

Submissions on behalf of the Lockyer Valley Regional Council

1. These submissions are made on behalf of the Lockyer Valley Regional Council, which was granted leave to be represented on all Terms of Reference of the Commission of Inquiry. It is not proposed to set out the Terms of Reference in the body of these submissions, as they are publicly available and well known to the Commission.
2. At the outset, the Council acknowledges the opportunity afforded by the Commission to those residents and former residents of Grantham to give evidence of their experiences on the afternoon and evening of 10 January 2011. The request and impetus for this Commission of Inquiry was generated in large part by community concern that the Queensland Floods Commission of Inquiry (QFCI) had not taken the evidence of Grantham residents properly and fully into account, and that their evidence was not 'listened to', particularly as to the timing of key events on the afternoon of the flood event.
3. It is immediately acknowledged that the QFCI was dealing with issues much wider than the flooding of Grantham on 10 January 2011. Apart from the exposure of the error in the SES records investigated by this Inquiry, no criticism ought or need be made of the QFCI (which in any event is probably foreclosed to a large extent by paragraph 3 of the Terms of Reference of this Commission of Inquiry).
4. It would now be very difficult for any resident to seriously contend that they have not had the opportunity to give evidence (either by way of statement or by way of oral evidence at the public hearings of this Inquiry). They have also had the opportunity to test the evidence of other witnesses and of the experts by direct legal representation. It is difficult to imagine that more could have been done to enable the residents to have a voice. It is hoped that this Commission of Inquiry has addressed and answered those lingering concerns and questions held by certain members of the Grantham community since 2011.
5. The evidence of the residents, both in their narrative of what occurred, and in the photographic and video evidence that they produced was both compelling and, at times, harrowing.

6. The ability of Dr McIntosh and Dr Newton to skillfully incorporate the evidence of the residents into the modeling that they produced, so as to explain the likely behavior of the flood waters on the afternoon of 10 January in a way that was consistent with virtually all of the lay evidence, was simply outstanding (ex. 166). It provided an explanation that simply could not be reproduced in the written form.
7. The Council does not propose, in these submissions, to examine all of the evidence submitted to this Commission of Inquiry, and to debate at length many of the matters that were canvassed during the public hearings. That is properly within the purview of those assisting the Commission, and of other more directly interested parties. Rather, the Council will address those matters that may be thought to directly involve it.
8. To that end, these submissions will be brief. As the Commissioner observed, during the evidence of the Mayor; he “*hasn’t heard a word of criticism of the Council*”: T958.40 – T959.5.
9. It is respectfully submitted that no adverse findings ought to be made concerning the Council, nor concerning the two witnesses from the Council who gave evidence, namely the Mayor (Mr Stephen Jones), and the Chief Executive Officer (Mr Ian Flint). More is said of their evidence below.
10. No notice has been received from those assisting the Commission of Inquiry that an adverse finding is open or contemplated against either Mr Jones or Mr Flint, or the Council more generally. Were such a finding to be made, the rules of procedural fairness, which unarguably apply to this Commission of Inquiry¹, would require that the person or entity concerned should be told of the risk of such a finding being made and be given the opportunity to adduce additional evidence or material that might deter the Commissioner from making that finding.

¹ *Commissioner of Police v Tanos* ((1958) 98 CLR 383; *Kioa v West* (1985) 159 CLR 550 at 584-5; *Annetts v McCann* (1990) 170 CLR 596 at 598; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 per Brennan J at 585

11. In those circumstances, and in the absence of such notice, the Council proposes to address a miscellany of matters that were raised in the evidence before the Commission, either by way of statement, or in oral evidence, as follows:
 - a. Whether it is within the Terms of Reference of this Commission of Inquiry to make findings about the regulatory regime that applied to the quarry prior to and at the time of the January 10 flood event;
 - b. If so, what findings ought be made;
 - c. The various matters raised in the statement of Mr Jones; and
 - d. The allegations of Mr Gallagher.
12. One can immediately appreciate the narrow way in which the Terms of Reference have been drawn. The only term of reference that could arguably entitle the Commission to investigate, and make findings about, the regulatory regime, is Term of Reference (a). Whilst it is acknowledged that the words “with respect to” are of wide meaning, it is submitted that the focus of that term of reference is on the flooding event itself, and whether any natural or man-made features of the landscape altered or contributed to the flooding. Obviously, it is necessary to identify any man-made features that are arguably relevant. It is not necessary, nor is it desirable (for the reasons to be discussed shortly) for the Commission to investigate whether, for example, any man-made structure was lawful or unlawful, and if unlawful who was responsible for that state of affairs.
13. The task of identifying the relevant man-made structures has been done and was, with respect, straightforward. The quarry and the railway embankment are the two obvious man-made features that needed to be looked at. The formation of the Gatton-Helidon Road and the various buildings and improvements, both residential and agricultural, bridges and other structures, whilst man-made, are quite unlikely to have had any meaningful effect on the flooding that occurred in Grantham.
14. With the assistance of Dr McIntosh, and the other expert witnesses, whose evidence is referred to in more detail below, the Commission

has fulfilled its task of investigating the contribution to the flooding event of the two obvious man-made features of the landscape.

15. To make findings as to the regulatory regime that applied to the construction of each of those structures, is not only outside the Terms of Reference, it is respectfully submitted that it is unnecessary and unhelpful.
16. There does not seem to have been any attempt to look at the regulatory regime applying to the construction and maintenance of the railway infrastructure. That is understandable. There is no suggestion that the railway infrastructure was built and maintained other than in compliance with the laws that governed it and indeed, no evidence has been adduced or given which controverts that statement². The railway embankment has been *in situ* for many years prior to the 2011 flood.
17. So far as the quarry is concerned, there was, prior to the public hearings of this Commission, a considerable amount of community concern as to whether high embankments were constructed that had the effect of acting as a levee or a dam, holding back the flood waters until bursting, and then releasing a torrent of water at a much higher velocity and perhaps in a different direction than would otherwise have been the case.
18. That concern has been put to rest by the evidence of the expert witnesses. This Commission will have little difficulty in discharging its function under Terms of Reference (b), (c) and (d). It is an inescapable conclusion, when all of the evidence is looked at logically, fairly and impartially, that the Grantham Quarry did not cause or contribute to the flooding of Grantham; its existence did not cause or contribute to the flooding, and the breach of the quarry made no meaningful difference to that flooding. Nor did the existence of the quarry, or its breach during the flood event, have any material impact on the damage caused by the flooding at Grantham. Nor did the breach of the

² Save for this matter being touched upon in Mayor Jones Statement dated 30 June 2015 (paragraphs 11-12)

quarry have any implications for the evacuation of Grantham. In that regard, the Council adopts the submission of the State of Queensland at paragraph 30 of its written submissions.

19. Once those conclusions are reached, as it is respectfully submitted they must, it is simply unnecessary to investigate whether any works were undertaken at the site of the quarry that were unlawful and, if so, which government was responsible for either detecting that unlawful activity, or of taking steps to alleviate it.
20. That is, if it be assumed that man-made embankments were created by quarry operators (whenever that happened after 1981) in contravention of approvals issued in respect of the site, what does it matter to the conclusions to be made under Term of Reference (a)? One can understand that, if the embankments (or their failure) caused or materially contributed to the flooding, the Commission would want to understand how the embankments came to be there, under what authority they were built, whether their construction was lawful, and which arm of government was responsible for (a) allowing their construction or (b) failing to detect them and require their removal. Issues of responsibility would loom large. But that is not the situation confronting this Commission of Inquiry.
21. In light of the principal finding to be made by this Commission of Inquiry, viz. that no part of the quarry caused, altered or contributed to the flooding of Grantham, any such matters are hypothetical.
22. There is a further reason why no findings should be made about the regulatory oversight of the quarry.
23. It would only be appropriate to make findings about that matter if the Commission thought it necessary to go on and make findings as to whether there had been a breach of the conditions imposed on the lawfulness of the operations of the quarry. Otherwise, findings as to the applicable regulatory regime are completely beside the point.
24. Submissions have been made, at length, by those representing the Wagners interests, as to why the Terms of Reference do not authorize a finding as to whether the operations at the quarry were conducted

in compliance with the relevant permits issued to the operator of the quarry. There is considerable force in the submission made at paragraph 27 of the written submissions of Wagner that whether the 'bunds' were created in compliance with any permit is not probative of any issue relevant to construing the flooding or any effect of the bunds upon the flooding.

25. It is accepted that Commissions of Inquiry by their terms of appointment have a wide discretion as to the manner in which their inquiries are to be conducted. Reference is made, inter alia, to s. 17 *Commissions of Inquiry Act*. Whilst the rules of evidence are expressly stated not to apply to Commissions of Inquiry, nevertheless some intellectual discipline is required before any findings of fact are made. That is certainly so before any findings are made adverse to an individual or organisation.
26. A finding that embankments were constructed in contravention of local authority approval, or in contravention of State legislation, is a finding of the breach of a law. Such matters are statutory offences. They carry penal consequences.
27. If findings are made that individuals, or an organisation, have acted unlawfully, or in breach of some duty, the Commission of Inquiry must, it is submitted, set out the facts on which those findings are made, based on the evidence, and be satisfied to a standard reflective of the seriousness of the findings made (by analogy to the 'Briginshaw standard' of a reasonable satisfaction: (1938) 60 CLR 336 at 362).
28. It is respectfully submitted that it is quite unnecessary to engage in that task in the present Commission of Inquiry, given the overriding conclusions that must be reached about the cause of the flooding and the inescapable conclusion that the quarry did not alter or contribute to the flooding.
29. In making that submission, the Council does not submit that this Commission of Inquiry should not make findings about whether man-made embankments were present, the dimensions of those embankments, and when they were likely constructed. Those facts

necessarily underpin the expert evidence that has been adduced. It is obviously necessary to make findings about what man-made features were present, and how they came to be there. A large body of evidence has been obtained as to when the embankments were likely constructed.

30. In that regard, notwithstanding the criticisms leveled at him by the Wagners' submissions, the Commission ought to accept the evidence of Mr Starr as to likely date of creation of the embankments, and their dimensions. The submissions made on behalf of the Grantham Families set out the findings that should be made regarding the timing of the construction of the embankments.
31. If it might be thought that comment should be made as to the regulatory regime, to assist going forward, in clarifying the respective roles and responsibilities of, relevantly, the Council and the State Government. That too is unnecessary. Legislative amendments made in 2014 now make it clear that responsibility for assessing and approving the construction of levees lies with the Council.
32. If the Commission considers that it is necessary to make findings about the regulatory regime and matters of responsibility, the Council makes the following submissions.
33. The Council accepts that any approval to conduct a quarrying application required a town planning consent from the Council. Such consent was issued in 1981. A copy of the relevant documents have been provided to the Commission, and form part of exhibit IF2 to the statement of Ian Flint dated 22 July 2015 (at pages 16-17).
34. Based on the advice of the Water Resources Commission, the Gatton Shire Council imposed two relevant conditions upon the use of the site for mining in its conditions of approval dated 20 October 1981:

“9. The buffer zone between Lockyer Creek and any excavated area to be 40 metres except where pegged to retain the natural water exit on the south east corner in case of flooding the lower terrace. The buffer zones in all cases are to be left in their natural state, they are not to be used for storage of materials, overburden, sand or gravel. All buffer zones are to be permanently marked.

10. Overburden is not permitted to be placed so as to form a levee bank, unless approval is obtained from the Water Resources Commission . . . Permission is required before any change of batter slopes is contemplated. ”

35. The Council also refers to the letter from the Water Resources Commission to the then owner of the quarry land on 3 July 1989 (item #9 in Schedule 1 of the information provided to the Commission on 2 June 2015). Because of the potential for quarry operations to affect the stability of the creek banks, water flow both within the creek and overland, and water quality, the Water Resources Commission was intimately involved in the approval process for the quarry, both in 1981 and in 1989/90.
36. As Mr Flint states on 11 June 2015:

“The Council took the view that as the Water Resources Commission was the agency responsible for these issues and the conditions it set, any future compliance action in relation to construction of an embankment would necessarily be the responsibility of the Water Resource Commission or other State Agency taking control of those responsibilities.”
37. The evidence discloses that the Department of Environment was involved in on-site inspections at the quarry, and was the relevant authority that dealt with the repairs carried out to the embankment following its breach on 10 January 2011.
38. The State of Queensland, by reference to the statements of Sue Ryan and others, makes the submission, at paragraph 4, that none of the evidence was the subject of challenge. Whilst it is correct to observe that none of the State witnesses was called to give oral evidence, the submission overlooks the fact that ex IF1 to the Statement of Ian Flint dated 24 July 2015 is a report from a solicitor experienced in the regulation of extractive industries as to the regulatory framework that applied in the circumstances. To the extent that there is conflict in the two statements, it cannot be said that the State evidence is unchallenged. The Council relies on its evidence in this regard.
39. Much of what is said in the statement of Sue Ryan is uncontroversial. At paragraph 5 of its submissions, the State accepts that it had the

authority to consent to the construction of works “associated with the watercourse, such as levee banks, and the power to investigate and undertaken compliance activities in relation to activity in the watercourse which would necessarily involve the construction of levee banks/bunds or the extraction of the quarry material”.

40. Paragraph 13 of the submissions on behalf of the State is that there is no evidence that the State was ever made aware of the making of the approval which contained the relevant clauses. As is made clear by paragraph 25 of ex. IF1 to Mr Flint’s statement, there was an inspection of the quarry by the Water Resources Commission prior to the approval being granted by the Council, with confirmation that the operation was satisfactory.
41. Item #13 of ex. IF2 to Mr Flint’s statement demonstrates that there was ongoing involvement of the Water Resources Commission after the 1981 approval. There was a site inspection on 7 May 1984. A letter dated 10 May 1984 extracted at paragraph 28 of ex. IF1 to Mr Flint’s statement makes it quite clear that the State, through the Water Resources Commission, was likely well aware of conditions of approval (noting the qualification in paragraph 29 of that same exhibit). Further inspections by the State are referenced at paragraph 35 of ex. IF1. The exhibit also highlights further interaction between State agencies and operators of the quarry from time to time.
42. A stormwater management plan was submitted by Wagners to the Environmental Protection Agency (see paragraphs 62 – 65 of ex. IF1). This did not involve the Council.
43. It can therefore be seen that the fact that the quarry operations were moved from within the confines of the creek to beside the creek (and within the horseshoe bend with a creek virtually surrounding the quarry pit) did not, contrary to the submissions on behalf of the State, take the quarry operations outside of State control or influence. Rather, the State continued to take an interest in the quarry operations.

44. Whilst the Council was responsible for town planning approvals, those conditions to which reference has been made, were imposed at the behest of the Water Resources Commission, to try and ensure that the quarrying operations did not have an adverse effect on Lockyer Creek. That is a matter very much of concern to the State.
45. If it is found that the embankments constructed at the quarry acted as a levee, then it is submitted that was a matter for the State to deal with.
46. The Council relies upon what is said at paragraphs 87 – 91 of the ex. IF1 concerning ongoing monitoring of the quarry operations.
47. It is the position of the Council that no complaint was made to it about the quarry operations, or the construction of any embankments. In so far as Mr Gallagher gave evidence to the contrary, that is separately dealt with, below.
48. There was ongoing monitoring by the State, under its legislation. If there were any matters of concern created by the placement of the embankments, so far as interference with the flow of Lockyer Creek or of storm water flow, that was a matter that one would ordinarily expect to have been raised and dealt with by the State, as it had in specific instances referred to in exs. IF1 and IF2 to the statement of Mr Flint.
49. There is no evidence before this Commission of Inquiry that the conditions imposed by the Council were inadequate or insufficient. No finding to the contrary can, or should, be made.
50. It remains a matter for the Commission whether it intends to make any finding that the operator of the quarry (and, in this regard, having regard to the evidence of Mr Starr, particularly Wagners from 1998 onwards) acted in contravention of the conditions attaching to the operation of the quarry.
51. The Council has earlier submitted as to why this matter ought not be the subject of any findings. If that submission is rejected, it submitted that there must be a finding that there was a contravention of

condition 9. Materials were clearly placed within the 40 metre buffer zone.

52. Whether there was a breach of condition 10 is more problematic. There is no evidence of any Water Resources Commission consent to the formation of a levee. The condition, for its breach, does not require that what was constructed was intended to be a levee. Rather, it is whether a levee was formed.
53. It can be accepted, as Wagners submit, that the placement of overburden so as to form the embankments, was not a designed structure, nor was it expressly for the purpose of being a levee.
54. However, there is evidence to support a finding that the embankments did constitute a levee; i.e. a structure to keep water out of an area. Whether it was ultimately successful in acting as a levee on 10 January is a different point. The fact that although, technically, there was a breach of condition 10, the fact that such breach had no causal potency in what eventuated is perhaps another good reason for the Commission not to enter upon any fact finding in this area.
55. The submissions made by Mr Prendergast on behalf of the residents of "West Grantham" urge that the Commission direct attention to the legislative and regulatory context within which the quarry operated prior to the 2011 flood event on 10 January 2011. For reasons already articulated, the Council submits that is a sterile exercise having regard to the findings that will otherwise undoubtedly be made as to the contribution, if any, of the quarry to the flood event.
56. The Commission should certainly not accede to the submission of Ms Gearing that the Commission should find that the fact that a very large structure was built in a riparian zone on a flood plain in contravention to (sic) the terms of the quarry approval is a matter of public concern. Ms Gearing also requests that the Commissioner make a finding in relation to the illegality of the dumping of overburden above natural ground level. For the reasons already contained in these submissions such a finding is neither authorized nor warranted.

57. Mr Stephen Jones, the Mayor of the Council raised matters of concern in his statement dated 30 June 2005 (exhibit 96):
- a. The level of communication between various agencies at the time of and immediately following the flood;
 - b. A particular 000 call referenced in a newspaper publication;
 - c. Whether an offer of assistance from the Australian Defence Force by the provision of Black Hawk helicopters was declined by personnel in the State Disaster Command Centre;
 - d. The likely involvement of the railway embankment in constraining flood waters;
 - e. The extent of the exclusion zone imposed by the police;
 - f. The removal of Sergeant Wilce;
 - g. The way in which residents were allowed to return to their homes;
 - h. The taking of evidence from members of the public.
58. The Commission should find that Mayor Jones raised these matters genuinely as concerns held by him, and to which there had not been any satisfactory explanation to the date of his statement. It is evident from his statement that Mayor Jones raised these matters not only because of what he saw and heard in the aftermath of the flood, but also complaints relayed to him by community members.
59. It has been submitted by both the State and by Wagners that “these matters” in Term of Reference (e) must refer to the matters in Terms of Reference (a) – (d). That construction accords with the plain meaning of the document. Accordingly, the Commission of Inquiry is not charged with an investigation into all matters appertaining to the events of 10 January 2011 and their aftermath.
60. The Council notes the comments of counsel assisting extracted by the State at paragraph 27 of its submissions. Significant work has been done by the Council subsequent to the flood both in terms of re-locating many residents, but also by installing early warning systems and the like. It is accepted that this is not relevant to this Inquiry’s terms of reference (see State submissions at paragraph 28). However,

reference should not be made to what was found in the QFCI about disaster management plans and the like without giving recognition to what has been done subsequently.

61. Nevertheless, the Commission has carefully and diligently investigated the matters raised by Mayor Jones. During his oral evidence, Mayor Jones said that, having heard some of the evidence concerning the above points that he accepts that a full and proper explanation has now been given about most of the matters raised by him.
62. It is perhaps unsurprising that in the occurrence of, and during the immediate aftermath of, a flood event of the magnitude of that experienced on the afternoon of 10 January 2011, that there might be difficulties in communications. As Mr Jones explained emotions were riding high and tempers were perhaps frayed.
63. The matter referred to in 57(b) above (evidenced by exhibit 124) was investigated by the Commission and it could not be shown that there was any such person working on the day in question. The genuineness of the statement to the newspaper must therefore be called into question.
64. The provision of helicopters has been dealt with in a number of statements. Paragraphs 88ff of the State submissions outlines the evidence concerning the request for ADF assistance in the provision of Black Hawk helicopters. Documentation has been produced that shows a request made to the State Disaster Coordination Centre. Reference is then made to the statements of Major Ian Dunn (the ADF liaison officer) and Air Vice Marshall Paule (ex. 133). It is said the ADF was unable to act on the request due to inclement weather.
65. The Council suggested that the commander of the Oakey base be interviewed. It is not known whether that occurred. There are discrepancies between the running sheets of Senior Sergeant McDonald and then Assistant Commissioner Gollschewski (he is now a Deputy Commissioner) that remain unresolved.
66. What must be accepted, however, is that there is no evidence that the provision of Black Hawk helicopters would have meant that someone

would have been rescued when they otherwise perished on the afternoon of 10 January.

67. The Commission engaged Dr McIntosh to examine the effect of the railway embankment. It undoubtedly had an effect in constraining floodwaters that would otherwise have flowed to the north of that embankment.
68. Queensland Rail has carefully, and with respect helpfully, analysed the evidence pertaining the involvement of the railway embankment. The involvement of the railway embankment is acknowledged.
69. Having heard the evidence of Superintendent Kelly, Mayor Jones said that he was satisfied with the explanation of why the exclusion zone was set up as it was.
70. Indeed, having heard the evidence of Inspector Isherwood, and the work that Taskforce Galaxy had underway, it is, in hindsight, unfortunate that the appointment of the QFCI on 17 January 2011 terminated the work of Taskforce Galaxy and the more extensive intended investigations of the coroner, as explained in the State submissions.
71. Having heard the evidence as to why Sergeant Wilce was re-deployed as he was, Mayor Jones accepted the reasons for that occurring.
72. Regarding what occurred when residents were allowed to return to their homes, it is evident that there is a difference in recollection between Mayor Jones and Assistant Commissioner Gollschewski. Mayor Jones gave evidence and was questioned on the topic. Assistant Commissioner Gollschewski did not give oral evidence. It would, in those circumstances, be unfair to prefer his evidence over that of the Mayor. It is overly harsh for the State to submit, as it does at paragraph 83 of its submissions that the Mayor's concerns were 'without foundation'. The Commission will be satisfied, having heard the Mayor give evidence, and be cross-examined, that he was genuinely upset and concerned about the way the return of residents to their homes was handled. At the very least, there was a breakdown

in communication. To be so dismissive of the Mayor's concerns does the State no credit.

73. What is highlighted is the need for clear and open communication between the stakeholders in the aftermath of natural disasters such as the flood of January 2011.
74. Apart from one video, there is no evidence that any property of residents was taken from them and not returned. In the absence of any complaint directly from residents this matter need not be addressed further.
75. Mr Gallagher, both in his statement and in his oral evidence, asserts that he wrote to the Council about the embankments at the quarry in about 2005 (T490.30). This evidence attracted significant media attention. In response to that evidence the Council has had extensive searches carried out. Two statements from Ms Beatty have been given to the Commission as to the results of those searches.
76. Numerous letters written by Mr Gallagher to the Council have been located, but none that match the description of the letter that Mr Gallagher claims was sent.
77. In light of the evidence of Ms Beatty the more compelling inference is that no such letter was received by the Council.
78. The Council wrote to the Commission of Inquiry on 6 August 2015 regarding whether there was any likelihood of the Commissioner making a finding about whether the claimed letter was sent or not.
79. It is respectfully submitted that no finding should be made that a letter was sent as claimed by Mr Gallagher.
80. Otherwise, it is sufficient for the Council to observe that the Commission has gathered a large amount of evidence, and has received many submissions. Much of the evidence on key points of interest has been set out in the submissions of particular 'parties' who have a specific interest in that evidence. It serves no point to repeat that evidence.

81. The evidence of Dr McIntosh, Dr Newton and Dr Szyrkarski was sufficiently consistent to enable the Commission to make findings with confidence about the subject matters of Terms of Reference (a) – (d).
82. Although some criticism has been made of the modeling, the opinions of well credentialed experts, including Dr Szyrkarski who was the hydrologist that raised concerns about the report of Dr Jordan, are unanimous that the modeling is sufficient to explain the flooding event that occurred, and to entitle the Commission to conclude that the quarry did not alter or exacerbate the flooding in any meaningful way.
83. Mr Szyrkarski was given the opportunity to review the reports and work of Dr McIntosh. He accepted that Dr McIntosh had adequately addressed each of the matters raised by him in his earlier report commissioned by the Australian newspaper. He did not disagree with Dr McIntosh's conclusions and his methodology. He described it as a 'reasonably likely scenario'.
84. Mr Patrick Hill of Jacobs has been given the opportunity of commenting on the expert reports, and his submission does not detract from the conclusions reached by those experts that gave evidence.
85. In so far as criticisms are made of the modeling and of the opinions expressed by the three experts, they should not be accepted. In particular, the Commission should not accept and rely upon the submissions (and evidence) of Mr Galletly, who did not give public evidence, and whose opinions were not tested. It is not known whether this 'evidence' was given to Dr McIntosh or any of the other experts to see whether it changed their opinions.
86. The well considered submission of Dr Max Winders, dated 26 August 2015, on the other hand, provides support for the opinions expressed by the three experts to whom reference has been made. The only matter that is raised by his submission is whether Dr McIntosh and the other experts were aware of and provided with the modeling conducted using the MIKE-21 software, and whether that modeling causes any of the experts to modify their opinion. As that modeling

was done by DHI (Dr Szylkarski's firm) it is assumed that at least he was aware of it.

87. Any criticism that such modeling was not carried out prior to 10 January 2011 is mis-placed. There has been no evidence as to why that was not done (including matters such as availability of resources), as it is not within the Terms of Reference.
88. Numerous residents gave evidence as to how the January 10 flood was so different from previous floods, particularly insofar as water came from the west at some velocity. It is submitted that this has been fully and adequately explained in the evidence of the three experts.
89. Finally, it is noted that Ms Gearing urges the making of a recommendation regarding residential development at Grantham. That is plainly outside the Terms of Reference. It is a matter of which the Council is acutely aware. The Council has provided information to the Commission of Inquiry about the circumstances in which a dwelling would be permitted to be built at that part of Grantham devastated by the floods. The Council now owns much of the land in that part of the township. The removal of many residents to higher ground was not the subject of evidence because it was not within the Terms of Reference. Should the Commission of Inquiry request evidence about that matter, the Council would be able to provide it.

Keith Wilson QC

Instructed by Australian Property Lawyers

On behalf of Lockyer

Valley Regional Council

10 September 2015