

**IN THE MATTER OF  
THE QUEENSLAND FLOODS COMMISSION OF INQUIRY 2011**

**A COMMISSION OF INQUIRY UNDER THE  
COMMISSIONS OF INQUIRY ACT 1950**

**AND PURSUANT TO THE  
COMMISSIONS OF INQUIRY ORDER (No. 1) 2011**

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**WRITTEN SUBMISSIONS ON BEHALF OF QUEENSLAND BULK WATER SUPPLY  
AUTHORITY ADDRESSING A FINDING THAT, DURING HIS SHIFT ON SATURDAY 8<sup>TH</sup>, MR.  
AYRE BELIEVED THAT STRATEGY W2 WAS BEING USED**

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1. The draft findings provided by the Commission on 1 March 2012 suggest that the Commission may be proposing to find that, during his shift on Saturday 8<sup>th</sup>, Mr Ayre subjectively believed that strategy W2 was being used. These submissions address what would follow from such a finding.
2. On this analysis:
  - a. Mr. Ayre would be believed that, at 8am, he appreciated the lake level had crossed 68.5m and he appreciated that under the manual this mandated that a higher strategy be used;
  - b. Mr. Ayre subjectively believed that he was using W2;
  - c. in the preparation of the flood report, he said he was using W3.
3. If these findings were made, Seqwater would make the following submissions:
  - a. There is considerable overlap between W2 and W3. In many situations there is little practical difference between them. A number of the experts vouched for this

(including Mr. Babister).<sup>1</sup> Both have urban protection as the primary consideration, and both have similar maximum levels of release. It would be understandable that, on Saturday 8<sup>th</sup>, Mr. Ayre might have subjectively thought that the mandated transition to a higher strategy was a move from W1 to W2;

- b. Mr. Ayre in giving evidence was firm that at 8am he had appreciated that the lake level had crossed 68.5, he appreciated that that required the transition to a higher strategy and, from then on, his primary consideration during the shift was urban protection. He also said that he had now no actual recollection of whether he subjectively thought he was using W2 or W3 on the day;
- c. It does not follow from a conclusion that he subjectively thought on the 8<sup>th</sup> that he was using W2 that that is what in fact he was using. The expressions “W2” and “W3” are labels or (as Professor Apelt put it) chapter headings. What really matters are the criteria that are to be applied when using one or the other. It is by reference to the criteria applied that a true assessment can be made as to which strategy was being used. For example, if Mr. Ayre subjectively thought he was using W2, but an analysis of the criteria he in fact applied demonstrates that he was applying the criteria of W3 (not W2), then it should nevertheless be concluded that he was actually using W3.

The essential criteria for W3 are:

- i. primary consideration be given to protecting urban areas from inundation;
- ii. secondary consideration be given to lower level objectives; in particular minimizing disruption to downstream rural life;
- iii. the maximum rate of release be that which will produce a flow in the Brisbane River at Moggill of 4,000m<sup>3</sup>/s per second;
- iv. the rate of release is not to be limited by reference to the naturally occurring peak flows at Lowood and Moggill.

(i) - (ii) are criteria common to both W2 and W3. Criterion (iii) is not common, although the maximum of 3,500m<sup>3</sup>/s in W2 is not greatly different. Criterion (iv) is unique to W3.

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<sup>1</sup> Mr Babister: T5895/34-55 and Professor Apelt: T5728/43-5729/4 and 5732/18-25. Mr Allen gave similar evidence: T5920/38-39; T5922/38-43.

- d. Mr. Ayre gave evidence that from 8am during his shift his primary consideration was protecting urban areas, and his secondary consideration was minimizing disruption to rural life. He thereby satisfied criteria (i) and (ii). The releases made, viewed objectively, satisfied criteria (iii) and (iv). It can therefore rightly be said that Mr. Ayre satisfied the performance criteria of W3 during his shift. And it can equally be said that his actions did not satisfy the criteria of W2, in that the releases he decided to make were above the maximum permissible releases under W2. Consequently, even if he subjectively thought during his shift he was applying W2, his actions (viewed objectively) demonstrate that he was in fact using the performance criteria for W3 and not W2.
- e. A post-event realization that the decisions as to releases he had made were above the maximum permissible under W2, and therefore W2 could not have been in use, is merely a waking up to the fact that, even though he may have subjectively thought he was using W2 at the time, he was mistaken in that subjective view, and in fact his actions were those of a flood engineer using W3, not W2. In other words, he was correct to write in the flood report that W3 had been in use from 8am on Saturday 8<sup>th</sup>. It would have been incorrect for him to have said in the flood report that W2 had been in use.
- f. This approach is supported by the expert witnesses. A number of them emphasise that what subjective view the flood engineer has as to what strategy is being used is not determinative. What is determinative are the actions of the flood engineer, and in particular the decisions as to releases.<sup>2</sup> The decisions as to releases made on 8 and 9 January are not consistent with the use of W2 from 8am on Saturday 8<sup>th</sup>. It would therefore have been wrong to have said in the flood report that the flood engineers were in fact using W2 from 8am on Saturday 8<sup>th</sup>.
4. Finally, Seqwater observes that, whilst it is true to say that the strategy summary log, the ministerial briefing note and Mr Ayre's spreadsheet all record that W2 had been used at some stage on the weekend of 8-9 January, it is not true to say that the documents are consistent. Mr Ayre's spreadsheet has W2 in use from 5am on Saturday. The strategy summary log has W2 in use from 12.30pm Sunday until 7.15pm Sunday. And the ministerial briefing note suggests that W2 was in use from no later than 7pm Sunday until perhaps as late as 6.30am

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<sup>2</sup> Shannon at T5820/43 - T5821/20, T5825/10 - 20 and T5848/20 - 42; Mr. Roads T5775/18 - 27 and T5805; Professor Apelt T5727/30 - 43, T5728/40 - 60 and T5732/10 - T5733/5

Monday. These inconsistencies suggest that Mr Ayre was not the author of the strategy summary log, and had not considered or endorsed the attribution of strategies in the strategy summary log or ministerial briefing note.

**Brian O'Donnell QC**  
**Adam Pomeranke**