

## **PARTICULARS**

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Appendix C, p 179.

### ***Rainfall and Inflows***

- 316 In the 24 hours to 9:00 am on 10 January 2011, there was widespread and heavy rainfall recorded throughout the catchment areas for Lake Somerset and Lake Wivenhoe, with up to 284 mm of rainfall in some areas.

## **PARTICULARS**

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Section 6.3, p 68.

- 317 Catchment inflows into Lake Wivenhoe and Lake Somerset continued in significant volumes throughout the course of 10 January 2011.

## **PARTICULARS**

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Section 9.2, pp 157-158 and Section 9.3, p 171.

- 318 In the 24 hours to 9:00 am on 11 January 2011, there was widespread and heavy rainfall recorded throughout the catchment areas for Lake Somerset and Lake Wivenhoe, with up to 131 mm of rainfall in some areas.

## **PARTICULARS**

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Section 6.3, p 69.

- 319 Catchment inflows into Lake Wivenhoe and Lake Somerset continued in significant volumes throughout the course of 11 January 2011.

## PARTICULARS

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Section 9.2, pp 158-159 and Section 9.3, pp 171-172.

- 320 The inflows into Lake Wivenhoe on 10 and 11 January 2011 included substantial inflows from Splityard Creek Dam caused by the release of water through that dam.
- 321 The release of water from Splityard Creek Dam into Lake Wivenhoe in the period 10 to 11 January 2011 increased the risk that there would be insufficient flood storage capacity in Lake Wivenhoe to store incoming flows should further rainfall occur in accordance with, or in excess of, that forecast by the Bureau of Meteorology.

### **Water Level**

- 322 At or around 1:14 am on 10 January 2011:
- a) the water level of Lake Somerset was at approximately EL 102.22 m AHD and rising quickly; and
  - b) the water level at Lake Wivenhoe was at approximately EL 69.60 m AHD and rising quickly.

## PARTICULARS

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Appendix E, pp 23-24.

- 323 At or around 6:30 am on 10 January 2011:
- a) the water level of Lake Somerset was at approximately EL 102.84 m AHD and rising quickly; and
  - b) the water level at Lake Wivenhoe was at approximately EL 70.77 m AHD and rising quickly.

**PARTICULARS**

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Appendix E, pp 25-26.

324 At or around 12:16 ~~am~~ pm on 10 January 2011:

- a) the water level of Lake Somerset was at approximately EL 103.11 m AHD and rising quickly; and
- b) the water level at Lake Wivenhoe was at approximately EL 71.95 m AHD and rising quickly.

**PARTICULARS**

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Appendix E, pp 28-29.

325 At or around 6:43 pm on 10 January 2011:

- a) the water level of Lake Somerset was at approximately EL 103.46 m AHD and rising; and
- b) the water level at Lake Wivenhoe was at approximately EL 72.92 m AHD and rising quickly.

**PARTICULARS**

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Appendix E, p 30.

326 At or around 11:56 pm on 10 January 2011:

- a) the water level of Lake Somerset was at approximately EL 103.40 m AHD and falling slowly; and
- b) the water level at Lake Wivenhoe was at approximately EL 73.22 m AHD and rising quickly.

**PARTICULARS**

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Appendix E, p 32.

327 At or around 6:12 am on 11 January 2011:

- a) the water level of Lake Somerset was at approximately EL 103.27 m AHD and falling slowly; and
- b) the water level at Lake Wivenhoe was at approximately EL 73.51 m AHD and rising quickly.

**PARTICULARS**

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Appendix E, p 34.

328 A substantial contributing cause of the rise in level of Lake Wivenhoe in the period 9 to 11 January 2011 was the actions of the Flood Engineers, or one or more of them, in releasing significant volumes of water from Somerset Dam into Lake Wivenhoe in circumstances where there were already large inflows into Wivenhoe Dam, and where such releases were unnecessary given the available capacity of the flood storage compartment of Lake Somerset.

***Flood Operations***

329 The Flood Engineers on duty on 10 and 11 January 2011 were as follows:

Shift Start Time	Shift Finish Time	Flood Operations Engineer
Sunday 9/1/2011 19:00	Monday 10/1/2011 07:00	Mr Ruffini Mr Ay re
Monday 10/1/2011 07:00	Monday 10/1/2011 19:00	Mr Malone Mr Tiibaldi Tibaldi
Monday 10/1/2011 19:00	Tuesday 11/1/2011 07:00	Mr Ruffini Mr Ay re

Shift Start Time	Shift Finish Time	Flood Operations Engineer
Tuesday 11/1/2011 07:00	Tuesday 11/1/2011 19:00	Mr Malone Mr Tiibaldi
Tuesday 11/1/2011 19:00	Wednesday 12/1/2011 7:00	Mr Ruffini Mr Ay re

329A In addition to the rostered shifts pleaded in the preceding paragraph:

- a) all four Flood Engineers met at or around the end of each shift on 10 and 11 January to discuss and agree the appropriate flood mitigation strategy given the prevailing and forecast conditions;
- b) Mr Ayre and Mr Ruffini assisted Mr Malone and Mr Tibaldi in conducting Flood Operations from approximately 1:00 pm on 11 January 2011; and
- c) Mr Malone and Mr Tibaldi assisted Mr Ayre and Mr Ruffini in conducting Flood Operations until approximately 11:00 pm on 11 January 2011.

### PARTICULARS

- A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, p 34.

329B In using the Real Time Flood Model on 10 and 11 January 2011 to predict future inflows into Lake Somerset and Lake Wivenhoe, the Flood Engineers selected and input initial losses and continuing loss rates as follows:

Region	Initial Losses	Continuing Loss Rates
CRE (Cressbrook Creek Region)	10mm	2.5 mm/hr
COO (Coovar Creek Region)	30 mm	0.5 mm/hr
LIN (Brisbane River at Linville Region)	30 mm	0.5 mm/hr
EMU (Emu Creek Region)	30 mm	0.5 mm/hr
GRE (Gregors Creek Region)	40 mm	0.5 mm/hr

<b>Region</b>	<b>Initial Losses</b>	<b>Continuing Loss Rates</b>
SDI (Somerset Dam Inflow Region)	15 mm	0.5 mm/hr
WDI (Wivenhoe Dam Inflow Region)	0 mm	2.5 mm/hr

330 Throughout 10 and 11 January 2011, the Flood Engineers released water from Wivenhoe Dam at substantial rates of discharge (between approximately 1,462 m<sup>3</sup>/s and 7,464 m<sup>3</sup>/s).

#### **PARTICULARS**

A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Section 9.2, pp 158-159.

331 The water released from Wivenhoe Dam on 10 and 11 January 2011 was released in such volumes and at such rates that urban flooding downstream of Wivenhoe Dam was certain or, alternatively, very likely, to occur.

332 Notwithstanding the matters pleaded in paragraph 328, the Flood Engineers did not discontinue making substantial releases from Lake Somerset into Lake Wivenhoe until around 8:30 am on 11 January 2011.

#### **PARTICULARS**

A. Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Appendix L, p 70.

333 By making substantial and unnecessary releases from Somerset Dam into Lake Wivenhoe in the period 10-11 January, the Flood Engineers, or one or more of them, increased the risk that there would be insufficient flood storage capacity in Lake Wivenhoe to store incoming flows should further rainfall occur in accordance with, or in excess of, that forecast by the Bureau of Meteorology.

334 Further, the Flood Engineers did not take any steps on or before around 6:00 pm on 11 January **2011**:

- a) to inform Tarong Energy that conditions were such that releases from Splityard Creek Dam into Wivenhoe Dam would increase the risk of flooding downstream of Wivenhoe Dam; or
- b) to request that Tarong Energy refrain from releasing water into Lake Wivenhoe.

335 Had the Flood Engineers requested that Tarong Energy refrain from releasing water from Splityard Creek Dam on 10 and 11 January 2011, Tarong Energy would have complied with that request.

#### **PARTICULARS**

- A. That Tarong Energy would have complied with the request is to be inferred from the circumstance that Tarong Energy did comply with a request to that effect when it was ultimately made by the Flood Engineers at or around 6:30 pm on 11 January 2011.
- B. Statement of Andrew Krotewicz to the Queensland Flood Commission of Inquiry, 13 September 2011, ATK-6.

336 The failure of the Flood Engineers to take the steps pleaded in paragraph 334 before 6:00 pm on 11 January 2011 increased the risk that they would be required to release water from Wivenhoe Dam in the following hours or days in volumes that would cause flooding in urban areas downstream of Wivenhoe Dam.

#### **PARTICULARS**

- A. The effect of the failure pleaded in Paragraph 334 of the SOC on the water level in Wivenhoe Dam is that described in Tarong Energy's report entitled *January 2011 Exceptional Rainfall Event: Review of Events and Actions*, February 2011, Appendix 7.

#### **10-11 January 2011 Breaches**

337 In the circumstances pleaded in paragraphs 310-328, on 10 and 11 January 2011, there was a substantial risk:

- a) that, unless releases into Lake Wivenhoe from Somerset Dam and Splityard Creek Dam were immediately stopped there would be

insufficient flood storage capacity in Lake Wivenhoe to store incoming flows should further rainfall occur in accordance with, or in excess of, that forecast by the Bureau of Meteorology; and

- b) that, without such capacity, subsequent releases would be necessary in volumes that would cause urban flooding downstream of Wivenhoe Dam, or more such flooding than would otherwise be necessary if releases from Somerset Dam and Splityard Creek Dam were stopped on 10 and 11 January 2011.

338 [Not used]

339 Further, by reason of the matters pleaded at paragraphs 310-328 and 337, a reasonably prudent flood engineer responsible for Flood Operations at Somerset Dam and Wivenhoe Dam on 10 and 11 January 2011:

- a) would have complied with the Flood Mitigation Manual;
- b) would have immediately ceased significantly reduced releases from Somerset Dam into Lake Wivenhoe;
- c) would have immediately informed Tarong Energy that the conditions were such that releases from Splityard Creek Dam into Wivenhoe Dam would increase the risk of flooding downstream of Wivenhoe Dam;
- d) would have immediately requested that Tarong Energy discontinue releasing water into Lake Wivenhoe;
- e) would have continued storing inflows in Lake Somerset by ensuring that releases from Lake Somerset were substantially less than the rate of inflow;
- f) [Not used] would have allowed the water level in Lake Somerset to rise to:
  - i) approximately EL 103.22 m AHD by the end of 10 January 2011; or, alternatively,
  - ii) approximately EL 104.50 m AHD by the end of 10 January 2011;



- g) [Not used] would have kept the water level in Lake Wivenhoe to no higher than:
- i) approximately EL 67.94 m AHD at the end of 10 January 2011; or, alternatively,
  - ii) approximately EL 72.42 m AHD at the end of 10 January 2011;
- h) [Not used] would have allowed the water level in Lake Somerset to rise to:
- i) approximately EL 106.10 m AHD by the end of 11 January 2011; or, alternatively,
  - ii) approximately EL 106.73 m AHD by the end of 10 January 2011; and
- i) [Not used] would have kept the water level in Lake Wivenhoe to no higher than:
- i) approximately EL 71.66 m AHD at the end of 10 January 2011; or, alternatively,
  - ii) approximately EL 74.89 m AHD at the end of 10 January 2011.
- j) would have selected and input losses and continuing loss rates equal, or approximate, to those specified in the table below into the Real Time Flood Model to forecast future inflows into Lake Somerset and Lake Wivenhoe to take account of the increased runoff that would be generated from continuing rainfall by reason of the increasingly saturated catchments:

<b>Region</b>	<b>Initial Losses</b>	<b>Continuing Loss Rates</b>
CRE (Cressbrook Creek Region)	<b>2.1 mm</b>	<b>0.05 mm/hr</b>
COO (Coovar Creek Region)	<b>2.1 mm</b>	<b>0.05 mm/hr</b>
LIN (Brisbane River at Linville Region)	<b>2.1 mm</b>	<b>0.05 mm/hr</b>
EMU (Emu Creek Region)	<b>2.1 mm</b>	<b>0.05 mm/hr</b>

<b>Region</b>	<b>Initial Losses</b>	<b>Continuing Loss Rates</b>
GRE (Gregors Creek Region)	<b>2.1 mm</b>	0.05 mm/hr
SDI (Somerset Dam Inflow Region)	<b>1.0 mm</b>	0.02 mm/hr
WDI (Wivenhoe Dam Inflow Region)	<b>1.0 mm</b>	0.02 mm/hr

### PARTICULARS

- A. A reasonably prudent flood engineer would have complied with the Flood Mitigation Manual by taking the actions pleaded in paragraphs 339(b)-(i).
- B. Flood Mitigation Manual, sections 1.1, 3.1, 8.4, 8.5, 9.3, 9.4.
- C. Christensen Report, Chapter VIII, [953]-[998].
- D. Christensen Report, Chapter X, [1357]-[1390], [1507]-[1540], [1636]-[1669], [1742]-[1773], [1830]-[1862], [1896]-[1937].
- E. Christensen Supplemental Report, Volume 2, pp 4-5.
- F. Christensen Supplemental Report, Chapter VI, [233]-[253], [2681]-[2691].

339A Further, by reason of the matters pleaded in paragraphs 151-152, 163A-165, 170-170A, 174, 179A-182, 192-201, 214-219, 231-236, 248-252, 270-275, 291-295 and 310-319, had the Flood Engineers commenced reasonably prudent Flood Operations at Somerset Dam and Wivenhoe Dam at any time on or after 16 December 2010 and continued such Flood Operations until 10 January 2011 (contrary to what occurred in fact), there would have remained a significant risk on 10 January 2011 that:

- a) unless releases were continued at Wivenhoe Dam, there would be insufficient flood storage capacity in Lake Somerset and Lake Wivenhoe to store incoming flows should further rainfall occur in accordance with, or in excess of, that forecast by the Bureau of Meteorology; and

- b) without such capacity, subsequent releases would be necessary in volumes that would cause urban flooding downstream of Wivenhoe Dam.

339B Further, by reason of the matters pleaded in paragraphs 151-152, 163A-165, 170-170A, 174, 179A-182, 192-201, 214-219, 231-236, 248-252, 270-275, 291-295, 310-319 and 339A, by the end of 10 January 2011, a reasonably prudent flood engineer:

- a) having first commenced reasonably prudent Flood Operations on 16 December 2010 (by taking the actions pleaded in paragraph 160 above), and having continued reasonably prudent Flood Operations since that time, would have kept the water level in Lake Somerset to no higher than approximately EL 103.28 m AHD, and would have kept the water level in Lake Wivenhoe to no higher than approximately EL 67.99 m AHD; or, alternatively,
- b) having first commenced reasonably prudent Flood Operations on 2 January 2011 (by taking the actions pleaded in paragraph 211 above), and having continued reasonably Flood Operations since that time, would have kept the water level in Lake Somerset to no higher than approximately EL 103.31 m AHD, and would have kept the water level in Lake Wivenhoe to no higher than approximately EL 68.00 m AHD; or, alternatively
- c) having first commenced reasonably prudent Flood Operations on 5 January 2011 (by taking the actions pleaded in paragraph 228 above), and having continued reasonably prudent Flood Operations since that time, would have kept the water level in Lake Somerset to no higher than approximately EL 103.18 m AHD, and would have kept the water level in Lake Wivenhoe to no higher than approximately EL 68.42 m AHD; or, alternatively,
- d) having first commenced reasonably prudent Flood Operations on 6 January 2011 (by taking the actions pleaded in paragraph 245 above), and having continued reasonably prudent Flood Operations since that time, would have kept the water level in Lake Somerset to no higher than approximately EL 103.58 m AHD, and would have kept

the water level in Lake Wivenhoe to approximately EL 68.99 m AHD; or alternatively,

- e) having first commenced reasonably prudent Flood Operations on 7 January 2011 (by taking the actions pleaded in paragraph 267 above), and having continued reasonably prudent Flood Operations since that time, would have kept the water level in Lake Somerset to no higher than approximately EL 104.00 m AHD, and would have kept the water level in Lake Wivenhoe to approximately EL 70.05 m AHD; or alternatively,
- f) having first commenced reasonably prudent Flood Operations on 8 January 2011 (by taking the actions pleaded in paragraph 288 above), and having continued reasonably prudent Flood Operations since that time, would have kept the water level in Lake Somerset to no higher than approximately EL 104.65 m AHD, and would have kept the water level in Lake Wivenhoe to approximately EL 71.10 m AHD; or alternatively,
- g) having first commenced reasonably prudent Flood Operations on 9 January 2011 (by taking the actions pleaded in paragraph 307 above), and having continued reasonably prudent Flood Operations since that time, would have kept the water level in Lake Somerset to **no higher** than approximately EL 104.72 m AHD, and would have kept the water level in Lake Wivenhoe to approximately EL 71.64 m AHD; or alternatively,
- h) having first commenced reasonably prudent Flood Operations on 10 January 2011 (by taking the actions pleaded in paragraph 339 above), would have kept the water level in Lake Somerset to no higher than approximately EL 104.39 m AHD, and would have **kept** the water level in Lake Wivenhoe to approximately EL 72.47 m AHD.

#### **PARTICULARS**

- A. Flood Mitigation Manual, sections 1.1, 3.1, 8.4, 8.5, 9.3, 9.4.
- B. Christensen Report, Chapter VIII, [953]-[975].

- C. Christensen Report, Chapter X, [1357]-[1373], [1507]-[1523][1540], [1636]-[1651][1669], [1742]-[1756][1773], [18301]-[1845][1862], [1896]-[1920].
- D. Christensen Report, Volume 2. pp 190-191. 378-379. 424-425. 464-465. 500-501.
- E. Christensen Supplemental Report, Chapter VI, [233]-[244][253], [268]-[269].
- F. Christensen Supplemental Report, Volume 2, pp 69-70, 122-123, 150-151.

- 340 By reason of the matters pleaded in paragraphs 310-339B, on 10 and 11 January 2011 the Flood Engineers (or one or more of them):
- a) failed to do one or more of the things pleaded in paragraph 339 in the period 10 January to 11 January 2011; and, or alternatively,
  - b) failed, by the end of 10 January 2011, to reduce the water levels in Lake Somerset and Lake Wivenhoe to levels no higher than the respective water levels pleaded in paragraph 339B.

341 In the circumstances pleaded in the preceding paragraph, the Flood Engineers (or one or more of them) breached their duty of care to the plaintiff and other Group Members on 10 and 11 January 2011 (the **10-11 January Breaches**).

## **W Causation and Loss**

342 In the period 9 January to 11 January 2011, there was substantial rainfall in the catchment areas of Lake Somerset and Lake Wivenhoe, which generated significant runoff volumes into Lake Somerset and Lake Wivenhoe.

343 By reason of one or more of:

- a) the 16 December Breaches;
- b) the 17-24 December Breaches;

- c) 25 December- 1 January Breaches;
- d) 2 January Breaches;
- e) the 3-5 January Breaches;
- f) the 6 January Breaches;
- g) the 7 January Breaches;
- h) the 8 January Breaches; and
- i) the 9 January Breaches; and
- j) the 10-11 January Breaches (collectively, the **Flood Engineers' Breaches**);

there was insufficient available capacity in Lake Somerset and Lake Wivenhoe in the period from the evening of 9 January to 11 January 2011 to store incoming inflows, or to mitigate effectively the effect of such inflows.

- 344 In circumstances where rainfall and inflows were ongoing in the period 9 January to 11 January 2011, the lack of available flood storage capacity at Lake Somerset and Lake Wivenhoe necessitated the release of large volumes of water from Wivenhoe Dam in order to protect the structural integrity of Wivenhoe Dam.

#### **PARTICULARS**

- A. The volume of water released from Wivenhoe Dam in the period 9 January 2011 to 19 January 2011 is that reported by Seqwater in its report entitled Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Section 9.2.

- 345 In the period from the evening of 9 January to 19 January 2011, the Flood Engineers caused Wivenhoe Dam to release water in large volumes, causing flooding of urban land downstream of Wivenhoe Dam.

## PARTICULARS

- A. The volume of water released from Wivenhoe Dam in the period 9 January 2011 to 19 January 2011 is that reported by Seqwater in its report entitled Seqwater, *January 2011 Flood Event: Report on the Operation of Somerset Dam and Wivenhoe Dam*, 2 March 2011, Section 9.2.

346 The large volume releases from Wivenhoe Dam in the period 9 January 2011 to 19 January 2011:

- a) would not have been necessary, or would have been of smaller volume, had the Flood Engineers not committed one or more of the Flood Engineers' Breaches;
- b) caused:
- i) flooding downstream of Wivenhoe Dam in circumstances where such flooding would not have otherwise occurred had the Flood Engineers not committed one or more of the Flood Engineers' Breaches; or
- ii) greater flooding downstream of Wivenhoe Dam than would have occurred had the Flood Engineers not committed one or more of the Flood Engineers' Breaches;
- (both are referred to in this pleading for convenience as "**Greater Flooding**");

## PARTICULARS

- A. The Greater Flooding was more extensive than the flooding downstream of Wivenhoe Dam that would have occurred absent the Flood Engineers' Breaches, both in terms of the geographical extent of downstream flooding and the depths of the flood waters in the flooded areas.
- B. The approximate geographic extent of Greater Flooding is indicated in the map that is Schedule A to this Further Amended Statement of Claim. The area shaded red indicates the extent of inundation had Somerset Dam and Wivenhoe Dam not been

negligently operated and the area shaded orange indicates the geographic extent of Greater Flooding.

- C. The extent of Greater Flooding in terms of depth can be inferred from the geographical extent of such flooding. It is a function of the difference between the elevation levels of the areas that flooded in fact, and the elevation levels of those areas which would have flooded even absent the Flood Engineers' Breaches according to the map in Schedule A.
  - D. Further particulars of the precise extent of Greater Flooding (both in terms of geographic extent and depth) will be provided upon service of the plaintiff's expert hydrology evidence.
- c) caused loss or damage to the plaintiff in circumstances where the plaintiff:
- i. would not have suffered any loss or damage; or
  - ii. would have suffered lesser loss or damage;
- had the Flood Engineers not committed one or more of the Flood Engineers' Breaches.

347 By reason of the matters pleaded in paragraphs 342-346, the Flood Engineers' Breaches, or one or more of them, caused loss or damage to the plaintiff;

#### PARTICULARS

- A. The premises from which the plaintiff conducted its business was inundated with water on or around 12 January 2011. The flood water did not recede from the premises until on or around 14 January 2011.
- B. The plaintiff's business had to be closed from 11 January 2011 (due to the likelihood of imminent inundation) until 26 May 2011 as a result of the inundation with water. The plaintiff was not able to continue operating its business for that period.



- C. The plaintiff suffered loss and damage as a result of the inundation.
- D. The plaintiff's loss and damage consists of:
  - a. damage caused to fixtures, fittings, stock and equipment as a result of the inundation;
  - b. loss of sales and profits for the period in which the premises had to be closed;
  - c. costs associated with repairs and restoration of the premises; and
  - d. costs associated with hiring a storage facility in which to store stock and equipment that was not damaged by the flood.
- E. The plaintiff's loss is Quantified in the expert report of Martin Cairns of Sapere Research Group Limited dated 29 June 2015. Further particulars of the plaintiff's claim for damage to property and economic loss will be provided prior to the trial of these proceedings.

348 The loss or damage pleaded in the preceding paragraph was the natural and foreseeable consequence of one or more of the Flood Engineers' Breaches.

## **X Direct Liability of Seqwater and SunWater in Negligence**

### ***Direct Liability of Seqwater in Negligence***

- 349 In circumstances where the Flood Engineers (or one or more of them) committed one or more of the Flood Engineers' Breaches in the period 16 December 2010 to 11 January 2011, Seqwater breached:
- a) Seqwater's Duty as Owner and Occupier; and, or alternatively,
  - b) Seqwater's Duty as Licensee.

350 In circumstances where the Flood Engineers' Breaches, or one or more of them, caused loss or damage to the plaintiff as pleaded in paragraph 347, Seqwater's breach of:

- a) Seqwater's Duty as Owner and Occupier; and, or alternatively,
- b) Seqwater's Duty as Licensee;

caused the loss or damage to the plaintiff pleaded in paragraph 347.

#### **PARTICULARS**

- A. The particulars to paragraph 347 are repeated.

#### ***Liability of SunWater in Negligence***

351 At all material times in the period from 16 December 2010 to 11 January 2011, SunWater:

- a) had practical control of Flood Operations at Somerset Dam and Wivenhoe Dam; and
- b) was able to supervise and control the Flood Engineers in the conduct of the Flood Operations at Somerset Dam and Wivenhoe Dam.

352 In circumstances where the Flood Engineers (or one or more of them) committed one or more of the Flood Engineers' Breaches in the period 16 December 2010 to 11 January 2011, and SunWater had supervision and control over the conduct of the Flood Operations by the Flood Engineers in that period, SunWater breached its duty of care to the plaintiff and other Group Members.

353 In circumstances where the Flood Engineers' Breaches, or one or more of them, caused loss or damage to the plaintiff as pleaded in paragraph 347, SunWater's breach of its duty of care caused the loss or damage to the plaintiff pleaded in paragraph 347.

#### **PARTICULARS**

- A. The particulars to paragraph 347 are repeated.

**Y Private Nuisance and Trespass**

354 Further, and in the alternative to the allegations in negligence above, the plaintiff brings these proceedings on its own behalf and on behalf of those Group Members who held an interest in land located downstream of Wivenhoe Dam (whether in the nature of freehold title, lease or otherwise), and whose use or enjoyment of that interest was interfered with by reason of the inundation by water in the period 9 January 2011 to 24 January 2011 of that land, or other land located downstream of Wivenhoe Dam **(Subgroup Members).**

355 Paragraphs 143, 147 and 149 are repeated.

356 At all material times in December 2010 and January 2011, the Risk of Interference with Use and Enjoyment was reasonably foreseeable by the Flood Engineers.

357 In the period 9 January to 19 January 2011, the Flood Engineers (or one or more of them) released water from Wivenhoe Dam in volumes that caused:

- a) Greater Flooding of land in which the plaintiff and other Subgroup Members held interests; and
- b) land in which the plaintiff and other Subgroup Members held interests to become inaccessible or practically unusable because of Greater Flooding of other land located downstream of Wivenhoe Dam;

such that Subgroup Members suffered loss or damage.

358 The releases of water made by the Flood Engineers in the period 9 January to 19 January 2011 were practicably avoidable and would have been unnecessary, or of smaller volume, had the Flood Engineers made sufficient precautionary releases from Wivenhoe Dam in the period 16 December 2010 to 9 January 2011.

359 In the premises:

- a) the releases of water made from Wivenhoe Dam in the period 9 January to 19 January 2011 substantially and unreasonably

interfered with the use or enjoyment of interests in land held by the plaintiff and other Subgroup Members; and

- b) constituted a private nuisance.

360 Further:

- a) the nuisance arose on land owned and controlled by Seqwater;
- b) Seqwater was the sole entity with lawful authority to release water from Somerset Dam and Wivenhoe Dam under the Water Act;
- c) Seqwater permitted SunWater and the Flood Engineers to conduct Flood Operations at Somerset Dam and Wivenhoe Dam;
- d) the conduct of Flood Operations at Somerset Dam and Wivenhoe Dam carried with it the inherent risk of the nuisance;
- e) Seqwater knew, or ought reasonably to have known, that the Flood Engineers (or one or more of them) had caused the nuisance by failing to make sufficient precautionary releases in the period 16 December 2010 to 9 January 2011; and
- f) Seqwater failed to take reasonable steps to bring the nuisance to an end or to prevent the nuisance from interfering with the use or enjoyment of interests in land held by the plaintiff and other Subgroup Members.

361 By reason of the matters pleaded in paragraph 360, to the extent the pleaded nuisance was caused by the Flood Engineers (or one or more of them), Seqwater is directly liable for the nuisance.

362 Further, and in the alternative to paragraph 359, the releases of water from Wivenhoe Dam in the period 9 January to 19 January 2011 constituted a trespass to land committed by the Flood Engineers (or one or more of them) to the extent that the released water entered onto any land in which the plaintiff or any Subgroup Members held an interest.

## **Z Vicarious Liability**

### ***Vicarious Liability of Seqwater***

363 To the extent that Mr Tibaldi committed one or more of:

- a) the 16 December Breaches;
- b) the 17-24 December Breaches;
- c) the 25 December- 1 January Breaches;
- d) the 3-5 January Breaches;
- e) the 8 January Breaches;
- f) the 9 January Breaches; and
- g) the 10-11 January Breaches;

those breaches were in the course of Mr Tibaldi's employment.

364 To the extent that Mr Malone committed one or more of:

- a) the 16 December Breaches;
- b) the 17-24 December Breaches;
- c) the 25 December- 1 January Breaches;
- d) the 2 January Breaches;
- e) the 3-5 January Breaches;
- f) the 6 January Breaches;
- g) the 7 January Breaches;
- h) the 8 January Breaches;
- i) the 9 January Breaches; and
- j) the 10-11 January Breaches;

those breaches were in the course of Mr Malone's employment.

- 365 Seqwater was accordingly vicariously liable for each of the Flood Engineers' Breaches committed by:
- a) Mr Tibaldi; or
  - b) Mr Malone.
- 366 To the extent Mr Tibaldi engaged in the conduct pleaded in paragraph 357, that conduct was in the course of Mr Tibaldi's employment.
- 367 To the extent Mr Malone engaged in the conduct pleaded in paragraph 357, that conduct was in the course of Mr Malone employment.
- 368 Seqwater was accordingly vicariously liable for the nuisance or trespass alleged in paragraphs 354-359 and 362 to the extent that that nuisance or trespass was caused by:
- a) Mr Tibaldi; or
  - b) Mr Malone.

***Vicarious Liability of SunWater***

- 369 To the extent that Mr Ayre committed one or more of:
- a) the 17-24 December Breaches;
  - b) the 25 December - 1 January Breaches;
  - c) the 2 January Breaches;
  - d) the 3-5 January Breaches;
  - e) the 6 January Breaches;
  - f) the 7 January Breaches;
  - g) the 8 January Breaches;
  - h) the 9 January Breaches; and
  - i) the 10-11 January Breaches;

those breaches were in the course of Mr Ayre's employment.

370 SunWater was accordingly vicariously liable for each of the Flood Engineers' Breaches committed by Mr Ayre.

371 To the extent Mr Ayre engaged in the conduct pleaded in paragraph 357, that conduct was in the course of Mr Ayre's employment.

372 SunWater was accordingly vicariously liable for the nuisance or trespass alleged in paragraphs 354-359 and 362 to the extent that that nuisance or trespass was caused by Mr Ayre.

### ***Vicarious Liability of the State of Queensland***

373 To the extent that Mr Ruffini committed one or more of:

- a) the 17-24 December Breaches;
- b) the 25 December- 1 January Breaches;
- c) the 3-5 January Breaches;
- d) the 7 January Breaches;
- e) the 8 January Breaches;
- f) the 9 January Breaches; and
- g) the 10-11 January Breaches;

those breaches were in the course of Mr Ruffini's employment.

374 The State of Queensland was accordingly vicariously liable for each of the Flood Engineers' Breaches committed by Mr Ruffini.

375 To the extent Mr Ruffini engaged in the conduct pleaded in paragraph 357, that conduct was in the course of Mr Ruffini's employment.

376 The State of Queensland was accordingly vicariously liable for the nuisance or trespass alleged in paragraphs 354-359 and 362 to the extent that that nuisance or trespass was caused by Mr Ruffini.

377 Further, and in the alternative to paragraphs 374 and 376, to that extent that the State of Queensland is not vicariously liable for the Flood Engineers' Breaches committed by Mr Ruffini, or the alleged nuisance or trespass by Mr Ruffini, as a result of the arrangements pleaded in paragraph 93, SunWater is vicariously liable for:

- a) each of the Flood Engineers' Breaches alleged in paragraph 373 committed by Mr Ruffini; and
- b) the nuisance or trespass alleged in paragraphs 354-359 and 362 to the extent that that nuisance or trespass was caused by Mr Ruffini.

**AA Section 374 of the Water Supply Act**

378 On or around 22 December 2010, the Chief Executive of DERM approved the Flood Mitigation Manual for a period of 5 years under s 371 of the Water Supply Act.

**PARTICULARS**

- A. Queensland, *Queensland Government Gazette*, Vol 353 No 15, 22 January 2010, p 127.

379 By reason of the matters pleaded in paragraph 378, to the extent that Section 374 of the Water Supply Act would prevent civil liability attaching to one or more of:

- a) Seqwater;
- b) SunWater; and
- c) the Flood Engineers;

that liability attaches to the State of Queensland by operation of Section 374(3) of the Water Supply Act.

**BB Relief**

380 The plaintiff, on its own behalf and on behalf of other Group Members, claims relief as follows:




- a) from Seqwater:
  - i) damages;
  - ii) interest in accordance with s 100 of the *Civil Procedure Act 2005* (Cth); and
  - iii) costs;
- b) from SunWater:
  - i) damages;
  - ii) interest in accordance with s 100 of the *Civil Procedure Act 2005* (Cth); and
  - iii) costs;
- c) from the State of Queensland:
  - i) damages;
  - ii) interest in accordance with s 100 of the *Civil Procedure Act 2005* (Cth); and
  - iii) costs.

## SIGNATURE OF LEGAL REPRESENTATIVE

I certify under section 347 of the Legal Profession Act 2004 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on the record

Date of signature



## NOTICE TO DEFENDANT

**If you do not file a defence within 28 days of being served with this statement of claim:**

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

## HOW TO RESPOND

**Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1** If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.
- 2** If money is claimed, and you believe you owe the money claimed, by:
  - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
  - Filing an acknowledgement of the claim.
  - Applying to the court for further time to pay the claim.
- 3** If money is claimed, and you believe you owe part of the money claimed, by:
  - Paying the plaintiff that part of the money that is claimed.
  - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at [www.lawlink.nsw.gov.au/ucpr](http://www.lawlink.nsw.gov.au/ucpr) or at any NSW court registry.

#### REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building 184 Phillip Street SYDNEY NSW 2000
Postal address	GPO Box 3 SYDNEY NSW 2001
Telephone	(02)9230 8111

**AFFIDAVIT VERIFYING**

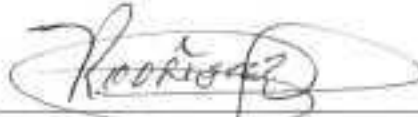
Name Vicente Rodriguez  
Address C/- Pluta Accountants  
858 Oxley Road  
Corinda QLD 4075  
Occupation Director of Rodriguez & Sons Pty Ltd  
Date

I say on oath:

- 1 I am the sole director of Rodriguez & Sons Pty Ltd (ACN 108 770 681).
- 2 I believe that the allegations of fact in the statement of claim are true.

SWORN at BRISBANE

Signature of deponent



Name of witness

Zoe Keane

Address of witness

Level 8, 179 North Quay, Brisbane QLD 4000

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

Old Driver's license

Identification document relied on (may be original or certified copy) †

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

## PARTY DETAILS

### PARTIES TO THE PROCEEDINGS

#### Plaintiff

Rodriguez & Sons Pty Ltd (ACN 108 770 681)

#### Defendants

Queensland Bulk Water Supply Authority trading as Seqwater (First Defendant)

SunWater Limited (ACN 131 034 985) (Second Defendant)

State of Queensland (Third Defendant)

## FURTHER DETAILS ABOUT PLAINTIFF

### Plaintiff

Name Rodriguez & Sons Pty Ltd (ACN 108 770 681)  
Address C/- Pluta Accountants  
85 Oxley Road  
Corinda QLD 4075

### Legal representative for plaintiff

Name Damian Scattini  
Practising certificate number 3028  
Firm Maurice Blackburn Pty Ltd  
Address Level 8, 179 North Quay  
Brisbane QLD 4000  
DX address DX 1060 Northpoint

Telephone	(07) 3016 0300
Fax	(07) 3236 1966
Email	DScattini@mauriceblackburn.com.au
Electronic service address	DScattini@mauriceblackburn.com.au

#### **DETAILS ABOUT DEFENDANTS**

##### **First defendant**

Name	Queensland Bulk Water Supply Authority trading as Seqwater
Address	C/- King and Wood Mallesons Level 33, Waterfront Place 1 Eagle Street Brisbane QLD 4000

##### **Second defendant**

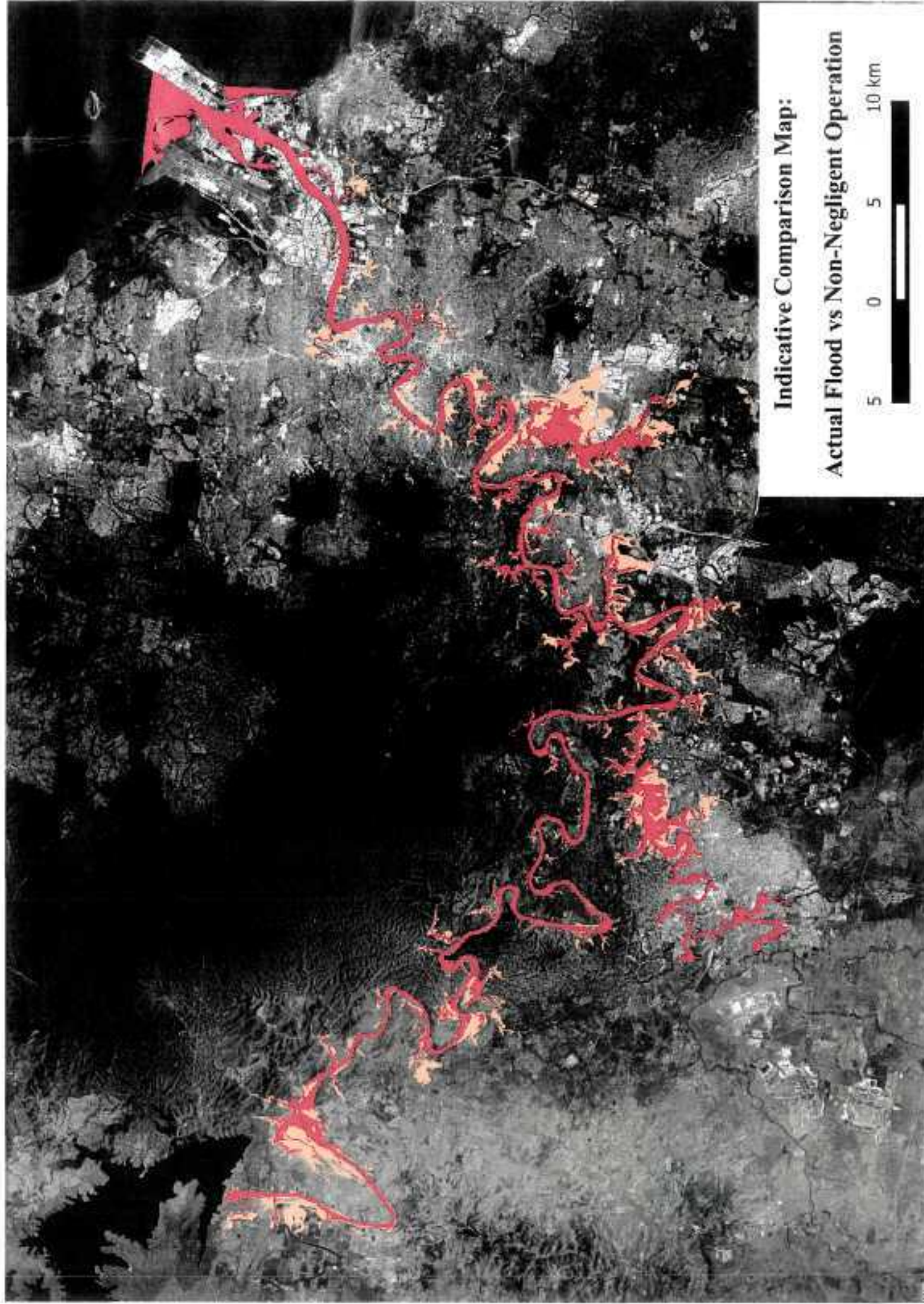
Name	SunWater Limited (ACN 131 034 985)
Address	C/- Norton Rose Fulbright Level 18, Grosvenor Place 225 George Street Sydney NSW 2000

##### **Third defendant**

Name	State of Queensland
Address	C/- Crown Law, Department of Attorney General and Justice State Law Building 50 Ann Street Brisbane QLD 4000

SCHEDULE A

Indicative Comparison Map: Actual Flood vs Non-Negligent Operation



**Indicative Comparison Map:**

**Actual Flood vs Non-Negligent Operation**

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