

**SUPPLEMENTARY SUBMISSION  
TO THE FLOODS COMMISSION OF INQUIRY  
ON BEHALF OF JOHN TIBALDI  
DATED 1 MARCH 2012**

**1. INTRODUCTION**

- 1.1. This supplementary submission is made in response to the Commission's request dated 28 February 2011. It concerns, specifically, the RAComments document contained in folder 7 of exhibit 2 to the statement of Robert Ayre dated 30 January 2012 ("**the document**").
- 1.2. The Commission has requested "*any submissions that might be made as to the use which could be made of this document. In particular, attention might be given to whether any conclusions about Mr Ayre's state of mind might be drawn from or supported by reference to this document*".

**2. TIBALDI RESPONSE**

- 2.1. Mr Tibaldi has perused the document for the purposes of preparing this submission. He has no recollection of having previously seen the document, nor of being aware that Mr Ayre had created the document.
- 2.2. Mr Tibaldi does not know:
- (a) when the document was created;
  - (b) the purpose for which the document was created; nor
  - (c) what information was used to populate the document.

- 2.3. Mr Tibaldi has no recollection that he referred to the document during the process of drafting the Flood Event Report, nor at any other time.
- 2.4. There is no evidence that Mr Tibaldi was shown the document while he was drafting the Flood Event Report.

### **3. CONCLUSIONS**

- 3.1. Mr Ayre identified the document in his statement to the Commission dated 30 January 2012 and described the purpose for which the document was created in paragraph 16 of that statement.
- 3.2. On the face of the document, it does not purport to be a contemporaneous record of the state of mind of any of the flood engineers during the January 2011 flood event.
- 3.3. The document does not record Mr Tibaldi's state of mind during the January 2011 flood event, nor does it record his state of mind in the following weeks, while the Flood Event Report was being drafted.
- 3.4. In the circumstances, no inference should be drawn in respect of Mr Tibaldi with regard to the document.
- 3.5. Mr Tibaldi cannot comment on Mr Ayre's state of mind at the time the document was being prepared. It is for Mr Ayre to comment on his own state of mind.
- 3.6. There is nothing about the contents of the document that should cause the Commission to divert from the conclusions reached in the Closing Submissions delivered by Mr Tibaldi and Seqwater dated 16 February 2012.
- 3.7. It is noted that the Commission's request dated 28 February 2012 does not advert to Counsel Assisting, or any other person, contending that an adverse inference against any party should be drawn from the document. In the event that Counsel Assisting the Floods Commission of Inquiry or any other person were to make

such a contention, it is submitted that this should be set out in a submission and provided to the parties concerned, allowing a reasonable period for their consideration and response.

Tom Sullivan SC  
Counsel for Mr Tibaldi  
1 March 2012