

Private and Confidential

By email

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

6 January 2012

Your ref: 1812383

Our ref 12376/80117397

Dear Ms Moynihan

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

We refer to your letter received on 3 January 2011 in relation to the Commission's draft findings and recommendations - Statutory Indemnity (and Injurious Affection).

Council refers to and reiterates paragraph 2.1 of its Land Planning B - Indemnity Submission dated 8 December 2011. Further, Council notes that amendments to section 706 of the *Sustainable Planning Act 2009* (**Sustainable Planning Act**) will only address the issue of injurious affection and not the need for a broader statutory indemnity for local government (which we have assumed will be addressed separately by the Commission in its final report).

In its draft findings and recommendations, the Commission has recommended that flood models, maps and information should be provided to the consultants engaged by applicants for development approvals and for flood maps and information to be provided to the community. Council supports (and has already adopted) this approach, however submits that this must be balanced by an appropriate indemnity to local councils who provide this information.

Liability to Compensation - Sections 704 and 705 of the Sustainable Planning Act

Council's initial submission was, relevantly, that:

- the scope of the limitation on the entitlement to compensation in relation to flooding is uncertain; and
- the entitlement to compensation resides in a broad class of potential claimants, leading to the potential for multiple claims of entitlement to compensation in respect of a single property.

The scope of the current exemption afforded by section 706 of the Sustainable Planning Act is uncertain as the phrases "*significant risk*" and "*the risk could not have been significantly reduced by conditions attached to a development approval*" are unclear.

Amendment to Section 706 of the Sustainable Planning Act

Council would support a recommendation by the Commission that section 706(1)(i)(i) of the Sustainable Planning Act be amended to clarify the intent of the subsection, provide certainty to Council as to the scope of the exemption and remove the current words of limitation as identified above.

Should amendment to section 706 of the Sustainable Planning Act be pursued, Council would be happy to participate in stakeholder consultation process on the form of any amendment, as is the normal course.

Yours faithfully

[Redacted]
[Redacted], Partner
[Redacted]
[Redacted]@claytonutz.com

[Redacted], Partner
[Redacted]
[Redacted]@claytonutz.com