Flood Event on 19/01/2011 and the date 02/03/2011, on which the report was required by the Manual at that time.

Dated 16 February 2012


Tony Conaghan
Partner
Thomsons Lawyers