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Defence to Amended Statement of Claim

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Supreme Court Sydney
Case number	2014/00200854

TITLE OF PROCEEDINGS

First Plaintiff	Rodriguez & Sons Pty Ltd ACN 108770681
First Defendant	Queensland Bulk Water Supply Authority trading as Seqwater
Second Defendant	SunWater Limited (ACN 131 034 985)
Number of Defendants	3

FILING DETAILS

Filed for	SunWater Limited (ACN 131 034 985), Defendant 2
Legal representative	Tricia Marguerite Hobson
Legal representative reference	
Telephone	02 9330 8000
Your reference	2782377

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Defence to Amended Statement of Claim (2017.11.29 - SunWater_s Further Amended Defence to 5ASOC - VERSION FOR FILING(60591065_1)_.PDF)

[attach.]

Form 7A (version 4)
UCPR 14.3

SECOND DEFENDANT'S DEFENCE TO THE FIFTH ~~THIRD~~ AMENDED STATEMENT OF CLAIM

COURT DETAILS	
Court	Supreme Court of New South Wales
Division	Common Law
Registry	Sydney
Case number	2014/200854
TITLE OF PROCEEDINGS	
Plaintiff	**Rodriguez & Sons Pty Ltd (ACN 108 770 681)**
First defendant	**Queensland Bulk Water Supply Authority trading as Seqwater**
Number of defendants (if more than two)	3
FILING DETAILS	
Filed for	**SunWater Limited (ACN 131 034 985)** Second Defendant
Legal representative	Tricia Marguerite Hobson, Norton Rose Fulbright Australia
Legal representative reference	TMH: 2782377
Contact name and telephone	Tricia Hobson 02 9330 8000
Contact email	tricia.hobson@nortonrosefulbright.com

PLEADINGS AND PARTICULARS

In response to the Plaintiff's allegations contained in the Fifth ~~Third~~ Amended Statement of Claim filed in these proceedings on ~~11 March 2016~~ 29 September 2017 (**the Claim**) (adopting the defined terms contained in the Claim, unless otherwise defined), the Second Defendant, SunWater Limited (ACN 131 034 985), (**SunWater**):

A The Plaintiff

1 In relation to paragraph 1:

(a) admits sub-paragraph (a);

(b) otherwise does not admit the allegations contained therein.

B The Defendants

2 Admits the allegations contained in paragraph 2.

3 Admits the allegations contained in paragraph 3.

4 Admits the allegations contained in paragraph 4.

C January 2011 Queensland Flood

5 In relation to paragraph 5:

(a) admits that in January 2011, the Brisbane River and Bremer River flooded, causing inundation to areas located downstream of Wivenhoe Dam;

(b) otherwise does not admit the allegations contained therein.

D Group Members and Common Questions

6 In relation to paragraph 6:

(a) does not know the identity or geographical location of each Group Member;

(b) otherwise does not admit the allegations contained therein.

7 In relation to paragraph 7:

(a) does not know the identity or geographical location of each Group Member;

(b) otherwise does not admit the allegations contained therein.

8 In relation to paragraph 8:

(a) admits that the claims advanced by the plaintiff in this proceeding are brought on its own behalf and purport to be brought on behalf of the Group Members;

(b) otherwise does not admit the allegations contained therein.

9 In relation to paragraph 9:

(a) admits that seven or more persons holding an interest in land suffered loss or damage, or interference of the use or enjoyment of that land, by reason of the inundation of that land by flood water from the Brisbane River or Bremer River (and their tributaries) in January 2011;

(b) otherwise does not admit the allegations contained therein.

10 In relation to paragraph 10:

(a) does not admit that all the questions of law and fact are common to all Group Members, as SunWater does not know the identity or geographical location of each Group Member;

(b) says that questions of duty, breach and causation of loss involve considerations particular to each individual Group Member, and considerations relevant to other persons upstream and downstream of Wivenhoe Dam, who are not or may not be Group Members;

(c) admits that the issues identified in sub-paragraphs 10 (a), (b), (c) and (d) are questions of law or fact common to the claims of Group Members;

(d) otherwise does not admit the allegations contained therein.

E Somerset Dam

11 Admits the allegations contained in paragraph 11.

12 Admits the allegations contained in paragraph 12.

13 Admits the allegations contained in paragraph 13.

14 Admits the allegations contained in paragraph 14.

15 Does not admit the allegations contained in paragraph 15.

16 Admits the allegations contained in paragraph 16.

17 Admits the allegations contained in paragraph 17.

18 In relation to paragraph 18:

(a) says that releases from Somerset Dam are governed by the Flood Mitigation Manual;

(b) otherwise admits the allegations contained therein.

19 In relation to paragraph 19:

(a) says that releases from Somerset Dam are governed by the Flood Mitigation Manual;

(b) otherwise admits the allegations contained therein.

20 Admits the allegations contained in paragraph 20.

21 Admits the allegations contained in paragraph 21.

22 Admits the allegations contained in paragraph 22.

23 Admits the allegations contained in paragraph 23.

24 Admits the allegations contained in paragraph 24.

25 Admits the allegations contained in paragraph 25.

26 Does not admit the allegations contained in paragraph 26.

27 Denies the allegations contained in paragraph 27.

F Wivenhoe Dam

28 Admits the allegations contained in paragraph 28.

29 Admits the allegations contained in paragraph 29.

30 Admits the allegations contained in paragraph 30.

31 Admits the allegations contained in paragraph 31.

32 Admits the allegations contained in paragraph 32.

33 Admits the allegations contained in paragraph 33.

34 Admits the allegations contained in paragraph 34.

35 Admits the allegations contained in paragraph 35.

36 In relation to paragraph 36:

(a) admits that Splityard Creek Dam has a total storage volume of 28,700 ML;

(b) says that Splityard Creek Dam has a volume of 23,500 ML available to the hydroelectric power generator;

(c) admits that Splityard Creek Dam is capable of releasing water into Lake Wivenhoe at a rate of up to 420m^3/s;

(d) otherwise does not admit the allegations contained therein.

37 In relation to paragraph 37:

(a) says that water released from Lake Wivenhoe Dam through Wivenhoe Dam flows into the Brisbane River, passing near the towns of Lowood and Fernvale (both 'urban' areas within the meaning of the Flood Mitigation Manual), and the suburb of Moggill (also an 'urban' area) and other suburbs of Brisbane (also 'urban' areas), and into Moreton Bay;

(b) otherwise does not admit the allegations contained therein.

38 Admits the allegations contained in paragraph 38.

39 Admits the allegations contained in paragraph 39.

40 Admits the allegations contained in paragraph 40.

41 In relation to paragraph 41:

(a) denies that the extent of flooding downstream of Wivenhoe Dam (including Brisbane and Ipswich) is always a function of the amount of water released from Wivenhoe Dam;

(b) says that the extent of flooding downstream of Wivenhoe Dam (including Brisbane and Ipswich) will be a function of multiple factors to be taken into account, including any one or more of those alleged at sub-paragraphs 41(a) to (d) of the Claim;

(c) says further that the extent of flooding downstream of Wivenhoe Dam is for the most part the function of the amount of rainfall and the time and location in which it occurs;

(d) otherwise does not admit the allegations contained therein.

42 In relation to paragraph 42:

(a) says that flood travel time varies and is affected by a number of factors;

(b) otherwise does not admit the allegations contained therein.

43 Admits the allegations contained in paragraph 43.

44 Admits the allegations contained in paragraph 44.

45 Admits the allegations contained in paragraph 45.

46 In relation to paragraph 46:

(a) says that the spillways are constructed as depicted in Appendix H of the Flood Mitigation Manual;

(b) otherwise does not admit the allegations contained therein.

47 In relation to paragraph 47:

(a) says that releases from Wivenhoe Dam are governed by the Flood Mitigation Manual;

(b) says that the fixed crest level of the radial gates is 57 m AHD, which equates to a storage capacity of 414,000 ML or 36.5% of the water supply capacity;

(c) says further that no releases are possible from the radial gates below the fixed crest level pleaded in sub-paragraph 47(b) above;

(d) otherwise admits the allegations contained therein.

48 In relation to paragraph 48:

(a) admits the characteristics and capabilities of the Primary Spillway at Wivenhoe Dam enable the dam operator to engage in active flood mitigation by controlling the outflow from the Primary Spillway;

(b) says that releases from Wivenhoe Dam are governed by the Flood Mitigation Manual;

(c) otherwise denies the allegations contained therein.

49 Admits the allegations contained in paragraph 49.

50 In relation to paragraph 50:

(a) says that the Channel Invert Levels for the erodible fuse plugs in the Auxiliary Spillway trigger (**Fuse Plugs**) are 75.7 m AHD, 76.2 m AHD and 76.7 m AHD respectively;

(b) says that the initiation of the Fuse Plugs is expected to occur when the Lake Water Level exceeds the Lake Level at the Fuse Plug Pilot Channel by 0.10 – 0.15 m;

PARTICULARS

(A) Flood Mitigation Manual, section 8.2

(c) otherwise does not admit the allegations contained therein.

51 Denies the allegations contained in paragraph 51.

52 Admits the allegations contained in paragraph 52.

53 In relation to paragraph 53:

(a) admits the allegations contained in sub-paragraphs 53(a) to (c) and (f);

(b) as to sub-paragraph 53(d) says:

(i) the crest of the saddle dam was 80.0 m AHD;

(ii) that a wave wall runs along the top of the Auxiliary Spillway which can hold water against it, thereby increasing the elevation of the top of Wivenhoe Dam to 80.1 m AHD;

(c) as to sub-paragraph 53(e) says:

(i) repeats paragraph 50 above;

(ii) otherwise admits the allegations contained in that sub-paragraph.

G Flood Mitigation

54 In relation to paragraph 54:

(a) admits that flood mitigation is achieved by water storage and water release;

(b) says that storage at, and releases from, Wivenhoe Dam and Somerset Dam are governed by the Flood Mitigation Manual;

(c) otherwise does not admit the allegations contained therein.

55 In relation to paragraph 55:

(a) says that Flood Operations, as that term is used in the Flood Mitigation Manual, were to be conducted by SunWater in accordance with the Flood Management Services Agreement (as defined in paragraph 77 below);

(b) says that the content of SunWater's obligation to Seqwater required SunWater:

(i) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(ii) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation (defined in paragraph 58 below), the FSL Common Interpretation (defined in paragraph 58 below) and the Forecast Rainfall Common Interpretation (defined in paragraph 106 below);

(iii) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention (defined in paragraph 106 below);

(c) otherwise does not admit the allegations contained therein.

56 Does not admit the allegations contained in paragraph 56.

57 In relation to paragraph 57:

(a) says that when the water level in Lake Wivenhoe exceeds 74.00 m AHD, Wivenhoe Dam is to be operated in accordance with strategy W4;

(b) otherwise does not admit the allegations contained therein.

58 In relation to paragraph 58:

(a) repeats the matters pleaded in paragraphs 56 and 57 above;

(b) says that the Flood Mitigation Manual did not provide for or contemplate precautionary releases;

(c) says that, at all material times, Seqwater through its employees Mr Tibaldi and Mr Malone interpreted the Flood Mitigation Manual in the way set out in sub-paragraph (b) above;

(d) says that, at all material times, SunWater through its employee Mr Ayre interpreted the Flood Mitigation Manual in the way set out in sub-paragraph (b) above;

(e) says that, at all material times, Seqwater knew that SunWater and its employee Mr Ayre interpreted the Flood Mitigation Manual in the way set out in sub-paragraph (b) above, and approved of SunWater carrying out its obligations pursuant to the Flood Management Services Agreement, on the basis of such an interpretation (**the No Precautionary Release Common Interpretation**);

(f) says that the Flood Mitigation Manual provided that the spillway (also known as radial) gates at Wivenhoe Dam were not to be opened for flood control purposes prior to the reservoir level exceeding 67.25 m AHD (**Gate Trigger Level**);

PARTICULARS

(A) Flood Mitigation Manual, section 8.3

(g) says that, save in relation to baseflow (but not forecast rainfall), the Flood Mitigation Manual did not authorise or require, during a Flood Event, releases from Wivenhoe Dam or Somerset Dam such that the level of either lake fell below FSL;

PARTICULARS

(A) Flood Mitigation Manual, sections 8.1, 8.5, 9.3 (pages 40, and 41, including the Operating Target Line), 9.4 (page 42)

(h) says that, at all material times, Seqwater through its employees Mr Tibaldi and Mr Malone interpreted the Flood Mitigation Manual in the way set out in sub-paragraph (g) above;

(i) says that, at all material times, SunWater through its employee Mr Ayre interpreted the Flood Mitigation Manual in the way set out in sub-paragraph (g) above;

(j) says that, at all material times, Seqwater knew that SunWater and its employee Mr Ayre interpreted the Flood Mitigation Manual in the way set out in sub-paragraph (g) above, and approved of SunWater carrying out its obligations pursuant to the Flood Management Services Agreement, on the basis of such an interpretation (**the FSL Common Interpretation**);

(k) otherwise denies the allegations contained therein.

59 In relation to paragraph 59:

(a) says that SunWater had a contractual obligation to Seqwater to operate Somerset Dam and Wivenhoe Dam in accordance with the Flood Management Services Agreement (as defined in paragraph 77 below);

(b) says that the content of SunWater's obligation to Seqwater required SunWater:

(i) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(ii) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation (defined in paragraph 106 below);

(iii) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention (defined in paragraph 106 below);

(c) otherwise does not admit the allegations contained therein.

60 In relation to paragraph 60:

(a) says that section 1.1 of the Flood Mitigation Manual provides that Wivenhoe Dam and Somerset Dam are operated in conjunction so as to maximise the overall flood mitigation capabilities of the two dams; and

(b) otherwise denies the allegations contained therein.

H Seqwater's Ownership and Control of Somerset Dam and Wivenhoe Dam

61 Admits the allegations contained in paragraph 61.

62 In relation to paragraph 62:

(a) says that Seqwater held a Resource Operations Licence granted by the Chief Executive under s 107 of the Water Act on 9 December 2009:

(i) concerning the flow of water in the Central Brisbane River Water Supply Scheme;

(ii) concerning the flow of water in the Stanley River Water Supply Scheme;

(**Seqwater ROL**);

(b) otherwise admits the allegations contained therein.

63 Admits the allegations contained in paragraph 63.

64 Does not admit the allegations contained in paragraph 64.

65 Admits the allegations contained in paragraph 65.

66 Admits the allegations contained in paragraph 66.

67 Admits the allegations contained in paragraph 67.

68 Does not admit the allegations contained in paragraph 68.

69 Admits the allegations contained in paragraph 69.

70 Does not admit the allegations contained in paragraph 70.

71 Does not admit the allegations contained in paragraph 71.

72 Does not admit the allegations contained in paragraph 72.

73 Does not admit the allegations contained in paragraph 73.

74 Does not admit the allegations contained in paragraph 74.

75 Does not admit the allegations contained in paragraph 75.

76 In relation to paragraph 76:

(a) says that SunWater had a contractual obligation to Seqwater to operate Somerset Dam and Wivenhoe Dam in accordance with the Flood Management Services Agreement (as defined in paragraph 77 below);

(b) says that the content of SunWater's obligation to Seqwater required SunWater:

(i) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(ii) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation (defined in paragraph 106 below);

(iii) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention (defined in paragraph 106 below);

(c) otherwise does not admit the allegations contained therein.

I SunWater's Control of Somerset Dam and Wivenhoe Dam

77 In relation to paragraph 77:

(a) admits that SunWater and Seqwater entered into an agreement, styled 'Service Level Agreement – Flood Management Services' (**the Flood Management Services Agreement**), consisting of 20 pages, with a 16-page 'Service Schedule';

(b) says further that the following were express terms of the Flood Management Services agreement:

(i) SunWater was required to act in accordance with reasonable directions from Seqwater in respect of SunWater's performance of the services;

(ii) in performing the services, SunWater was required to cooperate with Seqwater and its Personnel, and had to observe and comply with all lawful requests, directions and instructions which were made by Seqwater's relevant Personnel (acting reasonably);

PARTICULARS

(A) Clauses 3.2 (c), 3.4(a) and 3.4(c)

(c) says that, at all material times, SunWater received no direction to perform the services in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation (defined in paragraph 106 below).

78 In relation to paragraph 78:

(a) says that SunWater had a contractual obligation to Seqwater to operate Somerset Dam and Wivenhoe Dam in accordance with the Flood Management Services Agreement;

(b) says that the content of SunWater's obligation to Seqwater required SunWater:

(i) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(ii) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation (defined in paragraph 106 below);

(iii) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention (defined in paragraph 106 below);

(c) otherwise does not admit the allegations contained therein.

79 Admits the allegations contained in paragraph 79.

80 Admits the allegations contained in paragraph 80.

81 Admits the allegations contained in paragraph 81.

82 Admits the allegations contained in paragraph 82.

83 Admits the allegations contained in paragraph 83.

84 In relation to paragraph 84:

(a) admits the allegations contained in sub-paragraph 84(a), and says that it carried out the services in accordance with the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation (defined in paragraph 106 below);

(b) admits the allegations contained in sub-paragraph 84(b);

(c) as to sub-paragraph 84(c):

(i) admits, subject to sub-paragraphs (a) and (b) above, that as a practical matter (save when Mr Ayre was not rostered on duty), it had control of Somerset Dam and Wivenhoe Dam for the purposes of conducting Flood Operations;

(ii) otherwise does not admit the allegations contained therein;

(d) says further that:

(i) at all material times, SunWater was a public authority constituted under an Act;

PARTICULARS

(A) SunWater was constituted under the *Government Owned Corporations Act 1993* (Qld) and the *Government Owned Corporations Act (State Water Projects Corporatisation) Regulation 2000* (Qld) as amended by the *Government*

Owned Corporations Amendment Act 2007 (No 10 of 2007) (Qld)

(ii) by reason of the matter pleaded in sub-paragraph (d)(i) above, SunWater was a public authority within the meaning of s 34(c) of the *Civil Liability Act 2003 (Qld)* (**CLA**), alternatively, s 41 of the *Civil Liability Act 2002* NSW (**CLA NSW**);

(iii) these proceeding are based on an alleged wrongful exercise of, or failure to exercise, a function of a public authority;

(e) further and in the alternative to the matters pleaded in subparagraph (d) above:

(i) says that, at all material times, Seqwater was a public authority constituted under an Act;

PARTICULARS

(A) Seqwater was constituted under s 6 of the *South East Queensland Water (Restructuring) Act 2007* (Qld)

(ii) says that, by reason of the matter pleaded in sub-paragraph (e)(i) above, Seqwater was a public authority within the meaning of s 34(c) of the CLA alternatively, s 41 of the CLA NSW;

(iii) repeats the matters pleaded in paragraphs 61 to 76 and 77 to 83 above and says that the acts and omissions of SunWater in the operation of Wivenhoe Dam and Somerset Dam were the acts and omissions of Seqwater as a public authority under the CLA alternatively CLA NSW;

(iv) these proceeding are based on an alleged wrongful exercise of, or failure to exercise, a function of a public authority;

(f) further and in the alternative to the matters pleaded in sub-paragraphs (d) and (e) above, says that:

(i) in operating Wivenhoe Dam and Somerset Dam, SunWater was performing duties for the public benefit;

(ii) in operating Wivenhoe Dam and Somerset Dam, SunWater was performing the duties analogous to the duties of a public authority within the meaning of s 34(c) of the CLA alternatively, s 41 of the CLA NSW;

(g) further and in the alternative to the matters pleaded in sub-paragraphs (d) to (f) above:

(i) says that in operating Wivenhoe Dam and Somerset Dam, Seqwater was performing duties for the public benefit;

(ii) in operating Wivenhoe Dam and Somerset Dam, Seqwater was performing the duties analogous to the duties of a public authority within the meaning of s 34(c) of the CLA alternatively, s 41 of the CLA NSW;

(iii) repeats the matters pleaded in paragraphs 61 to 76 and 77 to 83 above and says that, in operating Wivenhoe Dam and Somerset Dam for Seqwater, SunWater was performing the duties analogous to the duties of a public authority within the meaning of s 34(c) of the CLA alternatively, s 41 of the CLA NSW.

J The Flood Mitigation Manual

Status, Purpose and Objectives of the Flood Mitigation Manual

85 In relation to paragraph 85:

(a) admits the allegations contained in paragraph 85;

(b) says that the Flood Mitigation Manual prepared by Seqwater was produced following the 2009 Review (as defined in paragraph 106 below).

86 In relation to paragraph 86:

(a) says that SunWater had a contractual obligation to Seqwater to operate Somerset Dam and Wivenhoe Dam in accordance with the Flood Management Services Agreement;

(b) says that the content of SunWater's obligation to Seqwater required SunWater:

(i) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(ii) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation (defined in paragraph 106 below);

(iii) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention (defined in paragraph 106 below);

(c) otherwise does not admit the allegations contained therein.

87 Does not admit the allegations contained in paragraph 87.

88 Admits the allegations contained in paragraph 88.

89 In relation to paragraph 89:

(a) admits the allegations contained in sub-paragraph (a);

(b) does not admit the allegations contained in sub-paragraph (b);

(c) says further that normal procedures required stored floodwaters to be emptied from the dams within seven days of the flood event peak passing through the dams.

PARTICULARS

(A) Flood Mitigation Manual, section 8.5, 9.4

Flood Operations Personnel and Responsibilities

90 In relation to paragraph 90:

(a) admits that section 2.3 of the Flood Mitigation Manual provided that Seqwater nominate one or more suitably qualified and experienced persons to undertake the role of Senior Flood Operations Engineer;

(b) otherwise does not admit the allegations contained therein.

91 In relation to paragraph 91:

(a) admits the matters pleaded in sub-paragraph 91(a);

(b) says that Mr Ayre and Mr Ruffini were the nominated Senior Flood Operations Engineer during the 2010/2011 wet season;

PARTICULARS

(A) Seqwater, *Flood Operations Preparedness Report: Wivenhoe, Somerset and North Pine Dam*, 13 October 2010

(c) says that Mr Ayre was on recreation leave from 10 December 2010 to 18 December 2010 and that Mr Ruffini was the Senior Flood Operations Engineer during this period;

(d) otherwise admits the allegations contained therein.

92 Admits the allegations contained in paragraph 92.

93 Does not admit the allegations contained in paragraph 93.

94 Admits the allegations contained in paragraph 94 on the basis that the term 'Flood Operations' has the meaning used in the Flood Mitigation Manual.

95 Admits the allegations contained in paragraph 95.

96 Admits the allegations contained in paragraph 96.

97 Admits the allegations contained in paragraph 97.

98 In relation to paragraph 98:

(a) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(b) says that the content of SunWater's obligation to Seqwater required SunWater:

(i) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(ii) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation (defined in paragraph 106 below);

(iii) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention (defined in paragraph 106 below);

(c) subject to sub-paragraphs (a) and (b) above, admits the allegations contained in sub-paragraph 98(a);

(d) denies the allegations contained in sub-paragraph 98(b);

(e) subject to sub-paragraphs (a) and (b) above, says that pursuant to clause 2.4 of the Flood Mitigation Manual, unless otherwise directed, a Flood Operations Engineer was to follow the Flood Mitigation Manual in managing Flood Events and not to apply reasonable discretion unless directed by the Senior Flood Operations Engineer or the Chief Executive;

(f) subject to sub-paragraphs (a) and (b) above, otherwise admits the allegations contained therein.

99 In relation to paragraph 99:

(a) says that section 2.2 of the Flood Mitigation Manual provided, for the purposes of operation of the dams during Flood Events, Seqwater to ensure a Duty Flood Operations Engineer was on call at all times;

(b) otherwise denies the allegations contained therein.

100 In relation to paragraph 100:

(a) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(b) says that the content of SunWater's obligation to Seqwater required SunWater:

(i) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(ii) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation (defined in paragraph 106 below);

(iii) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention (defined in paragraph 106 below);

(c) otherwise does not admit the allegations contained therein.

101 In relation to paragraph 101:

(a) says that Mr Ayre was on leave between 10 and 18 December 2010;

(b) otherwise admits the allegations contained therein.

Definition of "Flood Event"

102 Admits the allegations contained in paragraph 102.

103 Admits the allegations contained in paragraph 103.

104 Admits the allegations contained in paragraph 104.

Wivenhoe Dam Flood Operations Strategies

105 Admits the allegations contained in paragraph 105 on the basis that the term 'Flood Operations' has the meaning used in the Flood Mitigation Manual.

106 In relation to paragraph 106:

(a) admits the allegations contained in sub-paragraphs (a) and (b);

(b) says that, at all material times, for the purpose of choosing strategies at any point in time, SunWater and Seqwater recognised and accepted that:

(i) forecast rainfall was inherently unreliable;

(ii) to the extent that any forecast rainfall was appropriate to be utilised, that forecast rainfall was rain on the ground or the 24 hour Quantitative Precipitation Forecasts (**1 Day QPFs**);

(iii) predictions as to lake levels in Lake Wivenhoe and Lake Somerset were most reliably made utilising actual rainfall, stream flow information and loss rates;

(**the Forecast Rainfall Common Interpretation**)

(c) says that the Flood Mitigation Manual was revised in 2009 after a review conducted by Seqwater (**2009 Review**);

(d) says that prior to the revisions to the Flood Mitigation Manual in 2009:

(i) predictions as to lake levels and peak flow rates for the purposes of selecting the flood mitigation procedures and strategies had been made by use of the Real Time Flood Model using rain on the ground; and

(ii) it was recognised by the Flood Engineers that the Flood Mitigation Manual needed to better reflect the manner in which the Real Time Flood Model was utilised for the purposes of selecting strategies, then known as “procedures”;

(e) the 2009 Review of the Flood Mitigation Manual was coordinated by John Tibaldi, on behalf of Seqwater;

(f) the 2009 Review took place with the assistance of a technical review panel (**Review Panel**) which consisted of each of the Flood Engineers, Rob Drury (Dam Operations Manager at Seqwater), Barton Maher (Principal Engineer, Dams and Weirs Planning for Seqwater), Peter Allen and Ron Guppy (both of the Department of Environment and Resource Management (**DERM**)), Peter Baddiley (of the Bureau of Meteorology (**BOM**)), and the representatives of affected local councils including the Brisbane City Council (Ken Morris);

(g) during the 2009 Review:

(i) the Flood Engineers and the other members of the Review Panel agreed that the Flood Mitigation Manual needed to be updated to reflect the way that the dams had been operated in the past and in particular the use of the Real Time Flood Model in making predictions as to lake levels and peak flow rates for the purposes of selecting procedures and strategies;

(ii) there was no suggestion to the effect that the 2009 revisions to the Flood Mitigation Manual would alter the manner in which the dams had been operated in the past, such that predictions as to lake levels and/or peak flow rates for the purposes of selecting procedures and strategies would be made using rainfall forecasts as opposed to rain on the ground; and

(iii) the Flood Engineers and the other members of the Review Panel agreed that the revised Flood Mitigation Manual should reflect the then and past practice, i.e., that for the purposes of selecting procedures and strategies, predictions as to lake levels and peak flow rates would be made using the Real Time Flood Model based upon rain on the ground;

(the **2009 Review Intention**)

(h) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(i) says that the content of SunWater's obligation to Seqwater required SunWater:

(i) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(ii) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(iii) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention;

(j) otherwise does not admit the allegations contained therein.

106A In relation to paragraph 106A:

(a) says that section 3.2 of the Flood Procedures Manual provided that, once a decision had been made to mobilise the Flood Operations Centre, the Duty Flood Operations Engineer was to ensure that inflow hydrographs be derived for certain locations, as appropriate;

(b) otherwise denies the allegations contained therein.

106B In relation to paragraph 106B:

(a) repeats paragraph 106A above;

(b) otherwise denies the allegations contained therein.

107 In relation to paragraph 107:

(a) repeats paragraph 106 above;

(b) says that section 8.4 of the Flood Mitigation Manual provided that the strategy chosen at any time would depend on the actual levels in the dams and predictions as to maximum storage levels in Wivenhoe and Somerset Dams, and peak flow rates at the Moggill and Lowood gauges (excluding Wivenhoe Dam releases);

(c) admits that strategies may change during a Flood Event so as to maximise the flood mitigation benefits of the dams;

(d) otherwise does not admit the allegations contained therein.

108 Does not admit the allegations contained in paragraph 108.

109 In relation to paragraph 109:

(a) says that the first bullet point on page 25 of the Flood Mitigation Manual provided to the effect that the Flood Engineers were to select strategy W1

where the water level of Lake Wivenhoe was predicted to be less than 68.50 m AHD;

but

(b) says that the Flood Mitigation Manual provided for the Flood Engineers to select strategy W1A when the level of Lake Wivenhoe was greater than 67.25 m AHD, but less than 68.5 m AHD;

(c) says that the Flood Mitigation Manual provided for the Flood Engineers to select strategy W1B when the level of Lake Wivenhoe was greater than 67.5 m AHD, but less than 68.5 m AHD;

(d) says that the Flood Mitigation Manual provided for the Flood Engineers to select strategy W1C when the level of Lake Wivenhoe was greater than 67.75 m AHD, but less than 68.5 m AHD;

(e) says that the Flood Mitigation Manual provided for the Flood Engineers to select strategy W1D when the level of Lake Wivenhoe was greater than 68.0 m AHD, but less than 68.5 m AHD;

(f) says that the Flood Mitigation Manual provided for the Flood Engineers to select strategy W1E when the level of Lake Wivenhoe was greater than 68.25 m AHD, but less than 68.5 m AHD;

(g) says that page 23 of the Flood Mitigation Manual provided that the strategy chosen at any point in time depended on the actual levels in the dams, and predictions as to:

(i) maximum storage levels in Wivenhoe and Somerset Dams;

(ii) peak flow rate at the Lowood Gauge (excluding Wivenhoe Dam releases);

(iii) peak flow rate at the Moggill Gauge (excluding Wivenhoe Dam releases);

(h) repeats paragraph 106 above;

(i) otherwise does not admit the allegations contained therein.

110 In relation to paragraph 110:

(a) as to sub-paragraph (a), admits the allegations therein, subject to the qualification that downstream rural bridges were not to be submerged prematurely;

(b) as to sub-paragraph (b), says that the requirement of the Flood Mitigation Manual was in general, that the releases from Wivenhoe Dam are controlled such that the combined flow from Lockyer Creek and Wivenhoe Dam is less than the limiting values to delay the submergence of particular bridges;

(c) otherwise does not admit the allegations contained therein.

111 In relation to paragraph 111:

(a) says that the first bullet point on page 28 of the Flood Mitigation Manual provided to the effect that the Flood Engineers could, subject to certain flow rates, select strategy W2 where the water level of Lake Wivenhoe was predicted to be between 68.50 m AHD and 74.00 m AHD;

(b) says that the Flow Chart on page 24 of the Flood Mitigation Manual provided to the effect that if the level of Lake Wivenhoe was likely to exceed 68.50 m AHD, but not likely to exceed 74.0 m AHD, and maximum flow rates at Lowood and Moggill were likely to be less than 3500 m^3/s and 4000 m^3/s respectively, the Flood Engineers were to select strategy W2;

but

(c) says that page 23 of the Flood Mitigation Manual provided that the strategy chosen at any point in time depended on the actual levels in the dams, and predictions as to:

(i) maximum storage levels in Wivenhoe and Somerset Dams;

(ii) peak flow rate at the Lowood Gauge (excluding Wivenhoe Dam releases);

(iii) peak flow rate at the Moggill Gauge (excluding Wivenhoe Dam releases);

(d) says that the Flood Mitigation Manual provided for the Flood Engineers to switch to strategy W2 or W3 as appropriate once the level reached 68.5 m AHD in Wivenhoe Dam (page 27, in bold);

(e) otherwise does not admit the allegations contained therein.

112 In relation to paragraph 112:

(a) says that Strategy W2 was described in the Flood Mitigation Manual as a 'transition strategy' where the primary consideration changes from minimising impact to downstream rural life to protecting urban areas from inundation;

(b) otherwise does not admit the allegations contained therein.

113 In relation to paragraph 113:

(a) says that the intent of Strategy W2 was to limit the Combined Peak Flow to the lesser of the natural peak flow (excluding Wivenhoe Dam releases), and 3,500 m^3/s (at Lowood), and 4,000m^3/s (at Moggill);

(b) otherwise does not admit the allegations contained therein.

114 In relation to paragraph 114:

(a) says that the first bullet point on page 29 of the Flood Mitigation Manual provided to the effect that the Flood Engineers could, subject to certain flow rates, select strategy W3 where the water level of Lake Wivenhoe was predicted to be between 68.50 m AHD and 74.00 m AHD;

(b) says that the Flow Chart on page 24 of the Flood Mitigation Manual provided to the effect that if the level of Lake Wivenhoe was likely to exceed 68.50 m AHD, but not likely to exceed 74.0 m AHD, and maximum flow rates at Lowood and Moggill were not likely to be less than 3500 m^3/s and 4000m^3/s respectively, the Flood Engineers were to select strategy W3;

but

(c) says that page 23 of the Flood Mitigation Manual provided that the strategy chosen at any point in time depended on the actual levels in the dams, and predictions as to:

(i) maximum storage levels in Wivenhoe and Somerset Dams;

(ii) peak flow rate at the Lowood Gauge (excluding Wivenhoe Dam releases);

(iii) peak flow rate at the Moggill Gauge (excluding Wivenhoe Dam releases);

(d) repeats paragraphs 106 and 111 above;

(e) otherwise does not admit the allegations contained therein.

115 In relation to paragraph 115:

(a) admits sub-paragraph (a), but says that lower level objectives were also to be considered when making decisions on water releases;

(b) says that the intent of strategy W3 was to limit the Combined Peak Flow at Moggill to less than 4,000m^3/s;

(c) otherwise does not admit the allegations contained therein.

116 In relation to paragraph 116:

(a) says that the first bullet point on page 30 of the Flood Mitigation Manual provided to the effect that the Flood Engineers were to select strategy W4 where the water level of Lake Wivenhoe was predicted to exceed 74.00 m AHD;

(b) says that the Flow Chart on page 24 of the Flood Mitigation Manual provided to the effect that if the level of Lake Wivenhoe was likely to exceed 74.0 m AHD, the Flood Engineers were to select strategy W4;

but

(c) says that page 23 of the Flood Mitigation Manual provided that the strategy chosen at any point in time depended on the actual levels in the dams, and predictions as to:

(i) maximum storage levels in Wivenhoe and Somerset Dams;

(ii) peak flow rate at the Lowood Gauge (excluding Wivenhoe Dam releases);

(iii) peak flow rate at the Moggill Gauge (excluding Wivenhoe Dam releases);

(d) says that page 30 of the Flood Mitigation Manual provided to the effect that strategy W4 normally came into effect when the water level in Wivenhoe Dam reached 74.0 m AHD;

(e) says that page 30 of the Flood Mitigation Manual provided to the effect that strategy W4A came into effect when the water level in Wivenhoe Dam was actually between 74.0 m AHD and 75.5 m AHD;

(f) says that page 31 of the Flood Mitigation Manual provided to the effect that strategy W4B came into effect when the water level in Wivenhoe Dam was actually greater than 75.5 m AHD;

(g) repeats paragraph 106 above;

(h) otherwise does not admit the allegations contained therein.

117 Admits the allegations contained in paragraph 117, but says that lower level objectives were also to be considered when making decisions on water releases.

118 In relation to paragraph 118:

(a) says that the Flood Mitigation Manual provided as follows:

(i) there may be a need to take into account base flow (but not forecast rainfall) when determining final gate closure, such that the lake level temporarily fell below FSL to provide for a full dam at the end of the Flood Event;

(ii) the aim was always to empty floodwaters stored above 67.0 m AHD within seven days after the flood peak had passed through the dams, however provided a favourable weather outlook was available, this requirement could be relaxed for the volume between 67.0 m AHD and 67.5 m AHD, to obtain positive environmental outcomes;

PARTICULARS

(A) Flood Mitigation Manual, section 8.5

(b) save as to sub-paragraph (a)(i) above, denies that the Flood Mitigation Manual authorised, during a Flood Event, releases from Wivenhoe Dam such that the level of Lake Wivenhoe fell below FSL;

PARTICULARS

(A) Flood Mitigation Manual, sections 8.5, 9.3 (pages 30, 40, and 41, including the Operating Target Line); Appendix C

(c) otherwise denies the allegations contained therein.

Somerset Dam Flood Operations Strategies

119 Admits the allegations contained in paragraph 119.

120 Admits the allegations contained in paragraph 120.

121 In relation to paragraph 121:

(a) admits the allegations contained in sub-paragraph (a);

(b) admits that the Flood Mitigation Manual required the Flood Engineers to select the appropriate strategy taking into account predictions as to maximum storage levels of Lake Wivenhoe and Lake Somerset;

(c) repeats paragraph 106 above;

(d) otherwise does not admit the allegations contained therein.

122 Does not admit the allegations contained in paragraph 122.

123 Does not admit the allegations contained in paragraph 123.

124 Admits the allegations contained in paragraph 124.

125 Does not admit the allegations contained in paragraph 125.

126 In relation to paragraph 126:

(a) says that the intent of strategy S1 was to return Somerset Dam to FSL while minimising the impact on rural life upstream of the dam, with consideration also given to minimising the downstream environmental impacts from the releases;

(b) otherwise does not admit the allegations contained therein.

127 Admits the allegations contained in paragraph 127.

128 Admits the allegations contained in paragraph 128.

129 Does not admit the allegations contained in paragraph 129.

130 Admits the allegations contained in paragraph 130.

131 Admits the allegations contained in paragraph 131.

131A Admits the allegations contained in paragraph 131A.

132 In relation to paragraph 132:

(a) says that the Flood Mitigation Manual provided for as follows:

(i) there may be a need to take into account base flow (but not forecast rainfall) when determining final gate closure, such that the lake level temporarily fell below FSL to provide for a full dam at the end of the Flood Event;

(ii) unless determined otherwise by the Senior Flood Operations Engineer in accordance with section 2.8, the aim was to empty stored floodwaters within seven days after the flood peak had passed through the dams;

PARTICULARS

(A) Flood Mitigation Manual, section 9.4

(b) save as to sub-paragraph (a)(i) above, denies that the Flood Mitigation Manual authorised, during a Flood Event, releases from Somerset Dam such that the level of Lake Somerset fell below FSL;

PARTICULARS

(A) Flood Mitigation Manual, sections 9.3 (pages 40, and 41, including the Operating Target Line), 9.4 (page 42)

(c) otherwise denies the allegations contained therein.

K The Real Time Flood Model

133 Admits the allegations contained in paragraph 133.

134 Admits the allegations contained in paragraph 134.

135 Admits the allegations contained in paragraph 135.

136 Does not admit the allegations contained in paragraph 136.

136A Does not admit the allegations contained in paragraph 136A.

136B Does not admit the allegations contained in paragraph 136B.

137 In relation to paragraph 137:

(a) says that in December 2010 and January 2011, the Flood Operations Centre received:

(i) 1 Day QPFs (provided twice a day);

(ii) direct telephone briefings and email communications;

(iii) ad hoc forecast scenario requests;

(b) says that, in December 2010 and January 2011, the Flood Operations Centre accessed and obtained:

(i) operational forecasting and warning products from the BOM's website;

(ii) multi-day rainfall forecasts from BOM's website;

(iii) SILO meteograms;

(c) says that, in December 2010 and January 2011, the Flood Operations Centre conducted flood model results;

(d) says that in December 2010 and January 2011, the Flood Operations Centre obtained synoptic weather forecasts from BOM;

(e) otherwise does not admit the allegations contained therein.

138 In relation to paragraph 138:

(a) says that the 1 Day QPFs only dealt with catchment areas above Somerset Dam and Wivenhoe Dam;

(b) says that the 1 Day QPFs only provided a catchment average rainfall depth for the 24 hour period;

(c) says that the information contained in the 1 Day QPFs did not show when and where the predicted rainfall would be distributed within the catchment area across the 24 hour period;

(d) says that the 1 Day QPFs did not provide specific forecasts for areas below Somerset Dam and Wivenhoe Dam, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(e) says that the forecasts contained in the 1 Day QPFs were inherently unreliable;

(f) otherwise does not admit the allegations contained therein.

139 In relation to paragraph 139:

(a) says that there were 4 and 8 day rainfall forecasts available on BOM's website;

(b) denies that the 4 and 8 day forecasts were specifically for the catchment areas of Somerset Dam and Wivenhoe Dam;

(c) denies that the 4 and 8 day forecasts predicted average rainfall for the catchment areas of Somerset Dam and Wivenhoe Dam;

(d) says that the 4 and 8 day forecasts were constituted by maps of the whole of the eastern coast of Australia;

(e) says that the multi-day forecasts are based on a number of global climate models that BOM had access to and publishes;

(f) says that BOM specifically warned users that the 4 and 8 day forecasts were produced from computer models and contained no input from weather forecasters and that it was important to check BOM's local forecasts and warnings;

(g) says that BOM warned that the 4 and 8 day forecasts were updated over the forecast period, becoming more accurate as the date approaches;

(h) says that the predictions of average rainfall over the catchment areas of Somerset Dam and Wivenhoe Dam would require an interpretation of where forecast bands of rainfall were located;

(i) says that the level of uncertainty with the 4 and 8 day forecasts is high, and of even less reliability than the 1 Day QPFs;

(j) otherwise does not admit the allegations contained therein.

139A In relation to paragraph 139A:

(a) says that the most reliable rainfall information for predicting inflows was rain on the ground;

(b) says that the most reliable of the rainfall forecasts was the 1 day QPF;

(c) says that the 1 day QPFs were inherently unreliable as a predictor of inflows;

(d) repeats paragraph 138 above;

(e) says that, from time to time, it was made aware of inquiries of the BOM as to the reliability of rainfall forecasts including in 2010 following which BOM repeated its advice from 2006 that:

(i) short to medium term (0 to 48 hour) prediction of rainfall for the purpose of objective use in flood forecasting models is a difficult task;

(ii) while Numerical Weather Prediction models have shown improvement in the accuracy of 1 Day QPFs over the past decade or so, there is at times considerable error or uncertainty, in the prediction of location, amount and timing of rainfall events at the catchment scale;

(iii) while there is often the ability to forecast the potential for a significant rain event to occur in the Southeast Queensland to Northern New South Wales region, it is difficult (if not impossible) to predict the actual location of the heaviest rain;

(iv) there are large levels of uncertainty in rainfall forecasts;

(v) there was no sufficiently accurate method for objective decision making for pre-releases from Wivenhoe Dam;

PARTICULARS

(A) Email from Peter Baddiley to Rob Drury dated 1 December 2010 re-forwarding advice dated 24 July 2006

140 In relation to paragraph 140:

(a) says that when inputting any forecast information into the Real Time Flood Model, assumptions had to be made as to when and where, during the relevant periods, the rain would fall;

(b) says further that the information obtained from making this assumption was then input into a hydrology model, which produced rainfall estimates;

(c) says further that the Real Time Flood Model was broken up into regions, and within each region the rainfall was broken up into temporal patterns and rainfall depths, and used in conjunction with loss rates where the loss rate was:

(i) the amount of rainfall that did not appear as direct surface run off in the catchment area, which included the precipitation intercepted by vegetation, infiltration into the soil, retention on the surface, evaporation, and loss through the embankment or stream bed;

(ii) dependent on a number of factors, including catchment topography, soil, vegetation, and the antecedent soil moisture and an assumption about these factors and the impact on the data input into the Real Time Flood Model had to be made throughout the Flood Event;

(d) says further that the predicted lake levels at Lake Somerset and Lake Wivenhoe were also a function of an assumed release rate from the dams;

(e) says further that, by reason of the above, the predicted lake levels at Lake Somerset and Lake Wivenhoe were based on a number of assumptions;

(f) says that the prediction of lake level was dependent upon those various assumptions above and therefore inherently inexact;

(g) otherwise admits the allegations contained therein.

141 In relation to paragraph 141:

(a) admits that the Real Time Flood Model, used in conjunction with the forecast information supplied by the BOM, provided the Flood Engineers with a means to make predictions as to how past, current and predicted weather conditions would affect water levels in Lake Somerset and Lake Wivenhoe and inflows downstream of Wivenhoe Dam;

(b) admits that the Real Time Flood Model, used in conjunction with the forecast information supplied by the BOM and the Gate Operations

Spreadsheet, provided the Flood Engineers with the means to model potential release strategies at Somerset Dam and Wivenhoe Dam so as to make predictions as to how those strategies would affect flow rates, water levels and flooding downstream of Wivenhoe Dam;

(c) admits the allegations contained in sub-paragraphs (c) and (d);

(d) says that the predictions were subject to the limitations in paragraphs 138 – 140 above;

(e) otherwise does not admit the allegations contained therein.

142 Admits the allegations contained in paragraph 142.

L Duties of Care

Risk of Harm

142A In relation to paragraph 142A:

(a) says that pursuant to the Flood Mitigation Manual, the reservoir volume in Wivenhoe Dam above FSL of 67.0 m AHD is available as temporary flood storage;

PARTICULARS

(A) Flood Mitigation Manual, section 8.1; Appendix C

(b) denies that, pursuant to the Flood Mitigation Manual, any reservoir volume in Wivenhoe Dam below FSL is available for temporary flood storage purposes;

(c) denies that, pursuant to the Flood Mitigation Manual, any reservoir volume in Somerset Dam below FSL is available for temporary flood storage purposes;

(d) repeats paragraphs 118 and 132 above;

(e) says that Somerset Dam and Wivenhoe Dam are multi–purpose dams with the storage capacity below FSL being provided for the purpose of the water supply to the areas below the dams, including metropolitan Brisbane;

(f) says that reduction of the available flood storage capacity of Lake Somerset and Lake Wivenhoe below FSL risked the integrity of the water supply to the areas below the dams, including metropolitan Brisbane;

(g) says that proper conduct of the Flood Operations included the objective of not unnecessarily making flood releases;

(h) does not admit that, at the time of each of the alleged breaches, it was reasonably foreseeable to a reasonably competent dam operator in the position of SunWater that the result of failing to act in the way alleged by Dr Christensen might be inundation to the plaintiff's personal property located downstream of Wivenhoe Dam;

(i) does not admit that, at the time of each of the alleged breaches, it was reasonably foreseeable to a reasonably competent dam operator in the position of SunWater that the result of failing to act in the way alleged by Dr Christensen might be inundation to real and personal property located downstream of Wivenhoe Dam;

(j) otherwise does not admit the allegations contained therein.

142B Does not admit the allegations contained in paragraph 142B.

Seqwater's Duty of Care as Owner and Occupier

143 In relation to paragraph 143:

(a) repeats paragraph 147 below;

(b) otherwise denies the allegations contained therein.

144 Denies the allegations contained in paragraph 144.

Seqwater's Direct Duty of Care as Sole Licensee under the Water Act

145 Denies the allegations contained in paragraph 145.

146 Does not admit the allegations contained in paragraph 146.

SunWater's Direct Duty of Care

147 In relation to paragraph 147:

(a) as to sub-paragraph (a):

(i) repeats paragraph 142A above;

(ii) otherwise does not admit the allegations contained therein;

(b) as to sub-paragraph (b):

(i) says that, when carrying out the Flood Management Services Agreement, it was engaged in a potentially dangerous activity, but says that the proper discharge of its obligations pursuant to the Flood Management Services Agreement authorised and required it to release amounts of water from Wivenhoe Dam and Somerset Dam which, depending on the circumstances, would, or might, inundate areas downstream of Wivenhoe Dam, causing loss and damage;

(ii) otherwise does not admit the allegations contained therein;

(c) as to sub-paragraph (c):

(i) says that, when carrying out the Flood Management Services Agreement, it was engaged in a potentially hazardous activity, but says that the proper discharge of its obligations pursuant to the Flood Management Services Agreement authorised and required it to release amounts of water from Wivenhoe Dam and Somerset Dam which, depending on the circumstances, would, or might, inundate areas downstream of Wivenhoe Dam, causing loss and damage;

(ii) otherwise does not admit the allegations contained therein;

(d) as to sub-paragraph (d):

(i) repeats paragraph 142A above;

(ii) otherwise does not admit the allegations contained therein;

(e) as to sub-paragraph (e);

(i) says that 'the location and identity of persons and businesses likely to be directly impacted by a failure by SunWater properly to conduct Flood Operations' was identifiable only with hindsight, and was not reasonably ascertainable at the time, looking prospectively;

(ii) otherwise does not admit the allegations contained therein;

(f) as to sub-paragraph (f);

(i) repeats paragraph 84 above;

(ii) says that SunWater had no control over the extreme volume of rainfall, and the location and timing of that rainfall, and the significant inflows from the Lockyer Creek and the Bremer River, all of which were the true causes of any loss and damage suffered by the plaintiff and the other Group Members;

(iii) repeats paragraph 142A above;

(iv) otherwise denies the allegations contained therein;

(g) as to sub-paragraph (g);

(i) repeats paragraphs 138, 139, 139A and 140 above;

(ii) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(iii) otherwise does not admit the allegations contained therein;

(h) as to sub-paragraph (h):

(i) admits that the plaintiff and other Group Members could not direct or control the manner in which SunWater carried out the Flood Management Services Agreement;

(ii) says that members of the public could, and did, communicate with the Flood Operations Centre in an attempt to influence the manner in which Flood Operations were conducted;

(iii) otherwise does not admit the allegations contained therein;

(i) as to sub-paragraph (i):

(i) repeats paragraph 142A above;

(ii) says that the plaintiff and at least some of the Group Members had the ability to remove personal property from locations the subject of potential flooding;

(iii) otherwise does not admit the allegations contained therein;

(j) as to sub-paragraph (j):

(i) repeats paragraph 142A above;

(ii) otherwise does not admit the allegations contained therein;

(k) does not admit the allegations contained in sub-paragraph (k) and further says that the plaintiff and other Group Members were not vulnerable to harm from the manner in which SunWater exercised its functions in performing Flood Operations at Somerset Dam and Wivenhoe Dam:~~;~~

(i) in that the plaintiff and other Group Members were able to protect themselves from harm by taking out insurance to cover the following losses caused by flooding:

(A) damage to real and personal property;

(B) damage to plant, fixtures, fittings, stock and all other contents including fixtures and fittings owned by the landlord for which the plaintiff and other Group Members were required to hold insurance;

(C) loss of profits and additional expenses following material damage;

(D) costs associated with repairs and restoration of the premises and costs associated with hiring a storage facility in which to store any plant, equipment, stock and contents that were not damaged;

PARTICULARS

(a) The report dated May 2016 of Michael Mackintosh, served by Seqwater.

(b) Inferences arising from the fact that some of the claims of Group Members are subrogated insurance recovery claims.

(ii) SunWater repeats paragraph 147(i) above;

(iii) in the alternative, SunWater says that the extent of any vulnerability is to be assessed by reference to the matters referred to above.

(l) otherwise does not admit the allegations contained therein.

148 In relation to paragraph 148:

(a) repeats paragraph 142A above, and therefore denies that SunWater owed SunWater's alleged Duty of Care, or any duty of care at all to Group Members, or to any person downstream of Wivenhoe Dam who suffered loss by reason of the inundation;

(b) repeats sub-paragraph 147(e) above and says that SunWater's alleged Duty of Care might give rise to indeterminacy of liability, such that SunWater's alleged Duty of Care did not exist;

(c) repeats the balance of paragraph 147 above and pleads further as follows:

Inconsistency between interests of persons downstream of Wivenhoe Dam

At all material times, assessed at the time when SunWater was providing services pursuant to the Flood Management Services Agreement, and looking prospectively:

(i) persons (including natural persons, partnerships, bodies corporate, Councils, incorporated associations, and the State of Queensland) downstream of Wivenhoe Dam were potentially differently adversely affected (by reason of inconvenience, personal injury, damage to

property and consequential loss, or pure economic loss) by different flow rates in the Brisbane River, depending on their actual geographical location (distance downstream from Wivenhoe Dam, distance from the banks of the Brisbane River, Lockyer Creek, Bremer River and other tributaries, and topography);

(ii) persons downstream of Wivenhoe Dam in urban areas (within the meaning of the Flood Mitigation Manual) were potentially differently adversely affected by different flow rates in the Brisbane River, depending on the actual geographical location of the particular urban area;

(iii) in addition to inflows from Lockyer Creek and the Bremer River, flow rates in the Brisbane River were affected by water releases from Wivenhoe Dam;

(iv) persons downstream of Wivenhoe Dam were therefore potentially differently adversely affected by different release rates from Wivenhoe Dam, depending on their actual geographical location;

(v) persons downstream of Wivenhoe Dam in urban areas were therefore potentially differently adversely affected by different release rates from Wivenhoe Dam, depending on the actual geographical location of the particular urban area;

(vi) some water releases from Wivenhoe Dam might adversely affect some persons downstream of Wivenhoe Dam, including in urban areas, but not others;

(vii) for those persons in rural and urban areas downstream from Wivenhoe Dam who might not be adversely affected until relatively high flow rates, it might be in their interests for relatively high releases to be made from Wivenhoe Dam (to increase temporary flood storage), which releases might adversely affect other persons in different rural and urban areas downstream of Wivenhoe Dam;

(viii) for those persons who were in rural and urban areas downstream of Wivenhoe Dam who might be adversely affected by low flow rates, it

might be in their interests to delay releases from Wivenhoe Dam as long as possible;

(ix) so far as water releases from Wivenhoe Dam were concerned, the interests of persons downstream of Wivenhoe Dam, including in different urban areas, were inconsistent, diverse and irreconcilable;

(x) were the SunWater Duty of Care to exist, certain releases of water from Wivenhoe Dam, in proper discharge of that duty to some persons downstream of Wivenhoe Dam, would have constituted breach of that duty to other persons downstream of Wivenhoe Dam;

(xi) in determining whether SunWater owed SunWater's Duty of Care, or any duty at all to any persons downstream of Wivenhoe Dam, the common law would not prefer the interests of some persons over the interests of others;

(xii) the recognition of SunWater's Duty of Care would give rise to inconsistent obligations, such that SunWater's Duty of Care did not exist;

Inconsistency between interests of persons upstream of Somerset Dam, and persons downstream of Wivenhoe Dam

At all material times, assessed at the time when SunWater was providing services pursuant to the Flood Management Services Agreement, and looking prospectively:

(xiii) it was in the interests of some persons downstream of Wivenhoe Dam that as little water as possible be released from Wivenhoe Dam;

(xiv) releases from Somerset Dam flowed into Wivenhoe Dam;

(xv) one way of minimising releases from Wivenhoe Dam was therefore to minimise releases from Somerset Dam, by storing water in Somerset Dam, which, in periods of rainfall over the Somerset Dam catchment area, would cause the level in Lake Somerset to rise;

(xvi) it was therefore in the interests of some persons downstream of Wivenhoe Dam that as little water as possible be released from Somerset Dam which, in periods of rainfall over the Somerset Dam catchment area, would cause the level in Lake Somerset to rise;

(xvii) once the level in Lake Somerset reached about 102 m AHD to 103 m AHD, persons upstream of Lake Somerset, including in the urban area of Kilcoy, were potentially adversely affected;

(xviii) so far as water releases from Somerset Dam were concerned, the interests of some persons downstream of Wivenhoe Dam, and the interests of some persons upstream of Somerset Dam, including in different urban areas, were inconsistent, diverse and irreconcilable;

(xix) were the SunWater Duty of Care to exist, allowing the level in Lake Somerset to exceed about 103 m AHD, in proper discharge of that duty to some persons downstream of Wivenhoe Dam, would have constituted breach of that duty to some other persons upstream of Somerset Dam;

(xx) in determining whether SunWater owed SunWater's Duty of Care, or any duty at all to any persons downstream of Wivenhoe Dam, the common law would not prefer the interests of some persons downstream of Wivenhoe Dam over the interests of some persons upstream of Somerset Dam;

(xxi) the recognition of SunWater's Duty of Care would give rise to inconsistent obligations, such that SunWater's Duty of Care did not exist;

Inconsistency between SunWater's obligations pursuant to the Flood Management Services Agreement, and SunWater's Duty of Care

(xxii) SunWater owed Seqwater a contractual duty to carry out the services pursuant to the Flood Management Services Agreement with reasonable care and skill;

(xxiii) the duty of care alleged by the plaintiff relies on the Christensen report<u>s</u>, which, as pleaded more fully below, advances propositions that SunWater should have acted in a manner which was:

(A) in breach of the Flood Mitigation Manual, or arguably in breach;

(B) in breach of SunWater's contractual duties to Seqwater, or arguably in breach;

(C) contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(xxiv) the recognition of SunWater's Duty of Care would give rise to inconsistent obligations, such that SunWater's Duty of Care did not exist;

(d) ~~in the alternative~~<u>further</u> to the matters pleaded in sub-paragraph~~s~~ (<u>b</u>~~a) to (c~~) above:

(i) the imposition of a duty to avoid economic loss, such loss not resulting from injury to person or property, would result in the imposition of a liability of an indeterminate amount;

(ii) the imposition of a duty to avoid economic loss, such loss not resulting from injury to person or property, would result in the imposition of a liability to an indeterminate number of persons;

(iii) by reason of the matters pleaded in sub-paragraphs (d)(i) and (d)(ii) above or either of them, denies that it owed SunWater's alleged Duty of Care, or any duty of care at all to Group Members, or to any person downstream of Wivenhoe Dam who suffered economic loss, such loss not resulting from injury to person or property, by reason of the inundation;

(e) in the alternative to the matters pleaded in sub-paragraphs (a) to (c) above, says that by reason of the matter pleaded in sub-paragraph 84(d) above, an act or omission of SunWater in the operation of Wivenhoe Dam,

Somerset Dam or either of them did not constitute a wrongful exercise or failure by SunWater unless the act or omission was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of SunWater could properly consider the act or omission to be a reasonable exercise of SunWater's functions (alternatively, special statutory powers);

PARTICULARS

(A) s 36 of the CLA, alternatively s 43A of the NSW CLA

(f) in the alternative to the matters pleaded in sub-paragraphs (a) to (c) and (e) above, says that by reason of the matter pleaded in sub-paragraph 84(e) above, an act or omission of SunWater in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater did not constitute a wrongful exercise or failure by SunWater unless the act or omission was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions (alternatively, special statutory powers);

PARTICULARS

(a) s 36 of the CLA, alternatively, s 43A of the NSW CLA

(g) in the alternative to the matters pleaded in sub-paragraphs (a) to (c) and (e) to (f) above:

(i) repeats the matters pleaded in sub-paragraph 84(f) above:

(ii) says that the scope of any alleged duty owed by SunWater to the Group Members or any other person in operating Wivenhoe Dam, Somerset Dam or either of them was no greater than the scope of the duty that would have been owed by SunWater to the Group Members or any other person in operating Wivenhoe Dam, Somerset Dam or either of them, had SunWater been a public authority within the meaning of s 34 of the CLA, alternatively, under s 41 of the NSW CLA;

(iii) says that an act or omission of SunWater in the operation of Wivenhoe Dam, Somerset Dam or either of them did not constitute a breach of any alleged duty of care or an act of nuisance or trespass by SunWater unless the act or omission was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of SunWater could properly consider the act or omission to be a reasonable exercise of SunWater's functions;

(h) in the alternative to the matters pleaded in sub-paragraphs (a) to (c) and (e) to (g) above:

(i) repeats the matters referred to in sub-paragraph 84(g) above;

(ii) says that the scope of any duty owed by SunWater to the Group Members or any other person in operating Wivenhoe Dam, Somerset Dam or either of them for Seqwater was no greater than the scope of the duty that would have been owed by SunWater to the Group Members or any other person in operating Wivenhoe Dam, Somerset Dam or either of them for Seqwater, had Seqwater been a public authority within the meaning of s 34 of the CLA, alternatively, s 41 of the NSW CLA;

(iii) says that an act or omission of SunWater in operating Wivenhoe Dam, Somerset Dam or either of them for Seqwater did not constitute a breach of any duty of care or an act of nuisance or trespass by SunWater unless the act or omission was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions.

Flood Engineers' Duty of Care

149 In relation to paragraph 149:

(a) as to sub-paragraph (a):

(i) repeats paragraph 142A above;

(ii) otherwise does not admit the allegations contained therein;

(b) as to sub-paragraph (b):

(i) says that, when Mr Ayre was carrying out the Flood Management Services Agreement on behalf of SunWater, he was engaged in a potentially dangerous activity, but says that the proper discharge of SunWater's obligations pursuant to the Flood Management Services Agreement authorised it to release amounts of water from Wivenhoe Dam and Somerset Dam which, depending on the circumstances, would, or might, inundate areas downstream of Wivenhoe Dam, causing loss and damage;

(ii) otherwise does not admit the allegations contained therein;

(c) as to sub-paragraph (c):

(i) says that, when Mr Ayre was carrying out the Flood Management Services Agreement on behalf of SunWater, he was engaged in a potentially hazardous activity, but says that the proper discharge of SunWater's obligations pursuant to the Flood Management Services Agreement authorised it to release amounts of water from Wivenhoe Dam and Somerset Dam which, depending on the circumstances, would, or might, inundate areas downstream of Wivenhoe Dam, causing loss and damage;

(ii) otherwise does not admit the allegations contained therein;

(d) as to sub-paragraph (d):

(i) says that 'the location and identity of persons and businesses likely to be directly impacted by a failure by SunWater properly to conduct Flood Operations' was identifiable only with hindsight, and was not reasonably ascertainable at the time, looking prospectively;

(ii) otherwise does not admit the allegations contained therein;

(e) as to sub-paragraph (e);

(i) repeats paragraph 142A above;

(ii) otherwise does not admit the allegations contained therein;

(f) as to sub-paragraph (f);

(i) repeats paragraph 84 above;

(ii) says that Mr Ayre had no control over the extreme volume of rainfall, and the location and timing of that rainfall, and the significant inflows from the Lockyer Creek and the Bremer River, all of which were the true causes of any loss and damage suffered by the plaintiff and the other Group Members;

(iii) repeats paragraph 142A above;

(iv) otherwise denies the allegations contained therein;

(g) as to sub-paragraph (g);

(i) repeats paragraphs 138, 139, 139A and 140 above;

(ii) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(iii) otherwise does not admit the allegations contained therein;

(h) as to sub-paragraph (h):

(i) admits that the plaintiff and other Group Members could not direct or control the manner in which SunWater carried out the Flood Management Services Agreement;

(ii) says that members of the public could, and did, communicate with the Flood Operations Centre in an attempt to influence the manner in which Flood Operations were conducted;

(iii) otherwise does not admit the allegations contained therein;

(i) as to sub-paragraph (i):

(i) repeats paragraph 142A above;

(ii) says that the plaintiff and at least some of the Group Members had the ability to remove personal property from location the subject of potential flooding;

(iii) otherwise does not admit the allegations contained therein;

(j) as to sub-paragraph (j):

(i) repeats paragraph 142A above;

(ii) otherwise does not admit the allegations contained therein;

(k) does not admit the allegations contained in sub-paragraph (k) and further says that the plaintiff and other Group Members were not vulnerable to harm from the manner in which SunWater exercised its functions in performing Flood Operations at Somerset Dam and Wivenhoe Dam:~~;~~

(i) in that the plaintiff and other Group Members were able to protect themselves from harm by taking out insurance to cover the following losses caused by flooding:

(A) damage to real and personal property;

(B) damage to plant, fixtures, fittings, stock and all other contents including fixtures and fittings owned by the landlord for which the plaintiff and other Group Members were required to hold insurance;

(C) loss of profits and additional expenses following material damage;

(D) costs associated with repairs and restoration of the premises and costs associated with hiring a storage facility in which to store any plant, equipment, stock and contents that were not damaged;

PARTICULARS

(a) The report dated May 2016 of Michael Mackintosh, served by Seqwater.

(b) Inferences arising from the fact that some of the claims of Group Members are subrogated insurance recovery claims.

(ii) SunWater repeats paragraph 147(i) above;

(iii) in the alternative, SunWater says that the extent of any vulnerability is to be assessed by reference to the matters referred to above.

(l) otherwise does not admit the allegations contained therein.

150 In relation to paragraph 150:

(a) repeats paragraph 142A above, and therefore denies that Mr Ayre owed the alleged duty of care, or any duty of care at all to Group Members, or to any person downstream of Wivenhoe Dam who suffered loss by reason of the inundation;

(b) repeats sub-paragraph 149(e) above and says that the alleged duty might give rise to indeterminacy of liability, such that the alleged duty did not exist;

(c) repeats the balance of paragraph 149 above;

and pleads further as follows:

Inconsistency between interests of persons downstream of Wivenhoe Dam

At all material times, assessed at the time when SunWater was providing services pursuant to the Flood Management Services Agreement, and looking prospectively:

(i) persons (including natural persons, partnerships, bodies corporate, Councils, incorporated associations, and the State of Queensland) downstream of Wivenhoe Dam were potentially differently adversely affected (by reason of inconvenience, personal injury, damage to property, or pure economic loss) by different flow rates in the Brisbane River, depending inter alia on their actual geographical location (distance downstream from Wivenhoe Dam, distance from

the banks of the Brisbane River, Lockyer Creek, Bremer River and other tributaries, and the topography of their location);

(ii) persons downstream of Wivenhoe Dam in urban areas (within the meaning of the Flood Mitigation Manual) were potentially differently adversely affected by different flow rates in the Brisbane River, depending on the actual geographical location of the particular urban area;

(iii) in addition to inflows from Lockyer Creek and the Bremer River, flow rates in the Brisbane River were affected by water releases from Wivenhoe Dam;

(iv) persons downstream of Wivenhoe Dam were therefore potentially differently adversely affected by different release rates from Wivenhoe Dam, depending on their actual geographical location;

(v) persons downstream of Wivenhoe Dam in urban areas were therefore potentially differently adversely affected by different release rates from Wivenhoe Dam, depending on the actual geographical location of the particular urban area;

(vi) some water releases from Wivenhoe Dam might adversely affect some persons downstream of Wivenhoe Dam, including in urban areas, but not others;

(vii) for those persons in rural and urban areas downstream from Wivenhoe Dam who might not be adversely affected until relatively high flow rates, it might be in their interests for relatively high releases to be made from Wivenhoe Dam (to increase temporary flood storage), which releases might adversely affect other persons in different rural and urban areas downstream of Wivenhoe Dam;

(viii) for those persons who were in rural and urban areas downstream of Wivenhoe Dam who might be adversely affected by low flow rates, it might be in their interests to delay releases from Wivenhoe Dam as long as possible;

(ix) so far as water releases from Wivenhoe Dam were concerned, the interests of persons downstream of Wivenhoe Dam, including in different urban areas, were inconsistent, diverse and irreconcilable;

(x) were the alleged duty of care to exist, certain releases of water from Wivenhoe Dam, in proper discharge of that duty to some persons downstream of Wivenhoe Dam, would have constituted breach of that duty to other persons downstream of Wivenhoe Dam;

(xi) in determining whether the Flood Engineers owed the alleged duty, or any duty at all to any persons downstream of Wivenhoe Dam, the common law would not prefer the interests of some persons over the interests of others;

(xii) the recognition of the alleged duty would give rise to inconsistent obligations, such that the alleged duty did not exist;

Inconsistency between interests of persons upstream of Somerset Dam, and persons downstream of Wivenhoe Dam

At all material times, assessed at the time when SunWater was providing services pursuant to the Flood Management Services Agreement, and looking prospectively:

(xiii) it was in the interests of some persons downstream of Wivenhoe Dam that as little water as possible be released from Wivenhoe Dam;

(xiv) releases from Somerset Dam flowed into Wivenhoe Dam;

(xv) one way of minimising releases from Wivenhoe Dam was therefore to minimise releases from Somerset Dam, by storing water in Somerset Dam, which, in periods of rainfall over the Somerset Dam catchment area, would cause the level in Lake Somerset to rise;

(xvi) it was therefore in the interests of some persons downstream of Wivenhoe Dam that as little water as possible be released from Somerset Dam which, in periods of rainfall over the Somerset Dam catchment area, would cause the level in Lake Somerset to rise;

(xvii) once the level in Lake Somerset reached about 102 m AHD to 103 m AHD, persons upstream of Lake Somerset, including in the urban area of Kilcoy, were potentially adversely affected;

(xviii) so far as water releases from Somerset Dam were concerned, the interests of some persons downstream of Wivenhoe Dam, and the interests of some persons upstream of Somerset Dam, including in different urban areas, were inconsistent, diverse and irreconcilable;

(xix) were the SunWater Duty of Care to exist, allowing the level in Lake Somerset to exceed about 103 m AHD, in proper discharge of that duty to some persons downstream of Wivenhoe Dam, would have constituted breach of that duty to some other persons upstream of Somerset Dam;

(xx) in determining whether SunWater owed SunWater's Duty of Care, or any duty at all to any persons downstream of Wivenhoe Dam, the common law would not prefer the interests of some persons downstream of Wivenhoe Dam over the interests of some persons upstream of Somerset Dam;

(xxi) the recognition of SunWater's Duty of Care would give rise to inconsistent obligations, such that SunWater's Duty of Care did not exist;

Inconsistency between SunWater's obligations pursuant to the Flood Management Services Agreement, and SunWater's Duty of Care

(xxii) SunWater owed Seqwater a contractual duty to carry out the services pursuant to the Flood Management Services Agreement with reasonable care and skill;

(xxiii) the duty of care alleged by the plaintiff relies on the Christensen reports, which, as pleaded more fully below, advances propositions that Mr Ayre on behalf of SunWater should have acted in a manner which was:

(A) in breach of the Flood Mitigation Manual, or arguably in breach;

(B) in breach of SunWater's contractual duties to Seqwater, or arguably in breach;

(C) contrary to the Common No Precautionary Release Interpretation, the FSL Common Interpretation and the Rainfall Forecast Common Interpretation;

(xxiv) the recognition of the alleged duty would give rise to inconsistent obligations, such that the alleged duty did not exist;

(d) in the alternative to the matters pleaded in sub-paragraphs (a) to (c) above:

(i) the imposition of a duty to avoid economic loss, such loss not resulting from injury to person or property, would result in the imposition of a liability of indeterminate amount;

(ii) the imposition of a duty to avoid economic loss, such loss not resulting from injury to person or property, would result in the imposition of a liability to an indeterminate number of persons;

(iii) by reason of the matters pleaded in sub-paragraphs (d)(i) and (d)(ii) above or either of them, denies that the Flood Engineers owed any duty of care at all to Group Members, or to any person downstream of Wivenhoe Dam who suffered economic loss, such loss not resulting from injury to person or property, by reason of the inundation;

(e) in the alternative to the matters pleaded in sub-paragraphs (a) to (c) above:

(i) repeats the matters pleaded in paragraphs 61 to 76 and 90 to 101 above and says that the acts and omissions of the Flood Engineers in the operation of Wivenhoe Dam and Somerset Dam were the acts and omissions of Seqwater as a public authority under the CLA, alternatively, the NSW CLA;

(ii) says that these proceedings are based on an alleged wrongful exercise of, or failure to exercise, a function (alternatively, special statutory powers) of a public authority;

(iii) says that by reason of the matter pleaded in sub-paragraphs (e)(i) and (e)(ii) above, acts or omissions of the Flood Engineers in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater did not constitute a wrongful exercise or failure by the Flood Engineers unless the act or omission was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions;

PARTICULARS

(A) s 36 of the CLA, alternatively s 43A of the NSW CLA

(f) further and in the alternative to the matters pleaded in sub-paragraphs (a) to (c) and (e) above, says that:

(i) in operating Wivenhoe Dam and Somerset Dam, the Flood Engineers were performing duties for the public benefit;

(ii) in operating Wivenhoe Dam and Somerset Dam, the Flood Engineers were performing the duties analogous to the functions (alternatively, special statutory powers) of a public authority within the meaning of s 34(c) of the CLA, alternatively, s 41 of the NSW CLA;

(iii) the scope of any alleged duty owed by the Flood Engineers to Group Members or any other person in operating Wivenhoe Dam, Somerset Dam or either of them was no greater than the scope of the duty that would have been owed by the Flood Engineers to Group Members or any other person in operating Wivenhoe Dam, Somerset Dam or either of them, had the Flood Engineers been a public authority within the meaning of s 34 of the CLA, alternatively, s 41 of the NSW CLA;

(iv) an act or omission of the Flood Engineers in the operation of Wivenhoe Dam, Somerset Dam or either of them did not constitute a breach of any alleged duty of care or an act of nuisance or trespass by the Flood Engineers unless the act or omission was in

the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of the Flood Engineers could properly consider the act or omission to be a reasonable exercise of the Flood Engineer's functions;

(g) further and in the alternative to the matters pleaded in sub-paragraphs (a) to (c) and (e) to (f) above:

(i) says that in operating Wivenhoe Dam and Somerset Dam, Seqwater was performing duties for the public benefit;

(ii) in operating Wivenhoe Dam and Somerset Dam, Seqwater was performing the duties analogous to the functions (alternatively, special statutory powers) of a public authority within the meaning of s 34(c) of the CLA alternatively s 41 of the NSW CLA;

(iii) repeats the matters pleaded in paragraphs 61 to 76 and 90 to 101 above and says that, in operating Wivenhoe Dam and Somerset Dam for Seqwater, the Flood Engineers were performing the duties analogous to the functions (alternatively, special statutory powers) of a public authority within the meaning of s 34(c) of the CLA alternatively, s 41 of the NSW CLA;

(iv) says that, the scope of any duty owed by the Flood Engineers to the Group Members or any other person in operating Wivenhoe Dam, Somerset Dam or either of them for Seqwater was no greater than the scope of the duty that would have been owed by the Flood Engineers to the Group Members or any other person in operating Wivenhoe Dam, Somerset Dam or either of them for Seqwater, had Seqwater been a public authority within the meaning of s 34 of the CLA, alternatively, s 41 of the NSW CLA;

(v) says that an act or omission of the Flood Engineers in operating Wivenhoe Dam, Somerset Dam or either of them for Seqwater did not constitute a breach of any duty of care or an act of nuisance or trespass by the Flood Engineers unless the act or omission was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of

Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions.

M Events of 1 December to 16 December 2010

Rainfall and Inflows

151 Does not admit the allegations contained in paragraph 151.

Water Level

152 Does not admit the allegations contained in paragraph 152.

Flood Operations

153 Does not admit the allegations contained in paragraph 153.

154 In relation to paragraph 154:

(a) says that John Ruffini performed the role of Senior Flood Operations Engineer during the period 11 December 2010 to 18 December 2010;

(b) otherwise does not admit the allegations contained therein.

155 In relation to paragraph 155:

(a) admits that, at 11.25 am on 13 December 2010, the Flood Engineers directed the Wivenhoe Dam operators to undertake gate operations from 1.00 pm on 13 December 2010 releasing water from Somerset Dam and Wivenhoe Dam;

(b) gate operations at Wivenhoe Dam commenced at about 1.00 pm on 13 December 2010;

(c) says that, shortly before 3.00 pm on 13 December 2010, Radial Gate 3 at Wivenhoe Dam was open 2.0 m;

(d) otherwise does not admit the allegations contained therein.

156 In relation to paragraph 156:

(a) admits that releases from the radial gates at Wivenhoe Dam ceased at 10.00 am on 16 December 2010;

(b) says that releases continued from the hydro outlet at 13 m^3/s;

(c) says that releases from the radial gates were ceased and fish recovery operations commenced, in accordance with the objective in the Flood Mitigation Manual to minimise impacts to riparian flora and fauna during the drain down phase;

(d) otherwise does not admit the allegations contained therein.

157 In relation to paragraph 157:

(a) admits that, from around 10.30 am on 16 December 2010, no Flood Engineer was rostered on duty at the Flood Operations Centre to carry out dam operations at Wivenhoe and Somerset Dams;

(b) says that after 10.30 am on 16 December 2010, John Ruffini resumed Duty Engineer duties;

(c) otherwise does not admit the allegations contained therein.

158 In relation to paragraph 158:

(a) admits that the operators of Wivenhoe Dam reported a lake level of 67.10 m AHD at Wivenhoe Dam at around 10.00 am on 16 December 2010;

(b) admits that the operators of Somerset Dam reported a lake level of 99.07 m AHD at Somerset Dam at around 10.00 am on 16 December 2010;

(c) says that, at the time gate closing commenced, the level in Lake Wivenhoe and Lake Somerset had begun to fall, and the level in Lake Wivenhoe was below Gate Trigger Level;

(d) admits that some runoff into both Lake Wivenhoe and Lake Somerset was continuing, but denies that such runoff was 'flood inflows';

(e) repeats paragraphs 139, 139A and 140 above;

(f) denies the matters alleged in sub-paragraph 158(d) and says that the 1 Day QPF for 16 December 2010 stated that the forecast average rainfall for the 24 hour period to 10.00 am on 17 December 2010 for the Somerset Dam and Wivenhoe Dam Catchments was 10 – 20 mm, isolated falls to 40 mm;

(g) denies sub-paragraphs 158(e) and (f) and says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(h) says that the information contained in each of the rainfall forecasts was, to the knowledge and belief of the Flood Engineers, likely to be inaccurate;

(i) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore, it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(j) denies that a Flood Event was occurring;

(k) otherwise does not admit the allegations contained therein.

16 December Breaches

158A [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim]~~In relation to paragraph 158A:~~

~~(a) denies that at the time, it was reasonably foreseeable to SunWater or the Flood Engineers that the cessation of releases created a significant risk of inundation of the plaintiff's property or that of any Group Member some weeks later;~~

~~(b) denies that such risk was significant;~~

~~(c) otherwise denies the allegations contained therein.~~

159 [Not used]

160 [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim]~~In relation to paragraph 160:~~

~~(a) repeats paragraphs 158 – 158A above;~~

~~(b) as to sub-paragraph (a):~~

~~(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;~~

~~(ii) says that the content of SunWater's obligation to Seqwater required SunWater:~~

~~(A) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;~~

~~(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;~~

~~(iii) otherwise does not admit the allegations contained therein;~~

~~(c) denies the allegations contained in sub-paragraph (b);~~

~~(d) denies the allegations contained in sub-paragraph (c);~~

~~(e) denies the allegations contained in sub-paragraph (d);~~

~~(f) denies the allegations contained in sub-paragraph (e);~~

~~(g) denies the allegations contained in sub-paragraph (f);~~

~~(h) denies the allegations contained in sub-paragraph (g);~~

~~(i) denies the allegations contained in sub-paragraph (h), and says further that the simulated operations advanced by Dr Christensen (namely, continuing to release 380m^3/s from Wivenhoe Dam) would have submerged Twin Bridges, Savages Crossing, Colleges Crossing and possibly Burton's Bridge, thereby unnecessarily adversely affecting some persons~~

~~downstream of Wivenhoe Dam, and disrupting downstream rural life, which would have:~~

~~(i) been in breach of the Flood Mitigation Manual, or arguably in breach;~~

~~(ii) been in breach of the Flood Management Services Agreement, or arguably in breach;~~

~~(iii) been contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;~~

~~(iv) adversely affected, or potentially adversely affected, unnecessarily, some persons downstream of Wivenhoe Dam, but not others, such that acting in the manner suggested would, or might, have been to prefer the interests of some persons downstream of Wivenhoe Dam, over the interests of others;~~

~~(j) says further, that in determining appropriate release rates, a reasonably prudent flood engineer would take into account the likely effect of downstream tributaries;~~

~~(k) otherwise does not admit the allegations contained therein.~~

161 [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim]~~In relation to paragraph 161:~~

~~(a) repeats paragraphs 156 – 160 above;~~

~~(b) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;~~

~~(c) does not admit SunWater or the Flood Engineers did not do the things in sub-paragraphs 160 (b) to (h);~~

~~(d) repeats paragraph 160 above, and denies that SunWater or the Flood Engineers were obliged to do the things in sub-paragraphs 160 (e) to (h) of the Claim;~~

~~(e) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;~~

~~(f) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice;~~

~~(g) otherwise does not admit the allegations contained therein.~~

162 [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim]~~In relation to paragraph 162:~~

~~(a) repeats paragraph 158A above, and by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;~~

~~(b) repeats paragraph 161 above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;~~

~~(c) otherwise denies the allegations contained therein.~~

163 Does not admit the allegations contained in paragraph 163.

N Events of 17 December to 24 December 2010

Weather Forecasts

163A In relation to paragraph 163A:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

163B In relation to paragraph 163B:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

163C In relation to paragraph 163C:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

163D In relation to paragraph 163D:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

163E In relation to paragraph 163E:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

163F In relation to paragraph 163F:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

163G In relation to paragraph 163G:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed

within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

163H In relation to paragraph 163H:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

Rainfall and Inflows

164 In relation to paragraph 164:

(a) says that no rainfall occurred over Wivenhoe Dam and Somerset Dam catchments between about 3.00 am on 20 December 2010 and about 7.13 am on 21 December 2010;

(b) says that, between about 6.00 am on 22 December 2010 and 5.47 am on 23 December 2010, the average rainfall for Wivenhoe Dam and Somerset Dam catchment areas was approximately 10 mm;

(c) says that little or no rain was experienced in the Wivenhoe and Somerset Dams catchment areas between about 5.47 am on 23 December 2010 and 2.41 pm on 24 December 2010;

(d) otherwise admits the allegations contained therein.

165 Does not admit the allegations contained in paragraph 165.

Water Level

166 In relation to paragraph 166:

(a) says that the operators of Wivenhoe Dam reported that the Lake Level of Wivenhoe Dam was 68.24 m AHD at about 4.00 am on 21 December 2010;

(b) says that the operators of Somerset Dam reported that the Lake Level of the Somerset Dam was 100.43 m AHD at about 1.00 pm on 20 December 2010;

(c) otherwise does not admit the allegations therein.

Flood Operations

167 Does not admit the allegations contained in paragraph 167.

168 Admits the allegations contained in paragraph 168.

169 As to paragraph 169:

(a) says that, as at about 6.30 am on 17 December 2010, Somerset Dam was transferring water to Wivenhoe Dam via one regulator;
says that a regulator valve and hydro outlet were open at Wivenhoe Dam and the combined release was 50 m^3/s;

(b) otherwise does not admit the allegations contained therein.

170 In relation to paragraph 170:

(a) does not admit that on or around 24 December 2010, Barry Dennien, CEO of SEQ Water Grid Manager sent a letter dated 24 December 2010 to Peter Borrows, CEO of Seqwater (**the letter**);

(b) denies that, at any time prior to 11 January 2011 (being the date of the last of the alleged breaches), SunWater received a copy of the letter;

(c) denies that, at any time prior to 11 January 2011 (being the date of the last of the alleged breaches), SunWater was aware of the contents of the letter;

(d) repeats paragraph 65 of the Claim;

(e) says that, at all material times, pursuant to the Moreton ROP, the FSL of Wivenhoe Dam was 67.0 m AHD, and the FSL of Somerset Dam was 99.0 m AHD;

(f) repeats paragraphs 68, 69 and 75 of the Claim;

(g) says that, at all material times, the Chief Executive of DERM had not approved a change in the FSLs of Wivenhoe Dam or Somerset Dam, and had not approved a Temporary Full Supply Level;

(h) says that, had SunWater operated Wivenhoe Dam and Somerset Dam on the basis of the Temporary Full Supply Level, SunWater would have been acting:

(i) in breach of the Flood Management Services Agreement;

(ii) in breach of the Moreton ROP in respect of the Temporary Full Supply Level;

(iii) in breach of s 110 of the Water Act;

(iv) illegally;

(i) otherwise denies the allegations contained therein.

170A In relation to paragraph 170A:

(a) repeats paragraph 170 above;

(b) otherwise denies the allegations contained therein.

171 In relation to paragraph 171:

(a) admits that Seqwater did not take steps to draw down Lake Somerset or Lake Wivenhoe to 95% of their combined FSL on 24 December 2010 or at any material time thereafter;

(b) repeats paragraph 170 above;

(c) otherwise denies the allegations contained therein.

172 In relation to paragraph 172:

(a) says that, at about 1 pm on 24 December 2010, all radial gates were shut, to allow for the passage of the peak flow from Lockyer Creek;

(b) says that after the fish recovery process was completed, a regulator in Wivenhoe Dam was opened;

(c) otherwise does not admit the allegations contained therein.

173 In relation to paragraph 173:

(a) says that gate operations temporarily ceased at approximately 1.00 pm on 24 December 2010, at which time the operators of Wivenhoe Dam reported that the water level in Lake Wivenhoe was 67.11 m AHD;

(b) says that gate operations temporarily ceased to allow the passage of the peak flow from Lockyer Creek;

(c) says that 67.11 m AHD was below the Gate Trigger Level, in circumstances where the Flood Mitigation Manual provided in section 8.3 that the spillway (also known as radial) gates were not to be opened for flood control purposes prior to Wivenhoe Lake exceeding 67.25 m AHD;

(d) says that allowing the passage of the peak flow from Lockyer Creek allowed Burton's Bridge to remain open;

(e) says that, as at 1.45 pm on 24 December 2010, a regulator valve and hydro outlet were open at Wivenhoe Dam and the combined release was 50 m^3/s;

(f) says that from about 3.00 pm on 24 December 2010, Mr Tibaldi was the Duty Engineer on call, and was monitoring the situation;

(g) otherwise does not admit the allegations contained therein.

174 In relation to paragraph 174:

(a) as to sub-paragraph (a) says that:

(i) the operators of Wivenhoe Dam reported that the water level in Lake Wivenhoe was above FSL at approximately 67.11 m AHD at about 1.00 pm on 24 December 2010;

(ii) in relation to Temporary Full Supply Level, repeats paragraph 170 above;

(b) as to sub-paragraph (b) says that:

(i) the operators of Somerset Dam reported that the water level in Lake Somerset was 99.18 m AHD at about 6.30 am on 24 December 2010;

(ii) in relation to Temporary Full Supply Level, repeats paragraph 170 above;

(c) as to sub-paragraph (c), admits that some runoff into both Lake Wivenhoe and Lake Somerset was continuing, but denies that such runoff was 'flood inflows';

(d) as to sub-paragraphs (e) to (g):

(i) repeats paragraphs 139 and 139A above;

~~(i)~~(ii) repeats sub-paragraph 164(c) above;

~~(ii)~~(iii) says that the 1 Day QPF for 24 December 2010 stated that the forecast average rainfall for the 24 hour period from 9.00 am on 24 December 2010 to 9.00 am on 25 December 2010 for the Somerset Dam and Wivenhoe Dam Catchments was 25 - 35 mm;

~~(iii)~~(iv) denies the allegations contained in sub-paragraphs 174(f) and (g);

~~(iv)~~(v) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

~~(v)~~(vi) says that the information contained in each of the rainfall forecasts was, to the knowledge and belief of the Flood Engineers, likely to be inaccurate;

~~(vi)~~(vii) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(e) as to sub-paragraph (h), denies that a Flood Event was occurring;

(f) otherwise does not admit the allegations contained therein.

17 – 24 December Breaches

174A [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim].~~In relation to paragraph 174A:~~

~~(a) denies that at the time, it was reasonably foreseeable to SunWater or the Flood Engineers that the cessation of releases created a significant risk of inundation of the plaintiff's property or that of any Group Member some weeks later;~~

~~(b) denies that such risk was significant;~~

~~(c) otherwise denies the allegations contained therein.~~

175 [Not used]

176 [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim].~~In relation to paragraph 176:~~

~~(a) repeats paragraphs 174 to 174A above;~~

~~(b) as to sub-paragraph (a):~~

~~(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;~~

~~(ii) says that the content of SunWater's obligation to Seqwater required SunWater:~~

(A) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(iii) otherwise does not admit the allegations contained therein;

(c) does not admit the allegations contained in sub-paragraph (b);

(d) denies the allegations contained in sub-paragraph (c), and says that to implement such a strategy would have been in breach of the Flood Mitigation Manual, or arguably in breach, and contrary to the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(e) does not admit the allegations contained in sub-paragraph (d);

(f) does not admit the allegations contained in sub-paragraph (e), and says that when determining dam outflows within all strategies, peak outflow should generally not exceed peak inflow;

(g) denies the allegations contained in sub-paragraph (f), and says that to have reduced levels in the way suggested would have been:

(i) contrary to the FSL Common Interpretation;

(ii) in breach of the Flood Mitigation Manual, or arguably in breach;

(iii) in breach of the Flood Management Services Agreement, or arguably in breach;

(h) denies sub-paragraph (g), and says that to have reduced levels in the way suggested would have been:

(i) contrary to the FSL Common Interpretation;

(ii) in breach of the Flood Mitigation Manual, or arguably in breach;

(iii) in breach of the Flood Management Services Agreement, or arguably in breach;

(i) denies sub-paragraph (h), and says that to have reduced levels in the way suggested would have:

(i) been contrary to the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(ii) been in breach of the Flood Mitigation Manual, or arguably in breach;

(iii) been in breach of the Flood Management Services Agreement, or arguably in breach;

(iv) adversely affected, or potentially adversely affected, unnecessarily, some persons downstream of Wivenhoe Dam, but not others, such that acting in the manner suggested would, or might, have been to prefer the interests of some persons downstream of Wivenhoe Dam, over the interests of others;

(j) says further, that in determining appropriate release rates, a reasonably prudent flood engineer would take into account the likely effect of downstream tributaries;

(k) otherwise does not admit the allegations contained therein.

177 [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim]In relation to paragraph 177:

(a) repeats paragraphs 167 to 176 above;

(b) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;

(c) does not admit that the Flood Engineers failed to do the things pleaded in paragraph 176 (b) to (e) and (h);

~~(d) repeats paragraph 176 above and denies that SunWater or the Flood Engineers were obliged to do the things pleaded in sub-paragraphs 176 (b) to (e) and (h);~~

~~(e) admits that the Flood Engineers did not do the things pleaded in sub-paragraphs 176 (f) and (g), but repeats paragraph 176 above, and denies that SunWater or the Flood Engineers were obliged to do the things pleaded in sub-paragraphs 176 (f) and (g);~~

~~(f) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;~~

~~(g) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice;~~

~~(h) otherwise denies the allegations contained therein.~~

178 [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim]~~In relation to paragraph 178:~~

~~(a) repeats paragraph 174A above, and by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;~~

~~(b) repeats paragraph 177 above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;~~

~~(c) otherwise denies the allegations contained therein.~~

179 Does not admit the allegations contained in paragraph 179.

O Events of 25 December 2010 to 1 January 2011

Weather Forecasts

179A In relation to paragraph 179A:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

179B In relation to paragraph 179B:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

179C In relation to paragraph 179C:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

179D In relation to paragraph 179D:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

179E In relation to paragraph 179E:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

179F In relation to paragraph 179F:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

179G In relation to paragraph 179G:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

179H In relation to paragraph 179H:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

179I In relation to paragraph 179I:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed

within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

Rainfall and Inflows

180 In relation to paragraph 180:

(a) says that, between about 6.00 pm on 28 December 2010 and about 6.00 am on 29 December 2010 there was no rainfall in the Somerset Dam or Wivenhoe catchments with the exception of 2–4 mm in the upper Somerset catchment;

(b) says that there was no significant rainfall in the Somerset Dam or Wivenhoe Dam catchments between about 9.00 am on 29 December 2010 and about 6.09 am on 31 December 2010;

(c) otherwise does not admit the allegations contained therein.

181 Does not admit the allegations contained in paragraph 181.

182 Does not admit the allegations contained in paragraph 182.

Water Level

183 In relation to paragraph 183:

(a) says that the operators of Somerset Dam reported that the lake level of Lake Somerset was at 99.99 m AHD at about 9.00 pm on 28 December 2010;

(b) after about 0.00 am on 29 December 2010, the level of Lake Somerset began to fall;

(c) otherwise does not admit the allegations contained therein.

184 In relation to paragraph 184:

(a) says that the operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was at 69.33 m AHD at 1.00 pm on 29 December 2010;

(b) says that after about 1.00 pm on 29 December 2010, Wivenhoe Lake began to fall;

(c) says that operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was at 67.91 m AHD at about 6.00 pm on 31 December 2010;

(d) otherwise does not admit the allegations contained therein.

Flood Operations

184A In relation to paragraph 184A:

(a) says that releases were made from Wivenhoe Dam during the period 24 December 2010 – 26 December 2010;

(b) otherwise does not admit the allegations contained therein.

184B In relation to paragraph 184B:

(a) repeats paragraph 184A above;

(b) says that Terry Malone, John Tibaldi, and Rob Ayre attended the Flood Operations Centre at various times on 25 December 2010;

(c) otherwise does not admit the allegations contained therein.

185 In relation to paragraph 185:

(a) admits that Mr Ayre and Mr Tibaldi attended the Flood Operations Centre on 26 December 2010;

(b) otherwise does not admit the allegations contain therein.

186 Admits the allegations contained in paragraph 186.

187 In relation to paragraph 187:

(a) says that the operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was at 67.35 m AHD at about 6.30 am on 26 December 2010;

(b) says that the operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was at 67.36 m AHD at about noon on 26 December 2010;

(c) says that the operators of Somerset Dam reported that the lake level of Somerset Lake was at approximately 99.55 m AHD at about 12.58 pm on 26 December 2010;

(d) says that, as at about 10.40 am on 26 December 2010, two regulators were opened at Somerset Dam;

(e) says that, at about 9.00 am on 26 December 2010, radial gate operations (Gate 3) Wivenhoe Dam recommenced;

(f) otherwise does not admit the allegations contained therein.

188 In relation to paragraph 188:

(a) says that releases from Wivenhoe Dam were planned to take into account the passage of the peak flow from Lockyer Creek;

(b) otherwise does not admit the allegations contained therein.

189 In relation to paragraph 189:

(a) repeats paragraph 188 above;

(b) otherwise admits the allegations contained therein.

190 Does not admit the allegations contained in paragraph 190:

191 In relation to paragraph 191:

(a) says that the operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was at 69.33 m AHD at 1.00 pm on 29 December 2010;

(b) says that after about 1.00 pm on 29 December 2010, Wivenhoe Lake began to fall;

(c) says that that the operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was at 67.91 m AHD at about 6.00 pm on 31 December 2010;

(d) otherwise does not admit the allegations contained therein.

25 December – 1 January Breaches

191A [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim].~~In relation to paragraph 191A:~~

~~(a) repeats paragraphs 179A to 184A above;~~

~~(b) as to sub-paragraph (a):~~

~~(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;~~

~~(ii) says that the content of SunWater's obligation to Seqwater required SunWater:~~

~~(A) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;~~

~~(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;~~

~~(iii) otherwise does not admit the allegations contained therein;~~

~~(c) does not admit the allegations contained in sub-paragraphs (b), (c) and (d);~~

~~(d) denies the allegations contained in sub-paragraph (c), and says that to have reduced levels in the way suggested would have been:~~

~~(i) contrary to the FSL Common Interpretation;~~

~~(ii) in breach of the Flood Mitigation Manual, or arguably in breach;~~

(iii) in breach of the Flood Management Services Agreement, or arguably in breach;

(e) denies sub-paragraph (f), and says that to have reduced levels in the way suggested would have been:

(i) contrary to the FSL Common Interpretation;

(ii) in breach of the Flood Mitigation Manual, or arguably in breach;

(iii) in breach of the Flood Management Services Agreement, or arguably in breach;

(f) denies sub-paragraph (g), and says that to have reduced levels in the way suggested would have:

(i) been contrary to the FSL Common Interpretation;

(ii) been in breach of the Flood Mitigation Manual, or arguably in breach;

(iii) been in breach of the Flood Management Services Agreement, or arguably in breach;

(iv) been:

(A) in breach of the Moreton ROP;

(B) in breach of s 110 of the Water Act;

(C) illegal;

PARTICULARS

(A) The Christensen report relies on Temporary Full Supply Levels in determining whether a Flood Event was occurring, for the purpose of selecting operations strategies

(v) adversely affected, or potentially adversely affected, unnecessarily, some persons downstream of Wivenhoe Dam, but not others, such that acting in the manner suggested would, or might, have been to

~~prefer the interests of some persons downstream of Wivenhoe Dam, over the interests of others;~~

~~(g) says further, that in determining appropriate release rates, a reasonably prudent flood engineer would take into account the likely effect of downstream tributaries;~~

~~(h) otherwise does not admit the allegations contained therein.~~

191B [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim].~~In relation to paragraph 191B:~~

~~(a) repeats paragraphs 184A to 191A above;~~

~~(b) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;~~

~~(c) does not admit that the Flood Engineers failed to do the things pleaded in paragraph 191A (b), (c), (d) and (g);~~

~~(d) admits that the Flood Engineers did not do the things pleaded in sub-paragraphs 191A (e) and (f), but repeats paragraph 191A above, and denies that SunWater or the Flood Engineers were obliged to do the things pleaded in sub-paragraphs 191A (e) and (f);~~

~~(e) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;~~

~~(f) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice;~~

~~(g) otherwise does not admit the allegations contained therein.~~

191C [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim]~~In relation to paragraph 191C:~~

~~(a) by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;~~

~~(b) repeats paragraph 191B above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;~~

~~(c) otherwise denies the allegations contained therein.~~

P Events of 2 January 2011

Weather Forecasts

192 In relation to paragraph 192:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

193 In relation to paragraph 193:

(a) 1 Day QPF for 2 January 2011 stated that the forecast average rainfall for the 24 hour period from 9.00 am on 1 January 2011 to 9.00 am on 3 January for the Somerset Dam and Wivenhoe Dam Catchments was less than 5 – 10 mm;

(b) repeats paragraph 138 above;

(c) otherwise denies the allegations contained in paragraph 193.

194 In relation to paragraph 194:

(a) repeats paragraph 138 above;

(b) otherwise admits the allegations contained therein.

195 In relation to paragraph 195:

(a) says that as at 6.00 am on 2 January 2011:

(i) the level in Lake Wivenhoe, as reported by the Wivenhoe Dam operators, was 67.11 m AHD and falling slowly;

(ii) according to the Christensen reports, the 4 day forecast rainfall was only 2 - 10 mm, and the 8 day forecast rainfall was only 15-25 mm;

(b) denies that at the time, it was reasonably foreseeable to SunWater that the consequence of not continuing releases might be inundation of the plaintiff's property or that of any Group Member some weeks later;

(c) otherwise denies the allegations contained therein.

Rainfall and Inflows

196 In relation to paragraph 196:

(a) admits that as at 2 January 2011 additional runoff was likely to be generated in the event of rain;

(b) otherwise does not admit the allegations contained therein.

197 In relation to paragraph 197:

(a) says that there were light rainfalls in the Somerset Dam catchment area between about 9.00 am and 5.00 pm on 1 January 2011;

(b) says that there were light rainfalls of up to 30 mm in the Somerset Dam catchment area between about 6.00 am on 1 January 2011 and 6.00 am on 2 January 2011;

(c) otherwise denies the allegations contained therein.

198 In relation to paragraph 198:

(a) repeats paragraph 197 above;

(b) otherwise admits the allegations contained therein.

199 In relation to paragraph 199:

(a) denies that at the time, it was reasonably foreseeable to SunWater that the consequence of not continuing releases might be inundation of the plaintiff's property or that of any Group Member some weeks later;

(b) otherwise denies the allegations contained therein.

200 In relation to paragraph 200:

(a) as to sub-paragraph (a):

(i) says that as at 2 January 2011, the Brisbane River Basin, including the catchment areas for Lake Somerset and Lake Wivenhoe, had experienced some months of above average rainfall;

(ii) otherwise does not admit the allegations contained therein;

(b) as to sub-paragraph (b):

(i) says that in November 2010, the Brisbane River Basin, including the catchment areas for Lake Somerset and Lake Wivenhoe, experienced below median rainfall;

(ii) otherwise does not admit the allegations contained therein;

(c) does not admit the allegations in sub-paragraph (c).

201 In relation to paragraph 201:

(a) repeats paragraphs 196 and 200 above;

(b) otherwise denies the allegations contained therein.

202 In relation to paragraph 202:

(a) says that as at 2 January 2011, the North Pine and Somerset Dam catchments remained wet and were likely to generate additional runoff in the event of rain;

(b) otherwise does not admit the allegations contained therein.

Water Level

203 In relation to paragraph 203:

(a) says that the operators of Somerset Dam reported that the lake level of Somerset Lake was at 99.10 m AHD at about 7.30 am on 2 January 2010;

(b) says that the operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was at approximately 67.10 m AHD at about 9.00 am on 2 January 2010;

(c) says that the water level pleaded in sub-paragraph (b) above in Lake Wivenhoe was below the Gate Trigger Level;

(d) otherwise does not admit the allegations contained therein.

204 In relation to paragraph 204:

(a) does not admit the allegations contained therein;

(b) says further that releases were ceased to allow fish recovery operations to commence;

(c) says further that following completion of fish recovery operations, operational releases at Somerset Dam and Wivenhoe Dam were commenced with 35 m^3/s released from Somerset Dam and 50 m^3/s from Wivenhoe Dam using the regulator valves.

Flood Operations

205 Admits the allegations contained in paragraph 205.

206 In relation to paragraph 206:

(a) says that the operators of Wivenhoe Dam reported that the lake level in Lake Wivenhoe peaked at 69.33 m AHD at 1.00 pm on 29 December 2010 and, from 1.00 pm on 29 December 2010, began and continued to fall;

(b) says that the operators of Wivenhoe Dam reported that the lake level in Lake Wivenhoe was 67.10 m AHD at 9.00 am on 2 January 2011, and the radial gates were fully closed;

(c) says that the water level pleaded in sub-paragraph (b) above in Lake Wivenhoe was below the Gate Trigger Level;

(d) says that radial gates were fully closed during daylight hours to allow fish recovery operations to commence;

(e) says further that following completion of fish recovery operations, releases at Somerset Dam and Wivenhoe Dam were commenced with 35 m^3/s released from Somerset Dam and 50 m^3/s from Wivenhoe Dam using the regulator valves;

(f) says that on 2 January 2011, Mr Malone was still on duty as Flood Operations Engineer;

(g) otherwise does not admit the allegations contained therein.

207 In relation to paragraph 207:

(a) admits that on 2 January 2011, the operators of Wivenhoe Dam and Somerset Dam reported that the lake levels of Lake Wivenhoe and Lake Somerset were each above their respective FSLs, but says that the water level in Lake Wivenhoe as reported was falling, and was below the Gate Trigger Level;

(b) says that on 2 January 2011, Mr Malone was still on duty as Flood Operations Engineer;

(c) otherwise does not admit the allegations contained therein.

208 Denies the allegations contained in paragraph 208.

2 January 2011 Breaches

209 In relation to paragraph 209:

(a) denies that at the time, it was reasonably foreseeable to SunWater or the Flood Engineers that the cessation of releases created a significant risk of inundation of the plaintiff's property or that of any Group Member;

(b) denies that such risk was significant;

(c) otherwise denies the allegations contained therein.

210 [Not used]

211 In relation to paragraph 211:

(a) repeats paragraphs 192 – 204 and 209 above;

(b) as to sub-paragraph (a):

(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(ii) says that the content of SunWater's obligation to Seqwater required SunWater:

(A) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(C) <u>to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention;</u>

(iii) otherwise does not admit the allegations contained therein;

(c) denies the allegations contained in sub-paragraph (b);

(d) does not admit the allegations contained in sub-paragraph (c);

(e) does not admit the allegations contained in sub-paragraph (d);

(f) denies the allegations contained in sub-paragraph (e), and says that when determining dam outflows within all strategies, peak outflow should generally not exceed peak inflow;

(g) denies sub-paragraph (h), and says that to have reduced levels in the way suggested would have:

(i) been contrary to the FSL Common Interpretation;

(ii) been in breach of the Flood Mitigation Manual, or arguably in breach;

(iii) been in breach of the Flood Management Services Agreement, or arguably in breach;

(iv) been:

(A) in breach of s 110 of the Water Act;

(B) illegal;

PARTICULARS

(A) The Christensen report<u>s</u> rely<u>i</u>~~ies~~ on Temporary Full Supply Levels in determining whether a Flood Event was occurring, for the purpose of selecting operations strategies

(v) adversely affected, or potentially adversely affected, unnecessarily, some persons downstream of Wivenhoe Dam, but not others, such that acting in the manner suggested would, or might, have been to prefer the interests of some persons downstream of Wivenhoe Dam, over the interests of others;

(h) denies sub–paragraph (i);

(i) says further, that in determining appropriate release rates, a reasonably prudent flood engineer would take into account the likely effect of downstream tributaries;

(j) otherwise does not admit the allegations contained therein.

211A [Deleted as a result of the deletion of the corresponding paragraph in the amendments to the Claim].~~In relation to paragraph 211A:~~

~~(a) repeats paragraphs 151 to 152, 163A to 165, 170 to 170A, 174, 179A to 182 and 192 to 201 above;~~

~~(b) otherwise denies the allegations contained therein.~~

211B Denies the allegations contained in paragraph 211B.

212 In relation to paragraph 212:

(a) repeats paragraphs 205 – 211B above;

(b) as to sub-paragraph (a):

(i) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;

(ii) does not admit that it did not do the things in sub-paragraphs 211 (b) to (d) and (h);

(iii) does not admit that the Flood Engineers did not cause Somerset Dam and Wivenhoe Dam to release water at rates substantially exceeding the rate of inflow, repeats paragraph 211 above and denies that SunWater or the Flood Engineers were obliged to release water at rates substantially exceeding the rate of inflow;

(iv) admits that the Flood Engineers did not do the thing referred to in sub-paragraph 211(i) of the Claim, repeats sub-paragraph 211(h~~i~~) above and says that the Flood Engineers were not obliged to select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 211(i) of the Claim;

(c) as to sub-paragraph (b):

(i) does not admit that the Flood Engineers did not reduce the water levels in Lake Somerset and Lake Wivenhoe to levels no higher than the respective water levels alleged in sub-paragraph 211B of the Claim by the end of 2 January 2011;

(ii) says further that the Flood Engineers were not obliged to reduce the water levels in Lake Somerset and Lake Wivenhoe to levels no higher than the respective water levels alleged in paragraph 211B of the Claim by the end of 2 January 2011;

(d) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;

(e) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice;

(f) otherwise denies the allegations contained therein.

213 In relation to paragraph 213:

(a) repeats paragraph 209 above, and by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;

(b) repeats paragraph 212 above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;

(c) otherwise denies the allegations contained therein.

Q Events of 3 January to 5 January 2011

Weather Forecasts

214 In relation to paragraph 214:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

215 In relation to paragraph 215:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

216 In relation to paragraph 216:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

217 In relation to paragraph 217:

(a) repeats paragraphs 138, 139 and 139A above;

(b) admits that the BOM issued 1 Day QPF's:

(i) on the dates;

(ii) at about the times;

(iii) containing the forecasted rainfalls for the Somerset Dam and Wivenhoe Dam catchment areas;

(c) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(d) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(e) otherwise does not admit the allegations contained therein.

Rainfall and Inflows

218 Does not admit the allegations contained in paragraph 218.

219 Does not admit the allegations contained in paragraph 219.

Water Level

220 In relation to paragraph 220:

(a) says that the operators of Somerset Dam reported that the lake level of Lake Somerset was 99.10 m AHD at 6.30 am on 2 January 2011;

(b) says that the operators of Somerset Dam reported that the lake level of Lake Somerset was 99.34 m AHD at 6.30 am on 6 January 2011;

(c) says that the operators of Wivenhoe Dam reported that the lake level of Lake Wivenhoe was 67.10 m AHD at 9.00 am on 2 January 2011;

(d) says that the operators of Wivenhoe Dam reported that the lake level of Lake Wivenhoe was 67.31 m AHD at 6.30 am on 6 January 2011;

(e) otherwise does not admit the allegations contained therein.

221 In relation to paragraph 221:

(a) says that the Gate Trigger Level was not reached until about 6 January 2011;

(b) otherwise does not admit the allegations contained therein.

222 In relation to paragraph 222:

(a) says that the operators of Wivenhoe Dam reported that the lake level in Lake Wivenhoe was recorded at 67.31 m AHD on or about 6.30 am on 6 January 2011;

(b) otherwise does not admit the allegations contained therein.

223 In relation to paragraph 223:

(a) says that releases at Wivenhoe Dam were occurring with water being released from Wivenhoe Dam using the regulator valves;

(b) otherwise does not admit the allegations contained therein.

Flood Operations

224 In relation to paragraph 224:

(a) repeats paragraph 223 above;

(b) otherwise does not admit the allegations contained therein.

224A In relation to paragraph 224A:

(a) says that operational releases at Wivenhoe Dam were occurring with water being released from Wivenhoe Dam using the regulator valves;

(b) says that a Flood Engineer was on duty;

(c) otherwise does not admit the allegations contained therein.

225 In relation to paragraph 225:

(a) says that releases at Wivenhoe Dam were occurring with water being released from Wivenhoe Dam using the regulator valves;

(b) says that the Gate Trigger Level was not reached until about 6 January 2011;

(c) otherwise denies the allegations contained therein.

3-5 January 2011 Breaches

226 In relation to paragraph 226:

(a) denies that at the time, it was reasonably foreseeable to SunWater or the Flood Engineers that not immediately commencing releases created a significant risk of inundation of the plaintiff's property or that of any Group Member;

(b) denies that such risk was significant;

(c) otherwise denies the allegations contained therein.

227 [Not used]

228 In relation to paragraph 228:

(a) repeats paragraphs 214 to 223 and 226 above;

(b) as to sub-paragraph (a):

(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(ii) says that the content of SunWater's obligation to Seqwater required SunWater:

(A) not to interpret the Flood Mitigation Manual in a manner which was not reasonably open to a reasonably competent flood engineer;

(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(C) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention;

(iii) otherwise does not admit the allegations contained therein;

(c) in relation to sub-paragraph (b):

(i) says that in the period 3 to 5 January 2011, water was being released from Wivenhoe Dam and from Somerset Dam;

(ii) otherwise denies the allegations contained therein;

(d) denies the allegations contained in sub-paragraph (c), and says that in the period 3 – 5 January 2011, the level in Lake Wivenhoe was below the Gate Trigger Level;

(e) does not admit the allegations contained in sub-paragraph (d);

(f) denies the allegations contained in sub-paragraph (e), and says that when determining dam outflows within all strategies, peak outflow should generally not exceed peak inflow;

(g) denies the allegations contained in sub-paragraph (h), and says that to have reduced levels in the way suggested would have:

(i) been contrary to the FSL Common Interpretation;

(ii) been in breach of the Flood Mitigation Manual, or arguably in breach;

(iii) been in breach of the Flood Management Services Agreement, or arguably in breach;

(iv) adversely affected, or potentially adversely affected, unnecessarily, some persons downstream of Wivenhoe Dam, but not others, such that acting in the manner suggested would, or might, have been to

prefer the interests of some persons downstream of Wivenhoe Dam, over the interests of others;

(h) denies the allegations contained in sub-paragraph (i);

(i) says further, that in determining appropriate release rates, a reasonably prudent flood engineer would take into account the likely effect of downstream tributaries;

(j) otherwise does not admit the allegations contained therein.

228A In relation to paragraph 228A:

(a) repeats paragraphs ~~151 to 152, 163A to 165, 170 to 170A, 174, 179A to 182,~~ 192 to 201 and 214 to 219 above;

(b) otherwise denies the allegations contained therein.

228B Denies the allegations contained in paragraph 228B and says that to have reduced levels in the way suggested would have:

(a) been contrary to the FSL Common Interpretation;

(b) been in breach of the Flood Mitigation Manual, or arguably in breach;

(c) been in breach of the Flood Management Services Agreement, or arguably in breach;

(d) adversely affected, or potentially adversely affected, unnecessarily, some persons downstream of Wivenhoe Dam, but not others, such that acting in the manner suggested would, or might, have been to prefer the interests of some persons downstream of Wivenhoe Dam, over the interests of others.

229 In relation to paragraph 229:

(a) repeats paragraphs 224 to 228B above;

(b) as to sub-paragraph (a):

(i) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;

(ii) says that the Flood Engineers continued to make releases from Wivenhoe Dam and Somerset Dam in the period 3-5 January 2011;

(iii) does not admit that the Flood Engineers failed to do the things in paragraph 228 (c), (d) and (h);

(iv) does not admit that the Flood Engineers did not cause the Somerset Dam and Wivenhoe Dam to release water at rates substantially exceeding the rate of inflow, repeats paragraph 228 above, and denies that SunWater or the Flood Engineers were obliged to release water at rates substantially exceeding the rate of inflow;

(v) admits that the Flood Engineers did not select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 228(i) of the Claim, repeats sub-paragraph 228(h~~i~~) above and says that the Flood Engineers were not obliged to select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 228(i) of the Claim;

(c) as to sub-paragraph (b):

(i) does not admit that the Flood Engineers did not reduce the water levels in Lake Somerset and Lake Wivenhoe to levels no higher than the respective water levels alleged in paragraph 228B of the Claim by the end of 5 January 2011;

(ii) repeats paragraph 228 above and says that Flood Engineers were not obliged to reduce the water levels in Lake Somerset and Lake Wivenhoe to levels no higher than the respective water levels alleged in paragraph 228B of the Claim by the end of 5 January 2011;

(d) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;

(e) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional

opinion by a significant number of respected practitioners in the field as competent professional practice;

(f) otherwise denies the allegations contained therein.

230 In relation to paragraph 230:

(a) repeats paragraph 226 above, and by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;

(b) repeats paragraph 229 above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;

(c) otherwise denies the allegations contained therein.

R Events of 6 January 2011

Weather Forecasts

231 In relation to paragraph 231:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

232 In relation to paragraph 232:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was

necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

233 In relation to paragraph 233:

(a) admits the allegations contained in paragraph 233;

(b) repeats paragraph 138 above.

234 In relation to paragraph 234:

(a) admits the allegations contained in paragraph 234;

(b) repeats paragraph 138 above.

Rainfall and Inflows

235 In relation to paragraph 235:

(a) says that in the 24 hours to 9.00 am on 6 January 2011, there had been widespread falls of 30 mm with isolated heavy falls up to 50 mm in the Somerset and Wivenhoe catchments;

(b) otherwise does not admit the allegations contained therein.

236 In relation to paragraph 236:

(a) repeats paragraph 235 above;

(b) does not admit the allegations contained therein.

Water Level

237 In relation to paragraph 237:

(a) says that the operators of Somerset Dam reported that the water level of Lake Somerset was at 99.34 m AHD at or around 6.30 am on 6 January 2011;

(b) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was 67.31 m AHD at or around 6.30 am on 6 January 2011;

(c) denies that the Flood Mitigation Manual required releases to commence once the Gate Trigger Level was exceeded;

(d) otherwise does not admit the allegations contained therein.

238 In relation to paragraph 238:

(a) does not admit that the starting point for the water level of Lake Somerset was 99.27 m AHD;

(b) refers to and repeats the response to paragraph 237(a) above;

(c) does not admit that the starting point for the water level of Lake Wivenhoe was 67.22 m AHD;

(d) refers to and repeats the response to paragraph 237(b) above;

(e) otherwise does not admit the allegations contained therein.

Flood Operations

239 Does not admit the allegations contained in paragraph 239.

240 Admits the allegations contained in paragraph 240.

240A In relation to paragraph 240A:

(a) says that the Real Time Flood Model was capable of being operated using various initial losses and continuing loss rates;

(b) from time to time, the Flood Engineers considered the implications of utilising different initial losses and continuing loss rates by conducting model runs containing various permutations;

(c) the Real Time Flood Model did not preserve each and every permutation which was modelled on a particular day;

(d) says that on 6 January 2011, the initial losses and continuing loss rates utilised were:

Region	**Initial Losses**	**Continuing Loss Rate**
CRE (Cressbrook Creek Region)	10 mm	2.5 mm/hr
COO (Cooyar Creek Region)	10 mm	2.5 mm/hr
LIN (Brisbane River at Linville Region)	15 mm	2.5 mm/hr
EMU (Emu Creek Region)	25 mm and 30 mm	2.5 mm/hr
GRE (Gregors Creek Region)	0 mm and 10 mm	2.5 mm/hr
SDI (Somerset Dam Inflow Region)	0 mm	1 mm/hr
WDI (Wivenhoe Dam Inflow Region)	0 mm	2.5 mm/hr

(e) says that consequences of the utilisation of particular initial losses and continuing loss rates were also scaled from time to time in Gate Operations Spreadsheets;

(f) otherwise does not admit the allegations contained therein.

241 In relation to paragraph 241:

(a) denies that the Flood Mitigation Manual required releases to commence once the Gate Trigger Level was exceeded;

(b) otherwise does not admit the allegations contained therein.

242 In relation to paragraph 242:

(a) says that releases at Wivenhoe Dam were occurring with water being released from Wivenhoe Dam using the regulator valves;

(b) says that the release strategy took into account the passage of the peak flow from the downstream tributaries, particularly from Lockyer Creek;

(c) otherwise denies the allegations contained therein.

6 January 2011 Breaches

243 In relation to paragraph 243:

(a) denies that at the time, it was reasonably foreseeable to SunWater or the Flood Engineers that not immediately commencing releases created a significant risk of inundation of the plaintiff's property or that of any Group Member;

(b) denies that such risk was significant;

(c) otherwise denies the allegations contained therein.

244 [Not used]

245 In relation to paragraph 245:

(a) repeats paragraphs 231 – 238 and 243 above;

(b) as to sub-paragraph (a):

(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(ii) says that the content of SunWater's obligation to Seqwater required SunWater:

(A) not to interpret the Flood Mitigation Manual in a manner which was not open to a reasonably competent flood engineer;

(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(C) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention;

(iii) otherwise does not admit the allegations contained therein;

(c) in relation to sub-paragraph (b):

(i) says that on 6 January 2011 water was being released from Wivenhoe Dam and from Somerset Dam;

(ii) otherwise denies the allegations contained therein;

(d) denies the allegations contained in sub-paragraph (c);

(e) does not admit the allegations contained in sub-paragraph (d);

(f) denies sub-paragraph (e), and says that when determining dam outflows within all strategies, peak outflow should generally not exceed peak inflow;

(g) does not admit sub-paragraph (h), and says that to have reduced levels in the way suggested would have:

(i) been contrary to the FSL Common Interpretation;

(ii) been in breach of the Flood Mitigation Manual, or arguably in breach;

(iii) been in breach of the Flood Management Services Agreement, or arguably in breach;

(iv) adversely affected, or potentially adversely affected, unnecessarily, some persons downstream of Wivenhoe Dam, but not others, such that acting in the manner suggested would, or might, have been to prefer the interests of some persons downstream of Wivenhoe Dam, over the interests of others;

(h) repeats paragraph 240A above and otherwise denies the allegations contained in sub-paragraph (i);

(i) says further, that in determining appropriate release rates, a reasonably prudent flood engineer would take into account the likely effect of downstream tributaries;

(j) otherwise does not admit the allegations contained therein.

245A In relation to paragraph 245A:

(a) repeats paragraphs ~~151 to 152, 163A to 165, 170 to 170A, 174, 179A to 182,~~ 192 to 201, 214 to 219, and 231 to 236 above;

(b) otherwise denies the allegations contained therein.

245B Denies the allegations contained in paragraph 245B.

246 In relation to paragraph 246:

(a) repeats paragraphs 239 to 245B above;

(b) as to sub–paragraph (a):

(i) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;

(ii) says that the Flood Engineers continued to make releases from Wivenhoe Dam and Somerset Dam on 6 January 2011;

(iii) does not admit that the Flood Engineers failed to do the things in paragraph 245 (c), (d) and (h);

(iv) does not admit that the Flood Engineers did not cause Somerset Dam and Wivenhoe Dam to release water at rates substantially exceeding the rate of inflow, repeats paragraph 245(f) above and denies that SunWater or the Flood Engineers were obliged to cause Somerset Dam and Wivenhoe Dam to release water at rates substantially exceeding the rate of inflow;

(v) save with respect to the initial losses selected for CRE and COO as pleaded in paragraph 240A(d) above:

(A) admits that the Flood Engineers did not select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 245(i) of the Claim;~~,~~

(B) repeats sub-paragraph 245(h~~i~~) above and says that the Flood Engineers were not obliged to select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 245(i) of the Claim;

(c) as to sub-paragraph (b):

(i) admits that the Flood Engineers did not reduce the water levels in Lake Somerset and Lake Wivenhoe to levels no higher than the respective water levels alleged in paragraph 245B of the Claim by the end of 6 January 2011;

(ii) repeats paragraph 245 above and says that Flood Engineers were not obliged to reduce the water levels in Lake Somerset and Lake Wivenhoe to levels no higher than the respective water levels alleged in paragraph 245B of the Claim by the end of 6 January 2011;

(d) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;

(e) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice;

(f) otherwise denies the allegations contained therein.

247 In relation to paragraph 247:

(a) repeats paragraph 243 above, and by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;

(b) repeats paragraph 246 above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;

(c) otherwise denies the allegations contained therein.

S Events of 7 January 2011

Weather Forecasts

248 In relation to paragraph 248:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

249 In relation to paragraph 249:

(a) admits the allegations contained in paragraph 249;

(b) repeats paragraph 138 above.

250 In relation to paragraph 250:

(a) admits the allegations contained in paragraph 250;

(b) repeats paragraph 138 above.

Rainfall and Inflows

251 In relation to paragraph 251:

(a) admits that there was rainfall in the catchment areas for Wivenhoe Dam and Somerset Dam in the 24 hours to 9.00 am on 7 January 2011;

(b) otherwise does not admit the allegations contained therein.

252 In relation to paragraph 252:

(a) admits that catchment inflows into Lake Wivenhoe and Lake Somerset occurred on 7 January 2010;

(b) otherwise does not admit the allegations contained therein.

Water Level

253 Admits the allegations contained in paragraph 253.

254 In relation to paragraph 254:

(a) says that the water level in Lake Wivenhoe was above the Gate Trigger Level;

(b) denies that the Flood Mitigation Manual required flood releases to commence once the Gate Trigger Level was exceeded;

(c) otherwise does not admit the allegations contained therein.

255 Admits the allegations contained in paragraph 255.

Flood Operations

256 Admits the allegations contained in paragraph 256.

256A In relation to paragraph 256A:

(a) says that the Real Time Flood Model was capable of being operated using various initial losses and continuing loss rates;

(b) from time to time, the Flood Engineers considered the implications of utilising different initial losses and continuing loss rates by conducting model runs containing various permutations;

(c) the Real Time Flood Model did not preserve each and every permutation which was modelled on a particular day;

(d) says that on 7 January 2011, the initial losses and continuing loss rates utilised were:

Region	**Initial Losses**	**Continuing Loss Rate**
CRE (Cressbrook Creek Region)	10 mm	2.5 mm/hr
COO (Cooyar Creek Region)	10 and 30 mm	2.5 and 0.5 mm/hr
LIN (Brisbane River at Linville Region)	15 and 30 mm	2.5 and 0.5 mm/hr
EMU (Emu Creek Region)	30 mm	2.5 and 0.5 mm/hr
GRE (Gregors Creek Region)	10 and 40 mm	2.5 and 0.5 mm/hr
SDI (Somerset Dam Inflow Region)	0 and 15 mm	1 and 0.5 mm/hr
WDI (Wivenhoe Dam Inflow Region)	0 mm	2.5 mm/hr

(e) says that consequences of the utilisation of particular initial losses and continuing loss rates were also scaled from time to time in Gate Operations Spreadsheets;

(f) otherwise does not admit the allegations contained therein.

257 In relation to paragraph 257:

(a) says that at about 3.00 pm, Gate 3 was opened to 0.5 m;

(b) says that, prior to 3.00 pm water was being released through the regulators and that, between about 3.00 pm and 4.00 pm, releases increased from about 51 m^3/s to about 103 m^3/s;

(c) otherwise does not admit the allegations contained therein.

258 Does not admit the allegations contained in paragraph 258.

259 In relation to paragraph 259:

(a) repeats paragraph 258 above;

(b) otherwise does not admit the allegations contained therein.

260 Does not admit the allegations contained in paragraph 260.

261 In relation to paragraph 261:

(a) says that, up until about 7.00 pm on 7 January 2011, releases were being made from Somerset Dam using a regulator;

(b) says that, at about 7.00 pm on 7 January 2011, a sluice gate was opened at Somerset Dam;

(c) otherwise does not admit the allegations contained therein.

262 Does not admit the allegations contained in paragraph 262.

263 Does not admit the allegations contained in paragraph 263.

264 Does not admit the allegations contained in paragraph 264.

7 January 2011 Breaches

265 In relation to paragraph 265:

(a) denies that at the time, it was reasonably foreseeable to SunWater or the Flood Engineers that not commencing releases at rates substantially in excess of the rate of inflow created a significant risk of inundation of the plaintiff's property or that of any Group Member;

(b) denies that such risk was significant;

(c) otherwise denies the allegations contained therein.

266 [Not used]

267 In relation to paragraph 267:

(a) repeats paragraphs 248 to 255 and 265 above;

(b) as to sub-paragraph (a):

(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(ii) says that the content of SunWater's obligation to Seqwater required SunWater:

(A) not to interpret the Flood Mitigation Manual in a manner which was not open to a reasonably competent flood engineer;

(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(C) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention;

(iii) otherwise does not admit the allegations contained therein;

(c) in relation to sub-paragraph (b):

(i) says that on 7 January 2011, water was being released from Wivenhoe Dam up until about 3.00 pm from the regulators, after which time releases increased, and water was being released from Somerset Dam up until about 6.00 pm, after which time releases increased;

(ii) otherwise denies the allegations contained therein;

(d) does not admit the allegations contained in sub-paragraph (c);

(e) does not admit the allegations contained in sub-paragraph (d);

(f) denies the allegations contained in sub-paragraph (e);

(g) denies sub-paragraph (f), and says that when determining dam outflows within all strategies, peak outflow should generally not exceed peak inflow;

(h) repeats paragraph 256A above and otherwise denies the allegations contained in sub-paragraph (i):

(i) says further, that in determining appropriate release rates, a reasonably prudent flood engineer would take into account the likely effect of downstream tributaries;

(j) otherwise does not admit the allegations contained therein.

267A In relation to paragraph 267A:

(a) repeats paragraphs ~~151 to 152, 163A to 165, 170 to 170A, 174, 179A to 182,~~ 192 to 201, 214 to 219, 231 to 236 and 248 to 252 above;

(b) denies the allegations contained therein.

267B Denies the allegations contained in paragraph 267B.

268 In relation to paragraph 268:

(a) repeats paragraphs 256 – 267B above;

(b) as to sub-paragraph (a):

(i) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;

(ii) says that the Flood Engineers made releases from Wivenhoe Dam and Somerset Dam on 7 January 2011;

(iii) does not admit that the Flood Engineers did not do the things pleaded in sub-paragraphs 267(c) and (d);

(iv) admits that the Flood Engineers did not do the things pleaded in sub-paragraphs 267 (e) and (f), but repeats paragraph 267 above, and denies that SunWater or the Flood Engineers were obliged to do the things pleaded in sub-paragraphs 267 (e) and (f);

(v) save with respect to the initial losses selected for CRE, EMU and WDI as pleaded in paragraph 256A(d) above:

(A) admits that the Flood Engineers did not select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 267(i);~~,~~

(B) repeats sub-paragraph 267(h~~i~~) above and says that the Flood Engineers were not obliged to select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 267(i) of the Claim;

(c) as to sub-paragraph (b):

(i) admits that the Flood Engineers did not reduce the water levels in Lake Somerset and Lake Wivenhoe to levels, or to levels no higher than, the respective water levels alleged in paragraph 267B of the Claim by the end of 7 January 2011;

(ii) repeats paragraph 267 above and says that the Flood Engineers were not required to keep or reduce the water levels in Lake Somerset and Lake Wivenhoe to, or no higher than, the respective water levels alleged in paragraph 267B of the Claim by the end of 7 January 2011;

(iii) otherwise denies that there was any 'failure' by the Flood Engineers (or one or more of them) as alleged therein;

(d) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;

(e) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice;

(f) otherwise denies the allegations contained therein.

269 In relation to paragraph 269:

(a) repeats paragraph 265 above, and by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;

(b) repeats paragraph 268 above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;

(c) otherwise denies the allegations contained therein.

T Events of 8 January 2011

Weather Forecasts

270 In relation to paragraph 270:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

271 In relation to paragraph 271:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

272 In relation to paragraph 272:

(a) admits the allegations contained in paragraph 272;

(b) repeats paragraph 138 above.

273 In relation to paragraph 273:

(a) admits the allegations contained in paragraph 273;

(b) repeats paragraph 138 above.

Rainfall and Inflows

274 In relation to paragraph 274:

(a) says that in the period between 9.00 am on 7 January 2011, and 6.30 am on 8 January 2011, there were widespread 20 to 40 mm falls throughout the catchment areas for Lake Somerset and Lake Wivenhoe;

(b) says that no significant rain had fallen in the 12 hours prior to 6.30 am on 8 January 2011;

(c) otherwise does not admit the allegations therein.

275 Does not admit the allegations contained in paragraph 275.

Water Level

276 In relation to paragraph 276:

(a) says that the operators of Somerset Dam reported that the lake level of Somerset Lake was at approximately 100.43 m AHD at about 6.00 am on 8 January 2011;

(b) says that the operators of Somerset Dam reported that the lake level of Somerset Lake was at approximately 100.44 m AHD at about 7.00 am on 8 January 2011;

(c) says that, between about 10.00 am and 00.00 am on 9 January 2011, the operators of Somerset Dam reported that the lake level of Somerset Lake continuously decreased from approximately 100.44 m AHD to approximately 100.32 m AHD;

(d) otherwise denies the allegations contained in sub-paragraph 276(a);

(e) says that the operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was approximately 68.46 m AHD at about at 6.00 am on 8 January 2011;

(f) otherwise does not admit the allegations contained in sub-paragraph 276(b).

277 In relation to paragraph 277:

(a) says that the operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was approximately 68.48 m AHD at about 7.00 am on 8 January 2011;

(b) says that the operators of Wivenhoe Dam reported that the lake level of Wivenhoe Lake was approximately 68.52 m AHD at about 8.00 am on 8 January 2011;

(c) otherwise admits the allegations contained therein.

278 In relation to paragraph 278:

(a) says that the operators of Somerset Dam reported that the lake level of Somerset Lake was at approximately 100.31 m AHD at about 00.00 am on 8 January 2011;

(b) says that the operators of Somerset Dam reported that the lake level of Somerset Lake was at approximately 100.46 m AHD at about 8.00 am on 8 January 2011;

(c) says that the operators of Somerset Dam reported that the lake level of Somerset Lake remained at approximately 100.46 m AHD between about 8.00 am and 10.00 am on 8 January 2011;

(d) says that the operators of Somerset Dam reported that the lake level of Somerset Lake decreased continuously from approximately 100.46 m AHD to approximately 100.32 m AHD between about 10.00 am on 8 January 2011 and 00.00 am on 9 January 2011;

(e) otherwise does not admit the allegations contained therein.

Flood Operations

279 Admits the allegations contained in paragraph 279.

279A In relation to paragraph 279A:

(a) says that the Real Time Flood Model was capable of being operated using various initial losses and continuing loss rates;

(b) from time to time, the Flood Engineers considered the implications of utilising different initial losses and continuing loss rates by conducting model runs containing various permutations;

(c) the Real Time Flood Model did not preserve each and every permutation which was modelled on a particular day;

(d) says that on 8 January 2011, the initial losses and continuing loss rates utilised were:

Region	Initial Losses	Continuing Loss Rate
CRE (Cressbrook Creek Region)	10 mm	2.5 mm/hr
COO (Cooyar 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)	30 mm	0.5 mm/hr
SDI (Somerset Dam Inflow Region)	40 mm	0.5 mm/hr
WDI (Wivenhoe Dam Inflow Region)	15 mm	2.5 mm/hr

(e) says that consequences of the utilisation of particular initial losses and continuing loss rates were also scaled from time to time in Gate Operations Spreadsheets;

(f) otherwise does not admit the allegations contained therein.

280 Does not admit the allegations contained in paragraph 280.

281 In relation to paragraph 281:

(a) says that on 8 January 2011, release rates from Wivenhoe Dam were progressively increased;

(b) otherwise does not admit the allegations contained therein.

282 In relation to paragraph 282:

(a) says that on 8 January 2011, the releases made from Somerset Dam were continuing;

(b) otherwise does not admit the allegations contained therein.

283 Denies the allegations contained in paragraph 283.

284 [Not used]

8 January 2011 Breaches

285 In relation to paragraph 285:

(a) denies that at the time, it was reasonably foreseeable to SunWater or the Flood Engineers that not commencing releases at rates substantially in excess of the rate of inflow created a significant risk of inundation of the plaintiff's property or that of any Group Member;

(b) denies that such risk was significant;

(c) otherwise denies the allegations contained therein.

286 In relation to paragraph 286:

(a) denies that at the time, it was reasonably foreseeable to SunWater that the consequence of not commencing releases at rates substantially in excess of the rate of inflow might be inundation of the plaintiff's property or that of any Group Member;

(b) denies that such risk was significant;

(c) otherwise denies the allegations contained therein.

287 [Not used]

288 In relation to paragraph 288:

(a) repeats paragraphs 270 to 278 and 285 to 286 above;

(b) as to sub-paragraph (a):

(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(ii) says that the content of SunWater's obligation to Seqwater required SunWater:

(A) not to interpret the Flood Mitigation Manual in a manner which was not open to a reasonably competent flood engineer;

(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(C) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention;

(iii) otherwise does not admit the allegations contained therein;

(c) in relation to sub-paragraph (b):

(i) says that when the reported level in Lake Wivenhoe reached about 68.52 m AHD, at about 8.00 am on 8 January 2011, it was consistent with the practice of a reasonably prudent Flood Engineer to have taken steps to increase releases from Wivenhoe Dam, which the Flood Engineers did;

(ii) otherwise does not admit the allegations contained therein;

(d) does not admit the allegations contained in sub-paragraph (c);

(e) denies the allegations contained in sub-paragraph (d), and says that when determining dam outflows within all strategies, peak outflow should generally not exceed peak inflow;

(f) does not admit the allegations contained in sub-paragraph (e);

(g) repeats paragraph 279A above and otherwise denies the allegations contained in sub-paragraph (h);

(h) says further, that in determining appropriate release rates, a reasonably prudent Flood Engineer would take into account the likely effect of downstream tributaries;

(i) otherwise does not admit the allegations contained therein.

288A In relation to paragraph 288A:

(a) repeats paragraphs ~~151 to 152, 163A to 165, 170 to 170A, 174, 179A to 182,~~ 192 to 201, 214 to 219, 231 to 236, 248 to 252 and 270 to 275 above;

(b) otherwise denies the allegations contained therein.

288B Denies the allegations contained in paragraph 288B.

289 In relation to paragraph 289:

(a) repeats paragraphs 279 – 288B above;

(b) as to sub-paragraph (a):

(i) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;

(ii) does not admit that the Flood Engineers failed to do the things pleaded in paragraph 288 (b), (c), (d) and (e);

(iii) <u>save with respect to the initial losses for CRE, COO, LIN, EMU, GRE, SDI and WDI and the continuing losses for COO, LIN, EMU, GRE and SDI as pleaded in paragraph 279A(d) above:</u>

<u>(A)</u> admits that the Flood Engineers did not select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 288(h) of the Claim,

<u>(B)</u> repeats sub-paragraph 288(<u>g</u>~~h~~) above and says that the Flood Engineers were not obliged to select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 288(h) of the Claim;

(c) as to sub-paragraph (b):

(i) says that the water level in Somerset Dam on 8 January 2011 was below the level alleged in paragraph 288B(f) of the Claim;

~~(i)~~(ii) otherwise, admits that the Flood Engineers did not keep or reduce the water levels in Lake Somerset and Lake Wivenhoe to, or to levels no higher than, the respective water levels alleged in paragraph 288B of the Claim by the end of 8 January 2011;

~~(ii)~~(iii) repeats paragraph 289 above and says that the Flood Engineers were not required to keep or reduce the water levels in Lake Somerset and Lake Wivenhoe to, or to levels no higher than, the respective water levels alleged in paragraph 288B of the Claim by the end of 8 January 2011;

(d) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;

(e) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice;

(f) otherwise denies the allegations contained therein.

290 In relation to paragraph 290:

(a) repeats paragraph 285 above, and by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;

(b) repeats paragraph 289 above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;

(c) otherwise denies the allegations contained therein.

U Events of 9 January 2011

Weather Forecasts

291 In relation to paragraph 291:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

292 In relation to paragraph 292:

(a) admits the allegations contained in paragraph 292;

(b) repeats paragraph 138 above.

293 In relation to paragraph 293:

(a) admits the allegations contained in paragraph 293;

(b) repeats paragraph 138 above.

Rainfall and Inflows

294 In relation to paragraph 294:

(a) says that, in the 12 hours prior to about 6.15 am on 9 January 2011, the average rainfall was 40 mm in the Somerset Dam catchment area and less than 10 mm in the Wivenhoe Dam catchment areas;

(b) otherwise denies the allegations contained therein.

295 Save as to the word ‘significant’, admits the allegations contained in paragraph 295.

Water Level

296 In relation to in paragraph 296:

(a) says that the operators of Somerset Dam reported that the water level of Lake Somerset was 100.27 m AHD at or around 6.00 am on 9 January 2011;

(b) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was 68.58 m AHD and falling slowly at or around 6.00 am on 9 January 2011;

(c) otherwise, does not admit the allegations contained therein

297 In relation to paragraph 297:

(a) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was 68.52 m AHD at or around 8.00 am on 8 January 2011;

(b) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was 68.55 m AHD at or around 9.00 am on 9 January 2011;

(c) otherwise does not admit the allegations contained therein.

298 In relation to paragraph 298:

(a) as to sub–paragraph (a):

(i) says that the operators of Somerset Dam reported that the water level of Lake Somerset was 100.32 m AHD at or around 00.00 pm on 9 January 2011;

(ii) says that the operators of Somerset Dam reported that the water level of Lake Somerset was 100.27 m AHD at or around 07.00 am on 9 January 2011;

(iii) says that the operators of Somerset Dam reported that the water level of Lake Somerset was 102.22 m AHD at or around 11.00 pm on 9 January 2011;

(iv) otherwise does not admit the matters alleged therein.

(b) as to sub-paragraph (b):

(i) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was 68.64 m AHD at or around 00.00 pm on 9 January 2011;

(ii) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was 68.53 m AHD at or around 10.00 am on 9 January 2011;

(iii) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was 69.6 m AHD at or around 11.00 pm on 9 January 2011;

(iv) otherwise does not admit the matters alleged therein.

Flood Operations

299 Save that Mr Ayre commenced his shift at 7:30 pm, admits the allegations contained in paragraph 299.

299A In relation to paragraph 299A:

(a) says that at about 3:30 pm on 9 January 2011, all four Flood Engineers took part in a meeting to discuss the situation and the appropriate strategy to be implemented;

(b) says that Mr Tibaldi participated in the meeting by telephone;

(c) admits sub-paragraph 299A(b);

(d) otherwise does not admit the allegations contained therein.

299B In relation to paragraph 299B:

(a) says that the Real Time Flood Model was capable of being operated using various initial losses and continuing loss rates;

(b) from time to time, the Flood Engineers considered the implications of utilising different initial losses and continuing loss rates by conducting model runs containing various permutations;

(c) the Real Time Flood Model did not preserve each and every permutation which was modelled on a particular day;

(d) says that on 9 January 2011, the initial losses and continuing loss rates utilised were:

Region	**Initial Losses**	**Continuing Loss Rate**
CRE (Cressbrook Creek Region)	10 mm	2.5 mm/hr
COO (Cooyar 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
SDI (Somerset Dam Inflow Region)	15 mm	0.5 mm/hr
WDI (Wivenhoe Dam Inflow Region)	0 mm	2.5 mm/hr

(e) says that consequences of the utilisation of particular initial losses and continuing loss rates were also scaled from time to time in Gate Operations Spreadsheets;

(f) otherwise does not admit the allegations contained therein.

300 In relation to paragraph 300:

(a) admits that about 8.15 am Mr Malone directed the Somerset Dam operators to increase releases, namely to open Sluice K to 100% at 9.00 am;

(b) says that about 10.30 am Mr Malone directed the Wivenhoe Dam operators to open, at 11.00 am, Gate 5 from 1.5 m to 2.0;

(c) says that the operators of Wivenhoe Dam reported that the water level in Lake Wivenhoe had decreased from 68.64 m AHD at 00.00 am on 9 January 2011 to 68.53 m AHD at 10.00 am on 9 January 2011;

(d) otherwise does not admit the allegations contained therein.

301 In relation to paragraph 301:

(a) repeats paragraph 300 above;

(b) otherwise denies the allegations contained therein.

301A In relation to paragraph 301A:

(a) admits that the other Flood Engineers were sent Flood event – Somerset Dam Operations Directive No 4;

(b) repeats paragraph 301 above;

(c) otherwise does not admit the allegations therein.

302 In relation to paragraph 302:

(a) says that the release rates at Wivenhoe Dam on 9 January 2011 were increased from approximately 1,241 m^3/s to 1,462 m^3/s;

(b) otherwise denies the allegations contained therein.

303 Denies the allegations contained in paragraph 303.

9 January 2011 Breaches

304 In relation to paragraph 304:

(a) repeats paragraphs 291 to 298 above;

(b) says that on the morning of 9 January 2011 at 1.00 am, the Flood Engineers were releasing water from Wivenhoe Dam at a rate of approximately 1,241 m^3/s, which increased throughout the day;

(c) otherwise denies the allegations contained therein.

305 In relation to paragraph 305:

(a) repeats paragraphs 291 to 298 and 300 to 302 above;

(b) says that flood releases from Wivenhoe Dam had been continuing from about 8.00 am on 8 January 2011;

(c) otherwise denies the allegations contained therein.

306 [Not used]

307 In relation to the paragraph 307:

(a) repeats paragraphs 291 to 298 and 304 to 305 above;

(b) as to sub-paragraph (a):

(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(ii) says that the content of SunWater's obligation to Seqwater required SunWater:

(A) not to interpret the Flood Mitigation Manual in a manner which was not open to a reasonably competent flood engineer;

(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(C) <u>to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention;</u>

(iii) otherwise does not admit the allegations contained therein;

(c) does not admit the allegations contained in sub-paragraph (b);

(d) does not admit the allegations contained in sub-paragraph (c);

(e) does not admit the allegations contained in sub-paragraph (d);

(f) does not admit the allegations contained in sub-paragraph (e) and says that in any event releases from Lake Somerset were less than the rate of inflow;

(g) repeats paragraph 299B above and otherwise denies the allegations contained in sub-paragraph (h);

(h) says further, that in determining appropriate release rates, a reasonably prudent flood engineer would take into account the likely effect of downstream tributaries;

(i) otherwise does not admit the allegations contained therein.

307A In relation to paragraph 307A:

(a) repeats paragraphs ~~151 to 152, 163A to 165, 170 to 170A, 174, 179A to 182,~~ 192 to 201, 214 to 219, 248 to 252, 270 to 275 and 219 to 295 above;

(b) otherwise denies the allegations contained therein.

307B Denies the allegations contained in paragraph 307B.

308 In relation to paragraph 308:

(a) repeats paragraphs 299 to 307 above;

(b) as to sub-paragraph (a):

(i) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;

(ii) does not admit that the Flood Engineers failed to do the things pleaded in paragraph 307 (b), (c), (d), and (e);

(iii) save with respect to the initial losses for CRE, COO, LIN, EMU, GRE, SDI and WDI and the continuing losses for COO, LIN, EMU, GRE and SDI as pleaded in paragraph 299B(d) above:

(A) admits that the Flood Engineers did not select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 307(h) of the Claim;~~,~~

(B) repeats sub-paragraph 307(g~~h~~) above and says that the Flood Engineers were not obliged to select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 307(h) of the Claim;

(c) as to sub-paragraph (b):

(i) says that the operators of Somerset Dam reported that the water level of Lake Somerset was 102.22 m AHD at or around 11.00 pm on 9 January 2011;

(ii) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was 69.6 m AHD at or around 11.00 pm on 9 January 2011;

(iii) repeats paragraph 307 above and says that the Flood Engineers were not required to reduce, keep or maintain the water levels in Lake Somerset and Lake Wivenhoe to, or to levels no higher than, the respective water levels alleged in paragraph 307B of the Claim by the end of 9 January 2011;

(d) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;

(e) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice;

(f) otherwise denies the allegations contained therein.

309 In relation to paragraph 309:

(a) repeats paragraph 304 above, and by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;

(b) repeats paragraph 308 above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;

(c) otherwise denies the allegations contained therein.

V Events of 10 to 11 January 2011

Weather Forecasts

310 In relation to paragraph 310:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

311 In relation to paragraph 311:

(a) repeats paragraphs 139 and 139A above;

(b) says that the information contained in the rainfall forecasts did not show information as to when and where the predicted rainfall would be distributed within the catchment area within the time period, and therefore it was necessary to make assumptions in regard to the spatial and temporal distribution of rainfall to incorporate flows from these areas;

(c) says that the BOM 4 and 8 day forecasts made no predictions as to rainfall in the Lake Somerset and Lake Wivenhoe catchment areas;

(d) otherwise does not admit the allegations contained therein.

312 In relation to paragraphs 312:

(a) admits the allegations contained in paragraph 312;

(b) repeats paragraph 138 above.

313 In relation to paragraph 313:

(a) admits the allegations contained in paragraph 313;

(b) repeats paragraph 138 above.

314 In relation to paragraph 314:

(a) admits the allegations contained in paragraph 314;

(b) repeats paragraph 138 above.

315 In relation to paragraph 315:

(a) admits that the BOM issued a 1 Day QPF on or about 11 January 2011 at around 4.13 pm;

(b) says that, the 1 Day QPF pleaded in sub-paragraph (a) above, stated that the forecast average rainfall for the 24 hour period from 4.00 pm on 11 January 2011 to 4.00 pm on 12 January 2011 for the Somerset Dam and Wivenhoe Dam Catchments was 50 to 100 mm that evening and overnight, easing to less than 30 mm during 12 January 2011;

(c) repeats paragraph 138 above;

(d) otherwise denies the allegations contained in paragraph 315.

Rainfall and Inflows

316 Admits the allegations contained in paragraph 316.

317 Admits the allegations contained in paragraph 317.

318 Admits the allegations contained in paragraph 318.

319 Admits the allegations contained in paragraph 319.

320 Does not admit the allegations contained in paragraph 320.

321 Does not admit the allegations contained in paragraph 321.

Water Level

322 In relation to paragraph 322:

(a) says that the operators of Somerset Dam reported that the water level of Lake Somerset was at 102.54 m AHD at 1.00 am on 10 January 2011;

(b) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was at 69.97 m AHD at 1.00 am on 10 January 2011;

(c) otherwise does not admit the allegations contained therein.

323 In relation to paragraph 323:

(a) says that the operators of Somerset Dam reported that water level of Lake Somerset was at 102.84 m AHD at 5.00 am on 10 January 2011;

(b) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was at 70.77 m AHD at 5.00 am on 10 January 2011;

(c) otherwise, does not admit the allegations contained therein.

324 In relation to paragraph 324:

(a) says that the operators of Somerset Dam reported that the water level of Lake Somerset was at 103.11 m AHD at 10.00 am on 10 January 2011;

(b) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was at 71.95 m AHD at 11.00 am on 10 January 2011;

(c) otherwise, does not admit the allegations contained therein.

325 In relation to paragraph 325:

(a) says that the operators of Somerset Dam reported that the water level of Lake Somerset was at 103.45 m AHD at 7.00 pm on 10 January 2011;

(b) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was at 72.99 m AHD at 7.00 pm on 10 January 2011;

(c) otherwise, does not admit the allegations contained therein.

326 In relation to paragraph 326:

(a) as to sub-paragraph (a):

(i) says that the operators of Somerset Dam reported that the water level of Lake Somerset was at approximately 103.40 m AHD at about 11.00 pm on 10 January 2011 and falling;

(ii) otherwise does not admit the allegations contained therein;

(b) as to sub-paragraph (b):

(i) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was at approximately 73.22 m AHD at about 11.00 pm on 10 January 2011 and rising;

(ii) otherwise denies the allegations contained therein.

327 In relation to paragraph 327:

(a) as to sub-paragraph (a):

(i) says that the operators of Somerset Dam reported that the water level of Lake Somerset was at approximately 103.27 m AHD at or around 3.00 am on 11 January 2011;

(ii) otherwise does not admit the allegations contained therein;

(b) as to sub-paragraph (b):

(i) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was at approximately 73.51 m AHD at or around 6.00 am on 11 January 2011 and rising;

(ii) otherwise denies the allegations contained in sub-paragraph 327(b).

328 Denies the allegations contained in paragraph 328.

Flood Operations

329 Save that Mr Ayre started his shift at 7:30 pm on 9 January 2011, admits the allegations contained in paragraph 329.

329A In relation to paragraph 329A:

(a) as to sub-paragraph (a):

(i) admits that the Flood Engineers met at or around the end of each shift on 10 and 11 January 2011 to discuss the situation and projected and actual releases that were expected to be made from Somerset Dam and Wivenhoe Dam; and

(ii) otherwise does not admit the allegations contained in that sub-paragraph;

(b) admits the allegations contained in sub-paragraphs (b) and (c).

329B In relation to paragraph 329B:

(a) says that the Real Time Flood Model was capable of being operated using various initial losses and continuing loss rates;

(b) from time to time, the Flood Engineers considered the implications of utilising different initial losses and continuing loss rates by conducting model runs containing various permutations;

(c) the Real Time Flood Model did not preserve each and every permutation which was modelled on a particular day;

(d) ~~admits that on 10 and 11 January 2011, the initial losses and continuing loss rates alleged were amongst those that were utilised;~~ <u>says that on 10 January 2011 and 11 January 2011 the initial losses and continuing loss rates utilised were:</u>

Region	**Initial Losses**	**Continuing Loss Rate**
CRE (Cressbrook Creek Region)	10 mm	2.5 mm/hr
COO (Cooyar 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
SDI (Somerset Dam Inflow Region)	15 mm	0.5 mm/hr
WDI (Wivenhoe Dam Inflow Region)	0 mm	2.5 mm/hr

(e) says that consequences of the utilisation of particular initial losses and continuing loss rates were also scaled from time to time in Gate Operations Spreadsheets.

330 Admits the allegations contained in paragraph 330.

331 In relation to paragraph 331:

(a) does not admit that water released from Wivenhoe Dam on 10 January 2011 was in such volumes and at such rates that urban flooding downstream of Wivenhoe Dam was certain or, alternatively, very likely, to occur;

(b) otherwise says that when combined with the downstream flooding from the Bremer River and Lockyer Creek (over which the Flood Engineers had no control), the releases from Wivenhoe Dam on 11 January 2011 were such that urban flooding downstream of Wivenhoe Dam was likely to occur;

but:

(c) says that the releases were made in compliance with:

(i) the Flood Mitigation Manual;

(ii) SunWater's obligations pursuant to the Flood Management Services Agreement;

(d) otherwise does not admit the allegations contained therein

332 In relation to paragraph 332:

(a) repeats paragraph 328 above;

(b) otherwise does not admit the allegations contained therein.

333 Denies the allegations contained in paragraph 333.

334 In relation to paragraph 334:

(a) admits that the Flood Engineers did not speak to representatives of Tarong Energy before or around 6:00 pm on 11 January 2011;

(b) otherwise does not admit the allegations contained therein.

335 Does not admit the allegations contained in paragraph 335.

336 Does not admit the allegations contained in paragraph 336.

10-11 January 2011 Breaches

337 In relation to paragraph 337:

(a) repeats paragraph 310 to 328 above;

(b) otherwise does not admit the allegations contained therein.

338 [Not used]

339 In relation to the paragraph 339:

(a) repeats paragraphs 310 to 328 and 337 above;

(b) as to sub-paragraph (a):

(i) says that Flood Operations were to be conducted by SunWater in accordance with the Flood Management Services Agreement;

(ii) says that the content of SunWater's obligation to Seqwater required SunWater:

(A) not to interpret the Flood Mitigation Manual in a manner which was not open to a reasonably competent flood engineer;

(B) not to operate Wivenhoe Dam and Somerset Dam in a manner contrary to the No Precautionary Release Common Interpretation, the FSL Common Interpretation and the Forecast Rainfall Common Interpretation;

(C) to operate Wivenhoe Dam and Somerset Dam consistently with the 2009 Review Intention;

(iii) otherwise does not admit the allegations contained therein;

(c) does not admit the allegations contained in sub-paragraph (b);

(d) denies the allegations contained in sub-paragraph (c);

(e) denies the allegations contained in sub-paragraph (d);

(f) does not admit the allegations contained in sub-paragraph (e) and says that the rates of inflow and release varied over the two day period such that the net releases were less than the net inflow;

(g) repeats paragraph 329B above and otherwise denies sub-paragraph (j);

(h) says further, that in determining appropriate release rates, a reasonably prudent flood engineer would take into account the likely effect of downstream tributaries;

(i) otherwise does not admit the allegations contained therein.

339A In relation to paragraph 339A:

(a) repeats paragraphs ~~151 to 152, 163A to 165, 170 to 170A, 174, 179A to 182,~~ 192 to 201, 214 to 219, 248 to 252, 270 to 275, 291 to 295 and 310 to 319 above;

(b) otherwise denies the allegations contained therein.

339B Denies the allegations contained in paragraph 339B.

340 In relation to paragraph 340:

(a) repeats paragraphs 310 – 339B above;

(b) as to sub-paragraph (a):

(i) does not admit that SunWater or the Flood Engineers failed to comply with the Flood Mitigation Manual;

(ii) does not admit that the Flood Engineers failed to do the things pleaded in paragraph 339 (b), (c), (d) and (e);

(iii) save with respect to the initial losses for CRE, COO, LIN, EMU, GRE, SDI and WDI and the continuing losses for COO, LIN, EMU, GRE and SDI as pleaded in paragraph 329B(d) above:

(A) admits that the Flood Engineers did not select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 339(j) of the Claim;~~,~~

(B) repeats sub-paragraph 339(g) above and says that the Flood Engineers were not obliged to select and input losses and continuing losses equal to, or approximate, to those specified in the table in sub-paragraph 339(j) of the Claim;

(c) as to sub-paragraph (b):

(i) says that the operators of Somerset Dam reported that the water level of Lake Somerset was at 104.90 m AHD at 11.00 pm on 11 January 2011;

(ii) says that the operators of Wivenhoe Dam reported that the water level of Lake Wivenhoe was at 74.92 m AHD at 11.00 pm on 11 January 2011;

(iii) repeats paragraph 339 above and says that the Flood Engineers were not required to keep the water levels in Lake Somerset and Lake Wivenhoe to, or to levels no higher than, the respective water levels alleged in paragraph 339B of the Claim by the end of 10 January 2011;

(d) says that SunWater and the Flood Engineers were professionals carrying out a professional service within the meaning of ss 20 and 22 CLA alternatively s 5O of the NSW CLA;

(e) says that, at the time the services were provided, SunWater and the Flood Engineers acted in a way that was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice;

(f) otherwise denies the allegations contained therein.

341 In relation to paragraph 341:

(a) repeats paragraph 336 above, and by reason of s 9(1) CLA alternatively s 5B of the NSW CLA, denies that the Flood Engineers breached any duty;

(b) repeats paragraph 340 above, and by reason of s 22 CLA alternatively s 5O of the NSW CLA, denies that the Flood Engineers breached any duty;

(c) otherwise denies the allegations contained therein.

341A Further and in the alternative to the matters pleaded in paragraphs ~~162, 178,~~ 191C, 213, 230, 247, 269, 290, 209 and 341 above:

(a) repeats the matters pleaded in sub-paragraph 150(e) above;

(b) says that, no act or omission of the Flood Engineers between ~~16 December 2010~~2 January 2011 and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater was in the circumstances so unreasonable that no public or other authority having the

functions (alternatively, special statutory powers) of Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions;

(c) by reason of the matters pleaded in sub-paragraphs (a) and (b) above, no act or omission of the Flood Engineers between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater constituted a wrongful exercise or failure to exercise a function (alternatively, a special statutory power) by the Flood Engineers.

341B Further and in the alternative to the matters pleaded in paragraphs ~~162, 178,~~ 191C, 213, 230, 247, 269, 290, 209, 341 and 341A above:

(a) repeats the matters pleaded in sub-paragraph 150(f) above;

(b) says that no act or omission of the Flood Engineers between 2 January 2011~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or Somerset Dam was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of the Flood Engineers could properly consider the act or omission to be a reasonable exercise of the Flood Engineer's functions (alternatively, special statutory powers);

(c) says that by reason of the matters pleaded in sub-paragraphs (a) and (b) above, no act or omission of the Flood Engineers between 2 January 2011~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or Somerset Dam constituted the breach of an alleged duty of care by the Flood Engineers.

341C Further and in the alternative to the matters pleaded in paragraphs ~~162, 178,~~ 191C, 213, 230, 247, 269, 290, 209, 341, 341A and 341B above:

(a) repeats the matters pleaded in sub-paragraph 150(g) above;

(b) says that no act or omission of the Flood Engineers between 2 January 2011~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater was in the circumstances so unreasonable that no public or other authority having the

functions (alternatively, special statutory powers) of Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions (alternatively, special statutory powers) by SunWater;

(c) says that, by reason of the matter pleaded in sub-paragraphs (a) and (b) above, no act or omission of the Flood Engineers between 2 January 2011~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater constituted the breach of an alleged duty of care by the Flood Engineers.

341D Further, the actions of the alleged "reasonably prudent flood engineer" alleged in paragraphs ~~160 (16 December Breaches), 176 (17-24 December Breaches), 191A (25 December - 1 January Breaches),~~ 211 and 211B (2 January Breaches), 228 and 228B (3-5 January Breaches), 245 and 245B (6 January Breaches), 267 and 267B (7 January Breaches), 288 and 288B (8 January Breaches), 307 and 307B (9 January Breaches) and 339 and 339B (10-11 January Breaches) would have constituted breaches of the Flood Mitigation Manual.

PARTICULARS

(A) Drawing down the lake level in Wivenhoe Dam and Somerset Dam below FSL (see for example, sections 3.5, 8.1, 8.3, 8.4, 8.5 and 9.4 of the Flood Mitigation Manual)

(B) Normal procedures require stored floodwaters to be emptied from Wivenhoe Dam and Somerset Dam within seven days of the flood event peak passing through the dams (see for example, sections 1.1, 3.1, 3.2, 8.5 and 9.4 of the Flood Mitigation Manual)

(C) It is an objective of the Flood Mitigation Manual to retain storage at FSL at the conclusion of the Flood Event (see for example, sections 3.1 and 3.5 of the Flood Mitigation Manual)

(D) The spillway gates are not to be opened for flood control purposes prior to the level in Lake Wivenhoe exceeding the gate trigger level of 67.25 m AHD (see for example, section 8.3 of the Flood Mitigation Manual)

(E) When determining releases, peak outflow should generally not exceed peak inflow (see for example, section 8.4 of the Flood Mitigation Manual)

(F) In general, gate closing commences when the level in Wivenhoe Dam and Somerset Dam begins to fall and is generally to occur in the reverse order to opening. The final gate closure should occur when the lake level has returned to the FSL (see for example, sections 8.5 and 9.4 of the Flood Mitigation Manual)

(G) Flood Operations should be undertaken in accordance with the Operating Target Line (see for example, section 9.3 of the Flood Mitigation Manual)

(H) Further particulars will be provided by way of SunWater's expert evidence

341E In the premises the actions of the alleged "reasonably prudent flood engineer" would have constituted a departure from the standard of the reasonably competent flood engineer.

W Causation and Loss

342 Admits the allegations contained in paragraph 342.

343 Denies the allegations contained in paragraph 343.

344 In relation to the allegations contained in paragraph 344:

(a) says that the significant rainfall necessitated the release of large volumes of water from Wivenhoe Dam in order to protect the structural integrity of Wivenhoe Dam;

(b) says that the large releases from Wivenhoe Dam were not contrary to the provisions of the Flood Mitigation Manual;

(c) otherwise does not admit the allegations contained therein.

345 In relation to paragraph 345:

(a) says that the significant rainfall necessitated the release of large volumes of water from Wivenhoe Dam in order to protect the structural integrity of Wivenhoe Dam;

(b) says that the releases from Wivenhoe Dam were not contrary to the provisions of the Flood Mitigation Manual;

(c) admits that urban land downstream of Wivenhoe Dam was flooded;

(d) says that the flows from the downstream tributaries, particularly the Bremer River and Lockyer Creek would have resulted in urban flooding downstream of Wivenhoe Dam even had no releases from Wivenhoe Dam been made;

(e) otherwise does not admit the allegations contained therein.

346 Denies the allegations contained in paragraph 346.

347 In relation to paragraph 347:

(a) denies that one or more of the alleged breaches was a necessary condition of the occurrence of the loss or damage;

(b) denies that it is appropriate for the scope of any liability in SunWater to extend to the loss or damage;

(c) by reason of s 11 CLA alternatively s 5D of the NSW CLA, denies that one or more of the alleged breaches caused the loss or damage;

(d) otherwise denies the allegations contained therein.

347A In further answer to paragraph 347:

(e) sample Group Member, Ms Lynette Harrison received funds from the State in the amount of $1,275 by way of an Essential Household Contents Assistance Grant as part of the Personal Hardship Assistance Scheme on or about 28 March 2011;

(f) such payment was on account of damage to her personal property as a result of the inundation of a storage facility at which Ms Harrison's property was stored, occasioned by the Flood Event;

(g) in applying for that grant, Ms Harrison declared that she owned the personal property that was lost or damaged as a result of the Flood Event, and certified the truth of the information provided in the Application form about the value of the damaged or destroyed property for which the amount of $1,275 was paid;

(h) sample Group Members, Mr and Mrs John and Betty Keller received $15,000 on or about 18 July 2011 from the State (Premier's Disaster Relief Appeal);

(i) the amount paid was on account of structural damage to Mr and Mrs Keller's principal place of residence as a result of the Flood Event and declared the cost of rectifying that damage, which was the basis for assessment of the $15,000;

(j) Mr and Mrs Keller also received funds in the amount of $10,000 from the State (Department of Communities) on a date unknown for hardship sustained in the months following the Flood Event;

(k) in applying for the payment of $15,000, Mr and Mrs Keller declared that their home had suffered structural damage as a result of the Flood Event;

(l) sample Group Members, Mr and Mrs John and Lynette Lynch received $90,000 from the State (Premier's Disaster Relief Appeal) on account of structural damage to their principal place of residence;

(m) in seeking those funds, Mrs Lynch declared to the effect that the home owned by her and Mr Lynch had suffered structural damage as a result of the Flood Event and declared the cost of rectifying or repairing that damage, which was the basis for the assessment of the amount of $90,000;

(n) sample Group Member, Ms Sharon Visser received payments totalling $90,000 from the State (Premier's Disaster Relief Appeal);

(o) Ms Visser obtained a further payment of $10,000 from the State (Department of Communities) on a date unknown for hardship sustained in the months following the Flood Event;

(p) in seeking those funds, Ms Visser declared to the effect that the home owned by her had suffered structural damage as a result of the Flood Event and declared the cost of rectifying or repairing that damage, which was the basis for the assessment of the amount of $90,000;

(q) the Plaintiff received $25,000 from the State (QRAA) as special disaster flood assistance;

(r) that assistance was payable on account of floods associated with flood damage only;

(s) the payments referred to in subparagraphs (d), (h), (j) and (m) above:

(i) were not to be enjoyed in addition to any amounts recovered later in litigation;

(ii) operated to reduce the final assessment of damages;

(iii) were not relief for personal hardship, but rather recompense for loss.

348 Denies the allegations contained in paragraph 348.

X Direct Liability and Seqwater and SunWater in Negligence

Direct Liability of Seqwater in Negligence

349 Denies the allegations contained in paragraph 349.

350 Denies the allegations contained in paragraph 350.

Liability of SunWater in Negligence

351 In relation to paragraph 351:

(a) repeats paragraph 84 above;

(b) otherwise does not admit the allegations contained therein.

352 In relation to in paragraph 352:

(a) denies that the Flood Engineers committed one or more of the Flood Engineer's Breaches as alleged in that paragraph;

(b) further, denies SunWater owed any duty of care to the Group Members, the plaintiff or any persons downstream of Wivenhoe Dam;

(c) further and in the alternative to the matters pleaded in sub-paragraphs (a) and (b) above:

(i) repeats sub-paragraph 148(e) above;

(ii) says that no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of SunWater could properly consider the act or omission to be a reasonable exercise of SunWater's functions (alternatively, special statutory powers);

(iii) by reason of the matters pleaded in sub-paragraphs (c)(i) and (c)(ii) above, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or Somerset Dam constituted a wrongful exercise or failure to exercise a function (alternatively, special statutory power) by SunWater;

(d) further and in the alternative to the matter pleaded in sub-paragraphs (a) to (c) above:

(i) repeats sub-paragraph 148(f) above;

(ii) says that, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of Seqwater could properly consider the act or omission to

be a reasonable exercise of Seqwater's functions (alternatively, special statutory powers);

(iii) by reason of the matters pleaded in sub-paragraphs (d)(i) and (d)(ii) above, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater constituted a wrongful exercise or failure to exercise a function (alternatively, special statutory power) by SunWater;

(e) further and in the alternative to the matters pleaded in sub-paragraphs (a) to (d) above:

(i) repeats sub-paragraph 148(g) above;

(ii) says that no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or Somerset Dam was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of SunWater could properly consider the act or omission to be a reasonable exercise of SunWater's functions (alternatively, special statutory powers);

(iii) says that by reason of the matters pleaded in sub-paragraphs (e)(i) and (e)(ii) above, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or Somerset Dam constituted the breach of an alleged duty of care by SunWater;

(f) further and in the alternative to the matters pleaded in sub-paragraphs (a) to (e) above:

(i) repeats sub-paragraph 148(h) above;

(ii) says that no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory

powers) of Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions (alternatively, special statutory powers) by SunWater;

(iii) says that, by reason of the matter pleaded in sub-paragraphs (f)(i) and (f)(ii) above, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater constituted the breach of an alleged duty of care by SunWater;

(g) otherwise denies the allegation contained therein.

353 In relation to paragraph 353:

(a) repeats paragraph 347 above;

(b) otherwise denies the allegations contained therein.

Y Private Nuisance and Trespass

354 Does not admit the allegations contained in paragraph 354.

355 In relation to the allegations contained in paragraph 355, repeats paragraphs 143, 147 and 149 above.

356 Denies the allegations contained in paragraph 356.

357 In relation to paragraph 357:

(a) does not know and does not admit that the plaintiff held an interest in land;

(b) does not know the identity and location of 'other Subgroup Members' and does not admit that they held interests in land, or that the land in which Subgroup Members may have held an interest became inaccessible or practically unusable because of Greater Flooding;

(c) otherwise denies the allegations contained therein.

358 In relation to paragraph 358:

(a) says that to make 'precautionary releases' in the way suggested would have:

(i) been contrary to the No Precautionary Release Common Interpretation and the FSL Common Interpretation;

(ii) been in breach of the Flood Mitigation Manual, or arguably in breach;

(iii) been in breach of the Flood Management Services Agreement, or arguably in breach;

(iv) adversely affected, or potentially adversely affected, unnecessarily, some persons downstream of Wivenhoe Dam, but not others, such that acting in the manner suggested would, or might, have been to prefer the interests of some persons downstream of Wivenhoe Dam, over the interests of others.

(b) otherwise denies the allegations contained therein.

359 Denies the allegations contained in paragraph 359, and pleads further as follows:

Section 374 Water Supply Act

(a) SunWater:

(i) observed the operational procedures in the Flood Mitigation Manual;

(ii) acted honestly and without negligence in observing the procedures,

such that, pursuant to s 374 (2) Water Supply Act, it is not liable to the plaintiff or Group Members.

Necessity

(b) the releases from Wivenhoe Dam from 9 to 19 January 2011 were necessary in order for SunWater to comply with the Flood Management Services Agreement and the Flood Mitigation Manual;

(c) at approximately 9.00 am on 11 January 2011, it was predicted that the level in Lake Wivenhoe would exceed 74.0 m AHD;

(d) the circumstance in sub-paragraph (c) above required the Flood Engineers to invoke strategy W4 at Wivenhoe Dam;

(e) in strategy W4, the primary consideration was protecting the structural safety of Wivenhoe Dam, with no limit on release rates;

(f) were Wivenhoe Dam to structurally fail, the result would be catastrophic uncontrolled releases from Lake Wivenhoe, endangering the safety and lives of hundreds of thousands of people;

(g) the releases made from Wivenhoe Dam from about 9.00 am on 11 January 2011 were reasonably necessary to prevent the potential:

(i) overtopping and structural failure of Wivenhoe Dam;

(ii) consequential risk to the safety and lives of hundreds of thousands of people;

(h) by reason of the matters referred to above, the defence of public necessity operates as a complete defence to any claim for nuisance based on interference with land (including any personal property thereon) caused by the release of water, from 9 to 19 January 2011, from Wivenhoe Dam;

Authority

(i) further and in the alternative to the matters pleaded in sub-paragraphs (a) to (h) above:

(i) repeats the matters pleaded in sub-paragraph 150(e) above;

(ii) says that, no act or omission of the Flood Engineers between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions (alternatively, special statutory powers);

(iii) by reason of the matters pleaded in sub-paragraphs (i)(i) and (i)(ii) above, no act or omission of the Flood Engineers between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater constituted a wrongful exercise or failure to exercise a function by the Flood Engineers;

(j) further and in the alternative to the matters pleaded in sub-paragraphs (a) to (i) above:

(i) repeats the matters pleaded in sub-paragraph 150(f) above;

(ii) says that no act or omission of the Flood Engineers between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or Somerset Dam was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of the Flood Engineers could properly consider the act or omission to be a reasonable exercise of the Flood Engineer's functions (alternatively, special statutory powers);

(iii) says that by reason of the matters pleaded in sub-paragraphs (j)(i) and (j)(ii) above, no act or omission of the Flood Engineers between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or Somerset Dam constituted an act of nuisance or trespass on the part of the Flood Engineers;

(k) further and in the alternative to the matters pleaded in sub-paragraphs (a) to (j) above:

(i) repeats the matters pleaded in sub-paragraph 150(g) above;

(ii) says that no act or omission of the Flood Engineers between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of Seqwater could properly consider the act or

omission to be a reasonable exercise of Seqwater's functions (alternatively, special statutory powers) by the Flood Engineers;

(iii) says that, by reason of the matter pleaded in sub-paragraphs (k)(i) and (k)(ii) above, no act or omission of the Flood Engineers between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater constituted an act of nuisance or trespass on the part of the Flood Engineers.

360 Notes that the allegations contained in paragraph 360 are against Seqwater and does not admit the allegations contained therein.

361 Notes that the allegations contained in paragraph 361 are against Seqwater and does not admit the allegations contained therein.

362 In relation to paragraph 362:

(a) denies that any acts of the Flood Engineers were done directly unto any land in which the plaintiff or any Subgroup Members may have held an interest;

(b) otherwise denies the allegations contained therein;

(c) pleads further as follows:

Section 374 Water Supply Act

(d) SunWater:

(i) observed the operational procedures in the Flood Mitigation Manual;

(ii) acted honestly and without negligence in observing the procedures,

such that, pursuant to s 374 (2) Water Supply Act, it is not liable to the plaintiff or Group Members.

Necessity

(e) the releases from Wivenhoe Dam from 9 to 19 January 2011 were necessary in order for SunWater to comply with the Flood Management Services Agreement and the Flood Mitigation Manual;

(f) at approximately 9.00 am on 11 January 2011, it was predicted that the level in Lake Wivenhoe would exceed 74.0 m AHD;

(g) the circumstance in sub-paragraph (f) above required the Flood Engineers to invoke Strategy W4 at Wivenhoe Dam;

(h) in Strategy W4, the primary consideration was protecting the structural safety of Wivenhoe Dam, with no limit on release rates;

(i) were Wivenhoe Dam to structurally fail, the result would be catastrophic uncontrolled releases from Lake Wivenhoe, endangering the safety and lives of hundreds of thousands of people;

(j) the releases made from Wivenhoe Dam from about 9.00 am on 11 January 2011 were reasonably necessary to prevent the potential:

    (i) overtopping and structural failure of Wivenhoe Dam;

    (ii) consequential risk to the safety and lives of hundreds of thousands of people;

(k) by reason of the matters referred to above, the defence of public necessity operates as a complete defence to any claim for trespass to land based on interference with land (including any personal property thereon) caused by the release of water, from 9 to 19 January 2011, from Wivenhoe Dam;

Authority

(l) further and in the alternative to the matters pleaded in sub-paragraphs (a) to (k) above, repeats the matters pleaded in paragraphs 359(i) to 359(k) above.

Z Vicarious Liability

Vicarious Liability of Seqwater

363 In relation to paragraph 363:

(a) says that at all material times, Mr Tibaldi acted in the course of his employment with Seqwater;

(b) otherwise denies the allegations contained therein.

364 In relation to paragraph 364:

(a) says that at all material times, Mr Malone acted in the course of his employment with Seqwater;

(b) otherwise denies the allegations contained therein.

365 In relation to paragraph 365:

(a) says that Seqwater is vicariously liable for the acts of Mr Tibaldi and Mr Malone;

(b) otherwise denies the allegations contained therein.

366 In relation to paragraph 366:

(a) says that Mr Tibaldi's conduct was in the course of Mr Tibaldi's employment with Seqwater;

(b) otherwise denies the allegations contained therein.

367 In relation to paragraph 367:

(a) says that Mr Malone's conduct was in the course of Mr Malone's employment with Seqwater;

(b) otherwise denies the allegations contained therein.

368 In relation to paragraph 368:

(a) admits that Seqwater is vicariously liable for any conduct of Mr Tibaldi or Mr Malone;

(b) otherwise denies the allegations contained therein.

Vicarious Liability of SunWater

369 In relation to paragraph 369:

(a) says that at all material times, Mr Ayre acted in the course of his employment with SunWater;

(b) otherwise denies the allegations contained therein.

370 In relation to paragraph 370:

(a) says that SunWater is vicariously liable for the acts of Mr Ayre;

(b) otherwise denies the allegations contained therein.

371 In relation to paragraph 371:

(a) says that Mr Ayre's conduct was in the course of Mr Ayre's employment with SunWater;

(b) otherwise denies the allegations contained therein.

372 In relation to paragraph 372:

(a) says that SunWater is vicariously liable for Mr Ayre's conduct;

(b) repeats paragraphs 354 to 359 and 362 above;

(c) further and in the alternative to the matters pleaded in sub-paragraph (b) above:

(i) repeats sub-paragraph 148(e) above;

(ii) says that no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of SunWater could properly consider the act or omission to be a

reasonable exercise of SunWater's function (alternatively, special statutory powers);

(iii) by reason of the matters pleaded in sub-paragraphs (c)(i) and (c)(ii) above, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or Somerset Dam constituted a wrongful exercise or failure to exercise a function (alternatively, special statutory power) by SunWater;

(d) further and in the alternative to the matter pleaded in sub-paragraphs (b) and (c) above:

(i) repeats sub-paragraph 148(f) above;

(ii) says that, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions (alternatively, special statutory powers);

(iii) by reason of the matters pleaded in sub-paragraphs (d)(i) and (d)(ii) above, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater constituted a wrongful exercise or failure to exercise a function (alternatively, special statutory power) by SunWater;

(e) further and in the alternative to the matters pleaded in sub-paragraphs (b) to (d) above:

(i) repeats sub-paragraph 148(g) above;

(ii) says that no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or Somerset Dam was in the circumstances so

unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of SunWater could properly consider the act or omission to be a reasonable exercise of SunWater's functions (alternatively, special statutory powers);

(iii) says that by reason of the matters pleaded in sub-paragraphs (e)(i) and (e)(ii) above, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam or the Somerset Dam constituted an act of nuisance or trespass on the part of SunWater;

(f) further and in the alternative to the matters pleaded in sub-paragraphs (b) to (e) above:

(i) repeats sub-paragraph 148(h) above;

(ii) says that no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater was in the circumstances so unreasonable that no public or other authority having the functions (alternatively, special statutory powers) of Seqwater could properly consider the act or omission to be a reasonable exercise of Seqwater's functions (alternatively, special statutory powers) by SunWater;

(iii) says that, by reason of the matter pleaded in sub-paragraphs (f)(i) and (f)(ii) above, no act or omission of SunWater between 2 January 2011 ~~16 December 2010~~ and 11 January 2011 in the operation of Wivenhoe Dam, Somerset Dam or either of them for Seqwater constituted an act of nuisance or trespass on the part of SunWater;

(g) otherwise denies the allegations contained therein.

Vicarious Liability of the State of Queensland

373 In relation to paragraph 373:

(a) says that at all material times, Mr Ruffini acted in the course of his employment with the State of Queensland;

(b) otherwise denies the allegations contained therein.

374 In relation to paragraph 374:

(a) says that the State of Queensland is vicariously liable for the acts of Mr Ruffini;

(b) otherwise denies the allegations contained therein.

375 In relation to paragraph 375:

(a) says that Mr Ruffini's conduct was in the course of Mr Ruffini's employment with the State of Queensland;

(b) otherwise denies the allegations contained therein.

376 In relation to paragraph 376:

(a) says that the State of Queensland, as his employer, is vicariously liable for Mr Ruffini's conduct;

(b) says that, even if the allegations in paragraph 93 of the Claim are made good, SunWater is not liable for any tortious acts committed by Mr Ruffini;

(c) otherwise denies the allegations contained therein.

377 Denies the allegations contained in paragraph 377.

AA Section 374 of the Water Supply Act

378 Save that the correct date is on or around 22 January 2010, admits the allegations contained in paragraph 378.

379 Admits the allegations contained in paragraph 379.

BB Relief

380 Denies that the plaintiff, on its own behalf and on behalf of other Group Members, is entitled to the relief sought in paragraph 380 or at all.

Proportionate Liability - Queensland

381 In the event that SunWater is liable to the plaintiff or other Group Members, which is denied, SunWater pleads as follows:

382 Pursuant to s 6, the CLA binds the plaintiff, Group Members, Seqwater, SunWater and the State of Queensland.

383 The plaintiff's and Group Members' claims are claims for economic loss or damage to property in an action for damages arising from a breach of a duty of care within the meaning of s 28(1) CLA are therefore 'apportionable claims' under the CLA.

384 Seqwater is a person whose acts or omissions caused the loss or damage that is the subject of the claims, and for which Seqwater is liable to the plaintiff or other Group Members, and is thereby a 'concurrent wrongdoer' within the meaning of s 30 CLA.

PARTICULARS

(A) SunWater repeats, without admissions, the allegations made against Seqwater in the Claim

385 The State of Queensland is a person whose acts or omissions caused the loss or damage that is the subject of the claims, and for which the State of Queensland is liable to the plaintiff or other Group Members, and is thereby a 'concurrent wrongdoer' within the meaning of s 30 CLA.

PARTICULARS

(A) SunWater repeats, without admissions, the allegations made against the State of Queensland in the Claim

386 By reason of the matters set out in paragraphs 381 to 385 above, pursuant to s 31 CLA, SunWater's liability in relation to the claims is limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just and equitable having regard to the extent of SunWater's responsibility for the loss or damage, and judgment must not be given against SunWater for more than that amount in relation to the claims.

Proportionate Liability – New South Wales

387 In the alternative to paragraphs 381 to 386 above and in the event that SunWater is liable to the plaintiff or other Group Members, which is denied, SunWater pleads as follows:

388 The plaintiff's and Group Members' claims are claims for economic loss or damage to property in an action for damages arising from a breach of a duty of care within the meaning of s 34(1) of the NSW CLA and are therefore 'apportionable claims' under the NSW CLA.

389 Seqwater is a person whose acts or omissions caused the loss or damage that is the subject of the claims, and for which Seqwater is liable to the plaintiff or other Group Members, and is thereby a 'concurrent wrongdoer' within the meaning of s 34(2) of the NSW CLA.

PARTICULARS

(A) SunWater repeats, without admissions, the allegations made against Seqwater in the Claim

390 The State of Queensland is a person whose acts or omissions caused the loss or damage that is the subject of the claims, and for which the State of Queensland is liable to the plaintiff or other Group Members, and is thereby a 'concurrent wrongdoer' within the meaning of s 34(2) of the NSW CLA.

PARTICULARS

(A) SunWater repeats, without admissions, the allegations made against the State of Queensland in the Claim

391 By reason of the matters set out in paragraphs 388 to 391 above, pursuant to s 36(1) of the NSW CLA, SunWater's liability in relation to the claims is limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of SunWater's responsibility for the loss or damage, and judgment must not be given against SunWater for more than that amount in relation to the claims.

Inherent Risk

392 Further or in the alternative, to the matters pleaded in paragraphs 380 to 391 above, if the plaintiff, on its own behalf and on behalf of other Group members, would otherwise be entitled to relief from SunWater (which is denied as pleaded above), then SunWater:

(a) repeats paragraph 1 of the Claim;

(b) says that, at the time the plaintiff entered into occupation of the shopfront and at all times up to January 2011, that the land at 180 Fairfield Road, Fairfield was at risk of inundation from river flooding;

PARTICULARS

(A) the land at 180 Fairfield Road, Fairfield had been inundated by floodwaters from the Brisbane River in 1974

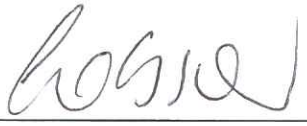
(c) by reason of the matters pleaded in sub-paragraphs 388(a) and 388(b) above, the risk of inundation from river flooding, including river flooding caused by or contributed to by releases into the Brisbane River in the operation of Wivenhoe Dam and Somerset Dam, was an inherent risk and SunWater is not liable in negligence for any harm suffered by the plaintiff (which harm is denied as pleaded above).

PARTICULARS

(A) Seqwater relies on s 16 of the CLA alternatively s 5I of the NSW CLA

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature	
Capacity	Tricia Hobson, Solicitor on record
Date of signature	29/11/2017

AFFIDAVIT VERIFYING

Name	Brad Watkins
Address	179 Turbot Street, Brisbane Queensland 4000
Occupation	General Counsel
Date	29 November 2017

I say on oath:

1 I am employed by the second defendant in this proceeding as General Counsel.

2 I believe that the allegations of fact contained in the defence are true.

3 I believe that the allegations of fact that are denied in the defence are untrue.

4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

SWORN at	Brisbane
Signature of deponent	
Name of witness	Victoria Chalmers
Address of witness	Level 21, One One One, 111 Eagle Street, Brisbane Queensland 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 identify using the following identification document.

Driver's Licence

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

Signature of witness V. Malmers