

BRISBANE RIVER FLOOD LEVELS

A CMC report on the Brisbane City Council's handling of flood study reports (March 2004)

A Crime and Misconduct Commission investigation into allegations that the Brisbane City Council improperly suppressed the findings of Brisbane River flood studies has not revealed any evidence of official misconduct by any person. However, the investigation did reveal some failings in the BCC's recordkeeping and administrative practices, and the CMC has made recommendations for improvements in these areas. The report also comments on some important general issues about the openness of government and the public interest.

Overview

Catalyst for the CMC's investigation

In June 2003 a series of articles appeared in the *Courier-Mail* newspaper containing a number of allegations in relation to the manner in which the Brisbane City Council (BCC) dealt with the findings of the Brisbane River flood studies. The articles suggested that BCC had undertaken an ongoing cover-up of possible flood and risk levels and had acted unconscionably towards the public, who had a 'right to know' this information 'to better protect their homes and families'.

Specifically, the articles alleged that a confidential Brisbane River flood study report in June 1999 had been suppressed by the council. They said that this report contained 'alarming findings of engineers and hydrologists' to the effect that the next major flood would be between one and two metres higher than that allowed for in the Brisbane Town Plan.

They also alleged that the present Lord Mayor, Councillor Tim Quinn, was at the time responsible for planning issues and the council had 'failed to implement flood mitigation strategies recommended to protect residents from life-threatening floods'. According to the articles, the council had failed to release the June 1999 study results to those responsible for disaster management at all levels of government — local, state and Commonwealth.

The articles further suggested that BCC had adopted a 'no change' strategy despite the fact that its own expert review warned that such a strategy was poor, and the BCC had effectively misled people 'who bought, renovated and developed properties on the basis of council advice'. They alleged that property insurance coverage for flood risk might be affected and that senior officers in the council were concerned at the 'continuing cover-up'. The articles also asserted that after four years nothing had emerged to challenge the findings in the June 1999 report, and BCC's actions in failing

to release that study amounted to a 'breach of the trust' between the council and the ratepayers.

In light of these allegations, the CMC determined to investigate whether the decision not to release the June 1999 report involved official misconduct on the part of any councillor or BCC officer. The CMC's initial inquiries revealed that the BCC had not released a series of reports into flooding in Brisbane produced between 1998 and 2000. Consequently, the CMC's investigation was widened to include consideration of whether there was any official misconduct linked to the non-release of these additional reports.

On 24 June 2003 the CMC received a letter from Mr Campbell Newman, the Liberal Party candidate for Lord Mayor, complaining about the suppression by the BCC of the June 1999 report.

Mr Newman asserted:

The alleged failure on Council's part to make the general public aware of the existence and content of this report appears to be an action which has not demonstrated honesty and resulted in a breach of trust by certain currently elected representatives within the Brisbane City Council. This would appear to warrant investigation as a case of official misconduct ...

Mr Newman also stated:

One can only guess at the motives behind [the BCC] adopting a no change policy and keeping the content of the report secret from the general public as well as failing to amend building and planning laws to account for this new information.

Mr Newman suggested various possible motives, such as concerns about the impact on rate revenue, an unwillingness to make hard decisions to protect future purchasers of riverfront property, or an apprehension that taking action might be viewed unfavourably by the development community.

Outcome

The CMC's investigation has revealed no evidence of official misconduct on the part of those councillors or BCC officers who were involved in the decision not to release the June 1999 report or any subsequent reports. However, it has identified some procedural and administrative issues that warrant action by the BCC.

Additionally, the facts of the matter investigated here raise some general and important issues about the openness of government. In view of the clear public interest attaching to such matters, the final section of this report discusses these issues.

Jurisdictional background

Official misconduct is defined by sections 14 and 15 of the *Crime and Misconduct Act 2001*. In summary, for an employed officer of the BCC to commit official misconduct, the conduct in question must involve the

exercise of the person's official powers in a way that is not honest or impartial; or be a breach of the trust placed in the person as a council officer; or involve a misuse of official information or material. Additionally, the conduct must (if proved) amount to either a criminal offence or a disciplinary breach providing reasonable grounds for dismissal.

There is no regime providing for the removal of councillors for disciplinary breaches. For a councillor's conduct to constitute official misconduct, therefore, it must be capable of amounting to a criminal offence.

Local governments in Queensland have a significant degree of autonomy. Council officers and elected representatives are empowered to make decisions about a range of matters. A decision about whether or not certain information should be released into the public domain cannot fall within the CMC's investigative jurisdiction unless there is evidence that the decision was made for an improper reason such as a corrupt or other criminal purpose.

Here, it was common knowledge that the BCC had not released some flood study information. The CMC investigated why this happened, in order to determine whether there was any evidence that it was for a corrupt or otherwise similarly improper purpose, capable of amounting to official misconduct.

The CMC's investigation

Brisbane City Council cooperated fully with the CMC during the investigation and provided all files relating to its flood studies and full access to all other relevant material, including minutes and delegations registers. The current Lord Mayor and a number of councillors and BCC officers provided written statements. These statements were considered in conjunction with the material in the files and the evidence gathered by the CMC from other sources. Interviews were conducted with a number of relevant witnesses, including the current CEO. The investigation included consultation with the Departments of Local Government and Planning, and Natural Resources, Mines and Energy.

Brisbane City Council

The City of Brisbane is unique among Queensland local councils in that it has its own governing legislation and is established along political lines. It has a Civic Cabinet, comprising only 'government' councillors and the Lord Mayor, which determines policy issues before matters are referred to the full council. The BCC is Australia's largest locally governed municipality.

The Brisbane City Council consists of its members — the mayor and 26 other councillors (section 5 of the *City of Brisbane Act 1924* [the CBA]). Sometimes the expression 'the council' is used loosely as referring to a council committee or employed council staff; but the Commission does not think it proper to adopt that usage. For example, if a particular matter is said in this report not to have been disclosed to the council, this means that the 27 councillors who comprise the full council were not given it. This is

not mere pedantry. It is the council — the 27 councillors — who have all the responsibilities imposed on them under the CBA, except insofar as they choose to delegate them to others.

Some historical aspects of relevance

The City of Brisbane was established in 1924 under the City of Brisbane Act by a Labor government. The City of Brisbane resulted from the merger of two former cities, six towns, ten shires and parts of two other shires to cover an area within a 10-mile radius of the Brisbane GPO. Those boundaries remain predominantly the same today.

Commentators have noted:

The Greater Brisbane Scheme, which was first conceived in the 1890s, was the logical product of a reaction against the fragmentation of metropolitan government.¹

The council was established to oversee provision of roads, water supply, sewerage, public transport, electricity, some general health services and town planning for the City of Brisbane in a coordinated manner.

Since the inception of the Greater Brisbane Scheme, the Brisbane City Council has been an arena for party political contests. Greenwood and Laverty noted:

The intrusion of party politics into local government occurred well before the creation of Greater Brisbane but the amalgamation of 1925 accentuated political activity, if only because the prize was greater.²

A Mr Wilson MP of Fortitude Valley made the following comments about the Greater Brisbane Scheme during the second-reading debates for the CBA:

This measure is without a doubt the greatest measure of its kind that has ever been introduced in any Australian State. It is in itself a miniature parliament to govern the local requirements of what must become a very extensive and important city. The proposed council is given all the powers necessary for the development along modern lines into what should be a modern city.³

Nearly all BCC elections have effectively been two-party political contests. In this and other respects, the BCC resembles a unicameral parliament — more so than other councils.

William Jolly, Brisbane's first Lord Mayor, recommended in the first year of the BCC's operation that it would be wise to establish a 'cabinet' system of civic authority, with a small group of councillors to appoint technocrats to administer and manage Greater Brisbane's civic resources.⁴

In 1930, amending legislation inserted a section in the CBA providing for the constitution of an executive committee of the council, charged with general administration of the council's departments and making reports to council.⁵

Following the introduction of wide-ranging administrative reforms in 1940, this executive committee, by then known as the Establishment and

Co-ordination Committee, functioned as council's 'key policy making body.'⁶

City of Brisbane Ordinances, gazetted on 1 January 1972, made some provision for the organisation and functions of the council. Under those ordinances the council delegated certain powers to the E&C Committee and made it responsible for making recommendations to the full council about any matter included in the functions of the Department of City Administration. In addition, the powers and the duties of the E&C Committee included considering and making recommendations to the council on policy issues and town planning matters. Writing in 1973, JD Tucker noted that the E&C Committee 'manages the affairs of the Council in considerable detail'.⁷

In March 1985 the Liberal Party regained control of the BCC under the leadership of Lord Mayor Sallyanne Atkinson. In 1986, the state government acted at the request of the Lord Mayor to further amend the CBA. For the first time the powers, duties and responsibilities of the Lord Mayor were particularised. These powers included the power to formulate general policies concerning the government of Brisbane. Further, the amendments allowed the council to delegate its powers to the Lord Mayor, Committees or BCC officers by simple resolution rather than through the more onerous process of passing ordinances.

A much revised Local Government Act was passed in 1993. This Act reshaped the role of local governments across Queensland, while leaving the City of Brisbane governed by its own legislation except in limited circumstances. The Honourable Terry Mackenroth MP, in the second reading speech for the LGA, stated:

The opportunity has been taken in the Bill to apply a number of the reforms to the Brisbane City Council — for example, the wide charter or general competence power and the new provisions dealing with local laws and the registers of interest requirements for elected members. As the Brisbane City Council has traditionally operated under the *City of Brisbane Act 1924*, that statute is being retained. However, I propose to thoroughly review the City of Brisbane Act next year to pick up all the remaining parts of the reform agenda from the proposed Local Government Act.

A complete review of the CBA was commenced in 1994 but, with the subsequent changing of governments, was never completed. Since that time amendments to the LGA have been applied to the BCC where applicable.

Legislative framework

The governance of Brisbane at the present time is regulated by the *City of Brisbane Act 1924* (CBA), the *Brisbane City Council Business and Procedure Act 1939* and the *Local Government Act 1993* (LGA). The LGA applies to the BCC only so far as expressly provided by the LGA or another Act (LGA, s. 9). The legislation gives the council an executive role in adopting and administering policy and a legislative role for promoting good government within its area. Section 26 of the LGA, which empowers local governments to make 'local laws' on certain matters, applies to the BCC. All the councils are legislative bodies.

Section 39B of the CBA permits the council to delegate its powers by way of resolution.

Development in Brisbane is subject to a planning scheme produced by the council and approved by the Minister for Local Government and Planning, under the *Integrated Planning Act 1997*. Section 1.2.3(1) of that Act provides that:

Advancing this Act's purpose includes ...

- (e) applying standards of amenity, conservation, energy, health and safety in the built environment that are cost effective and for the public benefit.

Council

As noted earlier, the full council consists of the 26 elected ward representatives and the Lord Mayor. Council meets weekly when not in recess and makes decisions by a simple majority of all councillors, including the Lord Mayor. After each election, the council elects the Deputy Mayor, the Chairperson of Council and chairpersons for each of council's standing committees.⁸ Where one party has a majority in council, that party ensures that its own councillors attain those positions.

Section 22 of the CBA gives the Lord Mayor the power to formulate policies, control the business of government and implement those policies adopted by council. The Lord Mayor also presents council's budget and capital works program for submission to council.⁹

Council committees

At present there are two groups of council committees — the E&C Committee, also known as 'Civic Cabinet', and all other committees. The BCC's local laws contain various provisions about the membership, proceedings and record-keeping requirements of these committees.

The E&C Committee is effectively the executive arm of the council and accordingly is its primary decision-making body. It is not a bipartisan committee, being constituted by the Lord Mayor and the six chairpersons of the council's standing committees. The E&C Committee makes recommendations to the council in respect of matters included in the functions of the Department of City Administration, policy issues and town planning matters. These powers and duties have been delegated to the E&C Committee by the council.

The E&C Committee functions in three modes: 'formal', 'strategy', and 'Administration Sub-Committee'. Throughout the period of relevance to the CMC's investigation, the BCC's local laws have not distinguished between the three E&C Committee modes.

The CMC was advised that the **formal** mode of E&C Committee meetings involves considering written submissions and exercising the committee's delegations. Submissions to the E&C Committee are prepared by BCC officers and authorised by the appropriate divisional manager. They must contain a recommendation by the CEO, who manages the agenda. Formal minutes are kept.

The **strategy** mode of the E&C Committee was introduced in the mid-1990s. The CMC was advised that the purpose of strategy sessions is to

enable the E&C Committee to provide broad direction to BCC officers in relation to projects on which they are working (but not make formal decisions) after the officers present the E&C Committee with options in relation to policy development. The current CEO produces an agenda for the strategy portion of E&C Committee meetings, and keeps handwritten notes. This was apparently not the practice of earlier occupants of this office.

The CEO informed CMC investigators that divisional managers are responsible for identifying whether, following a presentation to a strategy session, a formal decision is required by the E&C Committee. Mr Barry Ball, the BCC's Manager of Water Resources, Urban Management Division, observed that he, his divisional manager or the meeting of divisional managers assess whether a formal submission or a strategy session is required on matters within his field of responsibility.

The CEO described the role of the **Administration Sub-Committee** as 'an informal subcommittee of Civic Cabinet which gives direction on planning matters before they are formally submitted to Civic Cabinet for approval or referral to council itself'. Membership of the Administration Sub-Committee is not confined to E&C Committee members, and may include 'backbenchers'. The CEO advised that in 1999 no records were kept of the Administration Sub-Committee's deliberations.

After the 1994 election, the BCC began to move away from its system of standing committees. The present BCC committees (other than the E&C Committee) were formally established by the council on the advice of the E&C Committee in 1997, after a significant restructure of BCC divisions. No handbook or guidelines exist in relation to these committees; however, each committee has a charter setting out the committee's area of responsibility. Unlike the E&C Committee, these are bipartisan committees, although their chairperson must be a member of the E&C Committee. The standing committees do not make policy decisions of significance but they do make recommendations to the council, which are piloted through the council meetings by the respective chairpersons.

The current BCC committees are:

- Development and City Business
- Transport and Major Projects
- Community Policy
- Finance
- Customer and Local Services
- Urban Management and Sustainability.

By resolution of the E&C Committee, relevant purposes of the Urban Planning (now Urban Management and Sustainability) Committee include considering policies aimed at improving the quality of Brisbane's water and controlling flooding and runoff. The name of this committee was changed in 2003, and some minor amendments were made to its charter.

Council divisions

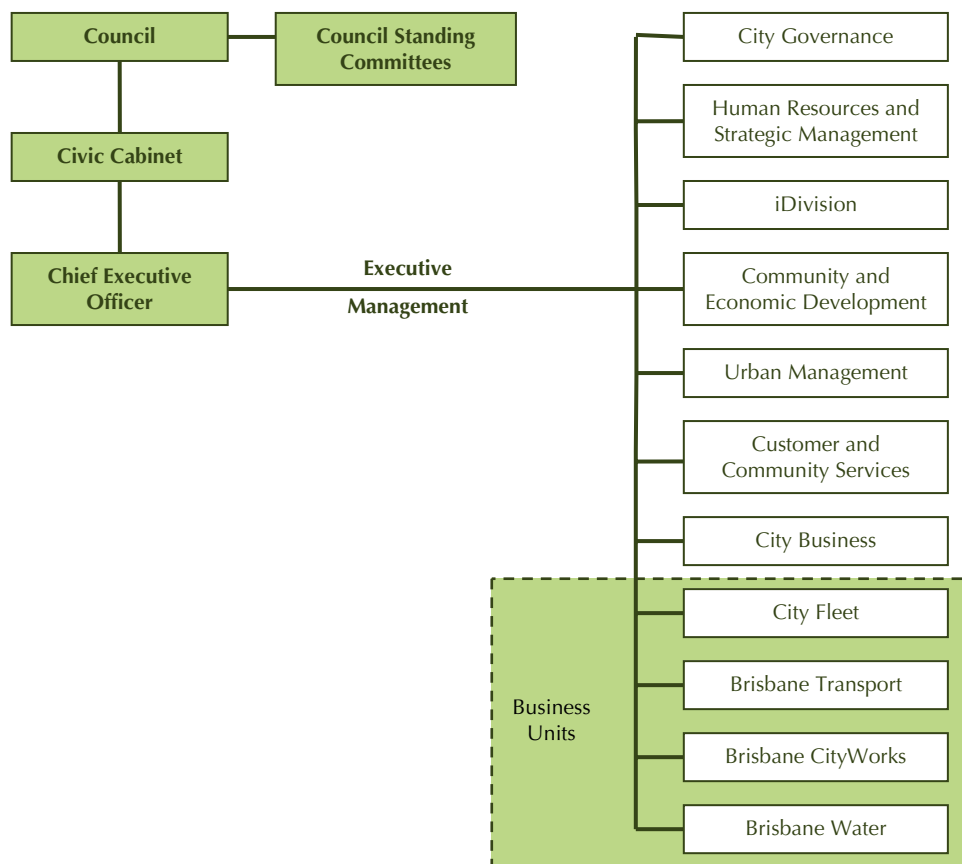
Until 1997 the BCC's Department of Works held responsibility for flood management. (It was that department which commissioned the initial flood study.) In August 1997 a significant restructure of the council occurred,

which included the reorganisation of its divisions into ‘purchaser’ and ‘provider’ groups.

The Urban Management Division (UMD) of the BCC is the purchaser division responsible for planning and infrastructure. Water Resources, which was created after a merger of the Waterways Branch and Infrastructure Management Branch in about June 2002, is the branch of the UMD responsible for policy and purchasing, and for funding all water-related matters for the BCC, including flood management.

City Design is one arm of City Business, a provider division. City Design provides consultancy services to purchaser divisions on a preferred supplier basis. Several key staff involved in the commissioning of the initial flood study moved to City Design after the 1997 restructure.

Current structure of the Brisbane City Council



External agencies

There are various external agencies with roles in the management of flooding in the Brisbane area, including the South East Queensland Water Corporation Limited (SEQWater) and the Department of Natural Resources, Mines and Energy (DNRME).¹⁰

SEQWater owns the Wivenhoe and other dams and is the region’s major supplier of ‘raw’ water.

The DNRME undertakes planning in relation to water supply and oversees the safety of large water-supply dams, including Wivenhoe. The DNRME officers explained that their focus is on dam safety; hence the flood events of interest to them are extremely rare events such as those that may cause water to 'over-top' a dam, causing it to collapse. The DNRME's other regulatory functions in relation to flooding are relatively limited. The department does not have a direct supervisory role in relation to the conduct of flood studies or floodplain management by any local government, but it does have other roles in this area. These include:

- providing technical advice to the Department of Local Government, Planning, Sport and Recreation in relation to applications by local governments for funding for flood mitigation schemes
- developing best-practice policies, both in Queensland and nationally, in relation to flooding
- contributing to the production of the flooding sections of relevant state planning policies
- carrying out technical modelling and mapping work.

In addition, the DNRME has recently prepared a State Flood Risk Management Policy Discussion Paper and undertaken public consultations in relation to this paper.

Ipswich City is located on the Bremer River and is bounded to the north by the Brisbane River. Serious flooding can occur in the Ipswich area as a result of backwater flooding from the Brisbane River, so the outcomes of any Brisbane River flood study are of particular interest to the Ipswich City Council (ICC) and the Ipswich Rivers Improvement Trust.

BCC files show that ICC officers and the Ipswich Rivers Improvement Trust were kept informed of the progress of the BCC flood study. On 28 May 1999 Mr Barry Ball, who was then Manager, Waterways, Urban Management Division, provided the Secretary of the Ipswich Rivers Improvement Trust with 'one copy of the complete *Draft Brisbane River Flood Study (1999) — Final Report — Volumes 1, 2 & 3*'. The letter on file included the advice that this report had not been endorsed by the BCC and should not be disseminated to the public 'at this stage'. The ICC also provided the BCC with a copy of the draft final report of the Ipswich Rivers Flood Study, and in October 2000 officers from the two councils met to discuss the Brisbane River flood studies. BCC files record that the councils have continued to share information in relation to the progress of their flood studies.

The evidence

The Q100

The Q100, or 1-in-100 year flood event, is a hydrological estimate of the 1 per cent annual probability that a flood of a given size or larger (also referred to as the design flood) will occur. The Q100 is also known as the 1% Annual Exceedance Probability (AEP) flood. It is not an estimate of the largest flood that could occur (which is the probable maximum flood). Flood studies produce estimates of flood flows, measured in cubic metres per second, which are then converted to estimated flood levels, measured in metres. It must be noted that the extent and frequency of flooding cannot

be predicted precisely; all that can be given are estimates and statements of probability.

Documents located on BCC files suggest that some time after the 1974 floods, the E&C Committee resolved to adopt an estimate of the mitigated 1974 flood (i.e. adjusted to allow for the addition of Wivenhoe Dam) as the defined flood event for the Brisbane River. A 'defined flood event' is explained, in the relevant State Planning Policy, as being the flood event adopted by a local government for the management of development in a particular locality.

In 1984 a study was conducted to assist in the refinement of operational rules for the Wivenhoe Dam. This study assessed the Q100 flow as 6800 cubic metres per second (m³/s) at the Port Office Gauge. The Q100 level at the Port Office Gauge estimated by this study was 3.8 m AHD.¹¹ The BCC later adopted development levels which reflected this estimate of the Q100.

In 1992 the DNRME released results of a study to apply the temporal rainfall distribution pattern suggested in the 1987 publication *Australian rainfall and runoff* (a guideline document published by the Institution of Engineers, Australia). This study, which was undertaken for the South East Queensland Water Board for dam safety purposes and not specifically for a Q100 event in Brisbane, produced a Q100 estimate at the Port Office Gauge of 9380 m³/s. This in turn led to a re-examination by council officers of the risk of the Brisbane River flooding and to a decision that a comprehensive flood review was necessary.

The 1998 Brisbane River flood study

Following a tender process, in November 1996 the engineering firm Sinclair Knight Merz¹² (SKM) was commissioned by the then Works Department of the BCC to undertake this review, in the form of a Brisbane River flood study. The brief for the study was a lengthy document prepared by officers of the Waterways section of the BCC. It prescribed that the primary objectives of the study were to 'design flood levels along the river and develop a flood forecasting model'. The brief included a requirement for public consultation. The BCC's letter of engagement to SKM indicated that the study was to be completed within 50 weeks. Documents on BCC files record that, in accordance with the terms of their brief, SKM made regular contact with council officers during the course of the study.

During the study Mr Ken Morris was the BCC's primary contact officer. Mr Morris, a Works Department officer at the time the study was commissioned, took on the role of Principal Engineer, Water Environment Section, City Design, when this Division was created in 1997. He recalled receiving a telephone call from the consultants to provide him with advance warning of the increased flood level estimates produced by the study. Mr Morris discussed the matter with the consultants, and he formed the opinion that the results were accurate. This information was later passed on to Mr Ball, who was then the BCC Works Department's Director of Planning and Development. Contemporaneous documents in BCC files show clearly that the preliminary advice from SKM about their estimated flood levels generated debate among the relevant council officers. For example, on 31 October 1997 a Waterways engineer wrote to the consultants, as follows:

As discussed in our recent meeting, there is presently some debate going on within Council with regard to flood levels calculated for the Brisbane

River. Consequently, it is requested that preparations for the public display portion of the study be placed on hold until further notice.

An undated note on City Design's file notes that Mr Ball had queried the levels and was seeking information about the assumptions used in their calculation. Other records reflected discussion among BCC officers as to the applicability of areal reduction factors to the Brisbane River catchment.¹³

On 23 February 1998, what is described in correspondence as the 'final draft' report of the study undertaken by SKM was received by the BCC's Waterways section. This study estimated a peak flow at the Port Office Gauge of 9560 m³/s, with an accompanying flood level estimate of 5.7 m AHD (1.9 m higher than the 1984 estimate upon which the council's development levels were based). BCC files reveal that from April 1998 SKM carried out additional flood forecasting and mapping work. This occasioned a delay in the completion of the study and the final report was received on 24 June 1998.

Mr Ball told the CMC that he had a number of concerns in relation to the report, which were canvassed with City Design. In summary, these related to the methodology used to produce Q100 flows, and whether the mitigating potential of the Wivenhoe Dam had been properly taken into account. Documents located in BCC files confirm that the concerns of Mr Ball and other Waterways officers were raised with City Design.

On 14 August 1998 City Design and Waterways officers met to discuss 'Scoping of further investigation and clarification of relevant issues'. A paper associated with this meeting includes the following comments:

The results from the Study have raised some concerns amongst the BCC stakeholders in relation to a number of issues, e.g. significantly higher flood levels, higher flows and the proposed location of the Flood Regulation Lines. Subsequently, Waterways Program discussed these with City Design and City Design have responded on a number of occasions in the past few months, clarifying/explaining the technical complexities involved in the Study and the implications of the new information from the Study.

An action plan was developed as a result of this meeting and tasks were allotted to nominated officers.

Other documentation located during the investigation provides further evidence that the BCC was undertaking further inquiries in relation to the study. For example:

- An internal Waterways e-mail dated 24 September 1998 shows that Waterways was at that time discussing whether BCC approval, and an expert review of the methodology used in the study, should be sought.
- In October 1998 SKM was contacted to provide further information.
- Professor Russell Mein, a recognised expert from Monash University, was engaged by BCC officers in November 1998 to provide an independent review of the report and the methodologies used.

On 10 December 1998 Professor Mein's final review report of the study was supplied to the Waterways branch. The review concluded:

The correct hydrologic strategy for determining design floods has been used in the Study (SKM, 1998). However, an apparent incompatibility between rainfall-based and flood frequency estimates of the Q100 flood, raises some uncertainties about the Study outcomes. Conservative assumptions in key input variables point to the likelihood that the magnitude of the Q100 obtained in this study is an over-estimate.

The report also contained recommendations for the work thought to be needed to address the highlighted issues of concern.

Mr Ball characterised the nature of his discussions with City Design in 1998 as:

good professional discussions ... there were some different perspectives on how these outcomes might be analysed ... I would suggest that in any discussion like that people have strong professional views and opinions and that was part of the process and that was really one of the reasons why I felt I needed to get a peer review who had that other element of expertise ...

He considered that the flood report was not in a form that was sufficiently 'final' for him to refer it on for consideration by the E&C Committee and council at that time. Mr Morris agreed that there was a difference of opinion between Mr Ball and himself in relation to the accuracy of SKM's Q100 predictions. BCC files confirmed that this difference of opinion principally involved issues about how rainfall information had been used in the report.

Further reports

In February and March 1999 Mr Morris provided the Waterways Program with documents entitled *Additional studies on Brisbane River — draft report* and *Brisbane River flood study overview report*. In June 1999 City Design provided Waterways with another report, entitled *Brisbane River flood study*. It was this report, without its appendixes, which was published by the *Courier-Mail* in June 2003. On the basis of further investigations, City Design estimated that the Q100 flood flow at the Port Office would be 8600 m³/s, in contrast to the 6800 m³/s estimated in the 1984 study and the 9560 m³/s estimated in SKM's 1998 study. The report stated:

At the Port Office Gauge the flood level corresponding to the calculated 1 in 100 year design flow ... is estimated to be 5.0 m AHD. The current development design flood level, based on the 1984 study is 3.8 m ... the flood levels calculated in this study vary from about 1.0 m to almost 3.0 m higher than the current development design flood level in Brisbane.

In contrast to the copy of the report that was published by the *Courier-Mail*, the copy on the BCC file was stamped 'Draft'. Mr Ball advised that in his view the June 1999 City Design report failed to properly consider some of Professor Mein's recommendations and for this reason the report did not meet his requirements; so when he received the report he asked for a 'Draft' stamp to be placed on it. His views about the June 1999 report were communicated to City Design. Mr Morris agreed that this was the

case, although he believed that City Design had ‘painstakingly’ addressed each of the expert’s recommendations. The BCC’s files reveal that a number of meetings were held between Waterways and City Design officers in the second half of 1999 and further work was pursued.

In December 1999 City Design provided Waterways with a further report entitled *Further investigations for the Brisbane River flood study*. This report contained the following assessment:

The revised flood estimate of the 1893 flood discharge reduces the estimate of the Q100 flood by 600 m³/s ... Q100 flood height is 4.7 m AHD at the Port Office Gauge.

Mr Ball told CMC investigators that he considered this report still did not address all of Professor Mein’s recommendations, and more detailed discussions were held between City Design and Waterways. More action plans were prepared in December 1999 and the early months of 2000. Some of the tasks allocated to BCC officers involved liaison with the DNRME.

On 6 October 2000 a Brisbane Flood Study Technical Review Meeting was held. It was attended by various BCC officers and relevant people from other agencies. A ‘background paper’ was delivered to participants. The paper also included the following comments:

This technical workshop is considered a critical step in the assessment of the flooding investigation we have undertaken. The outcomes may be to recommend acceptance of the study in its present form, or that some additional technical analysis be undertaken. The outcome we are seeking is a robust technical analysis, which can be used as the foundation for updating floodplain management along the Brisbane River corridor.

An action plan and notes for this meeting appear on the Urban Management Division file. The notes include a reference to a study then being undertaken by the DNRME for SEQWater, using some of the methodologies Professor Mein had raised in his report. Mr Ball explained to the CMC how this impacted on his decision-making process:

We got to a stage at that workshop that we really needed to start making decisions ... about where we were going to progress from here and what the outcomes were about ... at that meeting [the DNRME] said we’re currently working on this and we’ll have something around December for you so I mean that was a reasonable timeline so I suppose the two elements of it — one saying the [Q100] number might be higher or lower but it’s going to come in close and the fact that we’d have that sort of information within a few months were enough for me to say, well let’s wait for that data and ... we can put it into the model because this is the same model that SEQWater are going to use.

BCC files confirm that, in the year following the October 2000 Workshop, council officers persistently contacted the DNRME and SEQWater, by telephone, e-mail and letter, with a view to obtaining results of the study that the DNRME was undertaking.

On 2 November 2001 another Brisbane River flood study meeting was held. There is evidence that at this meeting a DNRME officer spoke about some preliminary results from the department's study. Mr Morris told CMC investigators that he took issue with those preliminary results, and further discussions followed. On 18 December 2002 a BCC officer forwarded complete copies of the 1998 and June and December 1999 flood reports to the DNRME. The covering letter stated:

As you are aware the status of this report is that it has not been accepted by Council and is therefore not for publication.

There is also evidence that, while awaiting the outcome of the results of the DNRME/SEQWater study, BCC officers took a number of other actions with a view to clarifying the results of their flood study — for example, developing an understanding of, and applying, the operating rules for Wivenhoe Dam to the context of their study; and considering the application of the State Planning Policy on Natural Disaster Mitigation. In February 2003 a further Brisbane River Flood Study Project Plan was produced by Water Resources officers. Item 3 on the plan was 'BCC Flood Study'. Some of the issues and action items listed were:

- updating the BCC Flood Study (timeline March)
- 'consultation' — including the delivery of a presentation, outlining a proposal, to the E&C Committee in strategy mode (timeline May)
- 'Public Awareness', including the briefing of 'Industry and Public', 'through the City Plan Amendment process and Flood Awareness Strategy' (timeline June).

Mr Morris informed CMC investigators that shortly before the *Courier-Mail* ran its series of articles in mid-2003 he had a discussion with Mr Ball in relation to where they were going with the flood study. Mr Morris said Mr Ball informed him that as soon as he had a definitive answer he would be reporting to the E&C Committee, and Mr Ball gave a consistent version as to his intentions in relation to the finalisation of the flood study. Mr Morris told CMC investigators that he was happy with Mr Ball's response, as a decision would be made and 'people would be informed about what the expectations would be ...'.

As noted above, DNRME officers were interviewed by the CMC. They explained that some preceding events, such as a review and follow-up work by the Bureau of Meteorology on estimated probable maximum precipitation levels, generated activity on the part of owners of large dams, including SEQWater. This included a joint project between the DNRME, the Bureau of Meteorology and other state agencies to apply these new figures in order to assess dam space. Wivenhoe was one of the test dams for this study, which had commenced before the October 2000 workshop held by the BCC.

A DNRME officer interviewed by the CMC noted that the 1987 version of *Australian rainfall and runoff* did not include areal reduction standards, and these standards were probably not available when the BCC commissioned the SKM study. He told the CMC that the Cooperative Research Centre for Catchment Hydrology instigated a program for research into areal reduction factors and began applying it to Victorian conditions.¹⁴ Professor Russell Mein was the director of the research centre at this time and was intimately involved with this research.

Ultimately the DNRME, in the discharge of its dam safety responsibilities, considered that it was necessary to develop areal reduction factors for Queensland conditions. This project was funded by about eleven organisations, one of which was SEQWater. The DNRME officers explained this was the first time that this methodology had been applied to the tropics. It had initially been developed in the United Kingdom and later applied in the United States of America, but only to catchments up to 1000 km² in size (the Brisbane River catchment is approximately 14 000 km²). This study was a component of a national study. The DNRME officers explained that, as for any methodology of this type, there is a fairly lengthy development testing phase.

DNRME Water Assessment Group officers were also involved in a parallel review of *Australian rainfall and runoff*. One of the Water Assessment Group's officers was a reviewer of a draft version of Book VI of *Australian rainfall and runoff*, which deals with estimating events from Q100 to probable maximum precipitation. In relation to this document, which was issued in October 1998, a DNRME officer interviewed by the CMC commented:

It did represent a significant shift in philosophy of how you might treat the whole continuum of flooding ... one of the key elements of it was the adoption of the Forge Method ... that was ... endorsing the outcomes of the Victorian studies and recommend[ing it be] applied in other states.

Water Assessment Group officers told the CMC that a number of issues had been raised with the Institution of Engineers in relation to proposed further amendments to Book VI of *Australian rainfall and runoff*.

A DNRME officer explained the reasons for the delay in the finalisation of this study and said that in his opinion the relevance of the DNRME study to the BCC's Q100 estimate was that:

... it gave them an areal reduction factor so it gave them a proper estimate of rainfall so that they can do the rainfall to runoff translation ... they were doing the best they could with the methodologies that they understood to be the best at the time. It's just unfortunate that they started it right in the middle of an extensive methodology revision, which is pretty rare ...

This DNRME officer confirmed that BCC officers contacted his group on a fairly regular basis, requesting updates on the progress of this study.

The CEO has advised that legal advice was not sought by the BCC at the time about the decisions not to disclose the flood reports or their findings.

The CEO was asked why the Urban Planning Committee was not involved in considering the flood matters (beyond the matters being brought to the attention of its Chair, Councillor Quinn, who was then the Deputy Lord Mayor and on the E&C Committee). In response, the CEO advised that issues relating to the adoption of an appropriate Q100 flow and other flood measurement standards are established by the BCC City Plan and associated planning and other policies. On that basis, issues in connection with possible amendments to the City Plan would not normally go to the Urban Planning Committee, but would go directly to the council via the E&C Committee.

The involvement of councillors in decisions not to release the study results

The earliest record on BCC files of contact between BCC officers and councillors in relation to the progress of the study notes that, in around August 1998, there was a meeting between Councillor Quinn (then Deputy Mayor) and Mr Ball. Mr Ball told CMC investigators that, while he had no particular recollection of this meeting, he had regular meetings with chairpersons of various BCC committees. He said:

I did have regular contact with Councillor Quinn and in those times we dealt with a range of topics and I do recall keeping him broadly informed of the flood study and where things were at ... but it wasn't something that was on a regular basis, as part of a fixed agenda.

Other documentary evidence established that as of late 1998 it was intended that a presentation would be given to the E&C Committee (in strategy session). In January 1999 the then CEO told the UMD and City Design officers that the study should not be put before the E&C Committee until he could be assured that it was accurate. The e-mail in which this direction is recorded also makes reference to a proposal to use the Office of the Lord Mayor to raise general flood awareness. It is unclear whether such action would have involved the then Lord Mayor personally.

Statements provided to the CMC by the current Lord Mayor, Mr Ball and Mr Michael Kerry¹⁵ in relation to this matter all refer to a meeting held on 5 May 1999, at which other Waterways officers were also present. Mr Ball explained the reason for this meeting:

I was still concerned that the Mein review recommendations had not been fully incorporated in the draft June 1999 report by City Design. I was also concerned about the consequences of releasing data about an increase in flood levels that was potentially inaccurate. I sought policy direction from Councillor Tim Quinn, the then chair of the Urban Planning Committee, who had policy responsibility for these matters.

Councillor Quinn stated that he understood the study discussed during this meeting was 'due to be completed in June 1999'.

A BCC officer who was then the Principal Policy Officer, Waterways, told CMC investigators:

It wasn't a full presentation. It was just sit down around the table and talk about what we're doing and what direction we're heading and what thoughts [the then Deputy Mayor] might have.

BCC officers used PowerPoint notes during this meeting. These notes included a brief discussion of the history of flood studies and the advice:

Q100 year flood levels determined by this study are 1 to 3 m higher than current development control levels.

This is consistent with the results reported in City Design's June 1999 report, but inconsistent with Councillor Quinn's recollection, which is that he was told the projected discrepancy was 1 to 2 m.

The notes also briefly canvassed policy options for responses to the study. The notes did not include any suggestion that the BCC's 1999 Q100 results could be less than accurate.

Councillor Quinn's recollection of this meeting was:

I was ... informed that Barry [Ball] had questions and concerns about the data, methodology and conclusions to be reached by that report and that further review should be undertaken before the findings could be accepted as accurate.

Councillor Quinn stated that he accepted Mr Ball's expert advice and 'agreed to raise the issue with the Lord Mayor'.

The copy of these notes that appears in the BCC file includes the handwritten notes 'Tim Quinn will talk to Lord Mayor' and 'Waterways to prepare plan showing existing and future flooding'. No other record of this meeting appears on the files. Councillor Quinn stated that he did in fact speak with the then Lord Mayor 'who agreed that the matter should come to Civic Cabinet for discussion and direction'.

Records on BCC files suggest that Waterways officers met with Councillor Quinn in about July 1999 to again discuss the progress of the Brisbane River flood study.

Mr Ball informed the CMC that he was required to attend either an E&C Committee strategy session or Administrative Sub-Committee 'sometime in mid to late 1999'. He used a PowerPoint presentation 'similar' to the one he used during his meeting with Councillor Quinn on 5 May 1999. He stated that he made the following recommendations:

- (a) the reports to date of increased flood levels did not fully accommodate the recommendations of Professor Mein's review and were therefore likely to overestimate the Q100 event and therefore should not ... be relied upon to change existing flood levels;
- (b) more work needed to be done to get a more definitive Q100 flood level; and
- (c) as a consequence it was not appropriate to alter official development control levels at this time as per the recommendation in the Draft June 1999 report.

As noted above, the PowerPoint presentation used at the May 1999 meeting did not include Mr Ball's concerns in relation to the new Q100 estimates. Councillors therefore relied on his spoken recommendations, and Mr Ball's recollection is that these were accepted. Mr Michael Kerry's version of this interaction with the E&C Committee is very similar to that provided by Mr Ball.

Those councillors who could still recall this meeting explained their recollections in general terms of being advised by the BCC officers to the effect that the study was 'inconclusive', that valid concerns existed, that further work was being undertaken, and that it would be inappropriate to release the information while this work was progressing.

No record of this meeting or of the committee's decision was made by UMD officers. There is no record of the E&C Committee's decision being conveyed to City Design. This absence of records reflects the general lack of record-keeping practices at that time in relation to such meetings.

Councillor Quinn recalled that the E&C Committee again discussed the progress of the Brisbane River flood study 'informally' after the March 2000 council elections. Again, as was the usual practice, this meeting was not minuted or otherwise recorded. Councillor Quinn stated:

The meeting was informed [by the then Lord Mayor] that the review of the flood study results was under way and that there were still valid concerns over the accuracy of the 1999 results. Cabinet [the E&C Committee] supported the continuation of the review work.

Councillors who provided statements to the CMC and could recall this discussion provided similar versions. Councillor Sharon Humphreys noted:

There was a discussion about whether the information should be released to the public. The general consensus was that it would be inappropriate to release the information while the further investigations were under way.

In October 2001 the *Courier-Mail* published an article suggesting, on the basis of information obtained from the council through FOI, that current levels of development could not be maintained unless additional measures were taken to cater for stormwater run-off. In response to this article an internal briefing paper was prepared by Mr Ball, for the attention of Councillor Quinn, providing a history of the Brisbane River flood studies from the 1998 SKM report onwards. The content of the briefing paper was consistent with the documentation held in BCC files and emphasised that the DNRME information was necessary before the BCC officers could arrive at a credible and conclusive position. The BCC files do not reveal whether this information (or part of it) was delivered to the then Deputy Mayor or released to the *Courier-Mail*.

Mr Ball recalled that in January in at least two different years the *Courier-Mail* had made requests for information in relation to creek and river flood studies. He said that in response to these requests he took copies of flood study work to the Lord Mayor's office. He told the CMC:

I may have left them there on one of those occasions but I think the others I brought them back and I really heard no more about it.

Councillor Quinn further stated:

I was kept informed from time to time by council officers of the progress of the review and was aware of the lengthy delays in securing better data from the DNRME rainfall study. There was no further discussion by Civic Cabinet in the issue before June 2003.

Mr Ball confirmed that after his 1999 presentation to the E&C Committee he did brief Councillor Quinn on occasions in relation to the progress of the Brisbane River flood study, but he was unable to provide the CMC with specific details as to the dates or content of these briefings. Such details are not recorded in the BCC files, but there is reference to planned

meetings with Councillor Quinn in several of the action plans prepared by BCC officers in relation to the flood study.

Present status of the Brisbane River flood study

On 27 June 2003 the DNRME provided the BCC with preliminary results in relation to its study. Mr Ball then engaged SKM to conduct further work with a view to finalising the BCC's Q100 assessment. After consultations with the Lord Mayor, Mr Ball also engaged an independent panel of experts to review the revised August 2003 Q100 flow and level estimates provided by SKM. This panel comprised Professor Mein (Chair); Professor Colin Apelt, former head of the Department of Civil Engineering, University of Queensland;¹⁶ Dr John Macintosh, Chairman of Engineers Australia National Committee on Water Engineering;¹⁷ and consultant Erwin Weinmann, Deputy Director of the Cooperative Research Centre for Catchment Hydrology and co-author of Book VI of *Australian rainfall and runoff (estimation of large and extreme floods)*.

The CMC has been provided with a copy of the report of the independent panel, dated 3 September 2003. The panel held discussions with SKM, City Design and the DNRME. The panel's assessment was that 'the appropriate technical processes have been followed in this study'. And the panel concluded that, on the basis of the available evidence, the best current Q100 estimates are a 6000 m³/s flow and a 3.3 m AHD level. The panel observed:

A quite plausible range for the Q100 flow is 5000 to 7000 m³/s and for the Q100 level, 2.8 to 3.8 m AHD. It seems certain that the position of best estimates in the respective ranges can be more precisely determined, and the width of these ranges could be significantly reduced, with further investigation as outlined [later in the report].

The panel recommended that the 2003 DNRME study be independently reviewed.

A presentation outlining the panel's findings was made to an E&C Committee strategy meeting on 27 October 2003. A formal submission was put before the E&C Committee (in formal mode) on 24 November 2003. The E&C Committee recommended that the full council adopt the panel's Q100 estimate; and at its meeting on 2 December 2003 the council resolved to do so. The council also resolved to maintain current development control levels, which are based on the 1984 Q100 flow estimate of 6800 m³/s.

Water Resources officers have advised the CMC that they are currently investigating a number of the panel's recommendations for further work.

Assessment of possible official misconduct

The CMC's investigation has not revealed any evidence of official misconduct on the part of councillors or BCC officers involved in the decision not to release the June 1999 City Design report. Similarly, no evidence of official misconduct has been discovered in relation to the non-release of the 1998 or December 1999 Brisbane River flood study reports.

It is clear that the BCC did not release this material to the general public, and the above discussion sets out the evidence as to what the relevant councillors (i.e. those on the E&C Committee who did know of the material), and BCC officers, say were the reasons for this. However, there is no evidence capable of supporting the view that the failure by the BCC to release the material was in any way a result of any corrupt or other similarly improper purpose, such as could ever amount to official misconduct. In arriving at this determination, the Commission has noted all of the evidence and particularly the following important points:

- SKM was commissioned in 1996, after a tender process, to undertake the study. The brief to the consultants was comprehensive, and directed them to appropriate sources of information external to the BCC. In this process external agencies were informed that the study was taking place.
- Throughout the relevant period BCC officers shared information about the study with relevant external agencies.
- It is clear that genuine professional concerns existed within the BCC as to the accuracy of the initial Q100 estimates provided by SKM. As early as December 1997, before the BCC received the draft SKM report, Mr Ball had raised concerns about areal reduction factors not being applied. The concerns were held by a number of BCC officers, who supported the position ultimately put forward by Mr Ball as the responsible manager.
- Significant and documented action was taken to explore these concerns. In dealings with relevant external agencies BCC officers conveyed their concerns about the contents of the various flood reports.
- There is no evidence that flood study information was manipulated by BCC officers or that those officers, in undertaking their reporting to members of the E&C Committee, sought to conceal information. The robust discussion among BCC officers in relation to the flood studies is well documented and the evidence indicates that the E&C Committee (although not the council) was advised of the general nature of the officers' concerns and the action being taken. There is no evidence that the E&C Committee acted against the advice of the relevant senior BCC officers, or that any relevant BCC officers acted outside their authority.
- The time taken in respect of the DNRME study was a major factor in the delay in the BCC's handling of the study. The extent of the delay in finalising this study could not have been anticipated initially. There is evidence that, from around late 2000, BCC officers had received preliminary advice that this study would produce an estimate close to the then Q100 flow, and that they would receive confirmation of the advice in a matter of months. For the reasons outlined above, the DNRME study was not finalised until much later — in June 2003. During this time BCC officers periodically followed up the progress of the departmental study.
- There is no evidence that any BCC officers were ever pressured or unduly influenced in their approach to these matters, or that their exercise of professional judgment was improperly overridden by any councillor(s) or other BCC officer(s).

However, the evidence arising from the investigation has drawn attention to a number of procedural concerns in relation to the BCC's decision-making and administrative processes, such as the lack of recordkeeping for

the E&C Committee meetings. These issues are addressed in the next section of this report.

Also, these matters raise some important issues about the nature of the BCC's processes and the openness of government. In view of the clear public interest attaching to such matters, the final section of this report discusses these issues in more depth.

Finally, it should be noted here that the evidence is not capable of establishing who released the June 1999 City Design report to the *Courier-Mail*. All of the officers interviewed denied any knowledge of, or involvement in, this action. Many people had access to the relevant information and there is no evidence capable of narrowing the field of possible suspects. On the current state of the evidence, the Commission is of the view that this issue is not capable of further investigation of a productive nature.

Procedural recommendations

Local governments are responsible for providing a wide range of services and regulatory functions. Although the CMC has found no evidence of official misconduct by any person, it must be acknowledged (as a general proposition) that some of the processes of local governments, particularly those associated with planning and development activities, may involve a risk of misconduct.

Flood analysis and floodplain management are key components of the planning process. The discretionary role of councillors and council officers in resolving the issues that will arise in this area will necessarily involve the exercise of professional judgment and policy considerations, which makes them potential targets for improper approaches. As a general statement, it can be said that there will always be some level of risk that decisions could be biased or manipulated in some manner due to misconduct. However, the level of risk can be significantly reduced by adopting an appropriate regime of accountability, incorporating effective reporting mechanisms that demonstrate the competence and objectivity of professional assessments.

Recognised misconduct prevention measures in this area include good recordkeeping, appropriate 'risk management' strategies, adequate supervision, and effective review processes, including independent checking and verification procedures.

This investigation identified some failings in the BCC's recordkeeping. There was no material — such as agendas, minutes, or documented records of decisions or the like — that could provide direct evidence of the E&C Committee's consideration of the flood studies and the decisions not to release information. In the absence of such material, the CMC found it necessary to go to other evidentiary sources, such as file records and witness accounts, to establish what the E&C Committee was advised and what action it took.

Additionally, there was a lack of other contemporaneous documentary material that could provide evidence of the BCC's 'risk management' processes leading to the decision not to release the report. There was a lack of material clearly reflecting the level of consideration of the issues that were (on other evidence) relevant here. Such issues included:

- the consequences of any delay in completing the further work thought necessary to arrive at an accurate picture of potential flooding levels
- whether formal legal advice should be sought about whether any legal liability might be incurred by the BCC
- the possibility of adverse publicity
- the lack of public confidence that might result from the non-disclosure or late disclosure of the report.

In the circumstances, although the E&C Committee was advised about the action being taken by BCC officers, there was no clear proposal and formal decision taken by the E&C Committee to reflect its position of not releasing the flood study information.

Other than in these respects, the Commission considers that generally BCC documentation was reasonable and reflected a clear and effective separation of functional roles (between the BCC officers and the E&C Committee), and that BCC coverage of policy, procedural and contract matters was good. However, in view of the evidence arising from the investigation, the Commission has some recommendations for consideration by the BCC, which are designed to address the problems mentioned above, to further enhance the BCC's operations, and to minimise potential misconduct risks. Those recommendations are as follows:

- That (while the CMC notes the provisions of the current BCC local laws that relate to council committees and the E&C Committee) the BCC review and clearly define the operational protocols and delegations of BCC committees, and in particular the E&C Committee.
- That, as part of this process, the roles of the different 'modes' of the E&C Committee be clearly defined.
- That the BCC adopt suitable recordkeeping practices for the E&C Committee when it is functioning in 'Strategy' and 'Administrative Sub-Committee' modes. While the precise nature of the records that should be kept is a matter for the BCC to determine, this could take the form of maintaining agendas (as the CEO does now) and records of decisions. Since the E&C Committee in strategy mode deals with issues of clear importance, the Commission is of the view that better recordkeeping is necessary to capture the decisions that are made, and also to provide some continuity if the membership and/or control of the E&C Committee changes.
- That the BCC review its documentation standards and file management procedures; the objective of this review being to ensure that the council uses the most appropriate file management systems to provide high levels of traceability and integrity in records management.
- That, as part of this review, the BCC's document classification system and information protocols be examined and appropriate protocols developed for handling information that is considered to be of a confidential nature.
- That in due course the BCC examine the effectiveness of current staff induction and training programs in providing the necessary skills for the maintenance of effective and auditable records.

Open government

Issues for the CMC

The CMC has before it complaints about non-disclosure of information concerning Brisbane River flooding studies. As noted above, the investigation of those complaints has not revealed evidence of official misconduct on the part of any councillors or BCC officers who were involved in the decisions not to release the June 1999 study or any subsequent, related reports. The reasons given by the relevant witnesses as to why the reports were not released to the full council or the public are set out above. Although there is no evidence that any corrupt or other improper purpose suggestive of official misconduct motivated these decisions, it remains that the content of the studies was not disclosed to all councillors, nor to the public, prior to the *Courier-Mail's* articles.

Issues about openness in government are of public interest and critical importance, particularly to a body such as the Commission. One of the main purposes of the statute under which the CMC was established is to improve the integrity of the public sector (*Crime and Misconduct Act 2001*, s. 4[1]); and the integrity and accountability of the public sector depend in part on the extent to which its actions are open to public scrutiny. The point has been well put by Transparency International:

Informed judgment and appraisal by public, press and Parliament alike is a difficult, even fruitless task if government activities and the decision-making process are obscured from public scrutiny.¹⁸

The CMC is very conscious that it has an important function of preventing misconduct in the public sector and that it is to perform this function, among other ways, by making recommendations to units of public administration and by providing information to the general community (*Crime and Misconduct Act*, s.24 [e] and [f]).

As far back as 1976, the Report of the Royal Commission on Australian Government Administration, in discussing public access to information in the hands of government agencies, acknowledged (in paragraph 10.7.20):

While there is no simple solution to the problems of determining what can properly be withheld, the general sentiment and expectations of the community have been changing consistently in the direction of requiring more openness and access to information gathered and held in its administration.

With these considerations in mind, the Commission has decided in this report not to confine itself strictly to advising of the outcomes of the precise complaints that were made, but also to draw attention to the extent to which, in this instance, information was admittedly withheld both from the general public and from several of the 27 councillors who comprise the Brisbane City Council.¹⁹

In the Commission's view, it seems desirable to do this in order to encourage debate on the desirability of such practices. The Commission notes that it has an overriding responsibility to promote public confidence in the integrity of units of public administration (*Crime and Misconduct Act*, s 34[d]) — the Brisbane City Council being one such unit. Much of the media commentary that followed the *Courier-Mail* articles was to the effect that public confidence is enhanced if the public is kept informed

about matters of public concern as far as practicable — and that Brisbane River flooding was plainly such a matter.

A right to know?

Some of the initial *Courier-Mail* articles about the withholding of the flood studies spoke of the public's 'right to know' such significant information. Those who were critical of the actions taken by the BCC officers and the E&C Committee, such as the *Courier-Mail*, called those actions a 'cover-up'.

The issue of government secrecy has been a frequently addressed theme in the reports of commissions of inquiry into suspected government maladministration. In addressing the issue of government 'secrecy', the Fitzgerald report noted that:

Secrecy and propaganda are major impediments to accountability, which is a prerequisite for the proper functioning of the political process. Worse, they are the hallmarks of a diversion from the Parliament.

Information is the lynch-pin of the political process. Knowledge is, quite literally, power. If the public is not informed, it cannot take part in the political process with any real effect.²⁰

Similarly, the report of the 'WA Inc.' Royal Commission stated that fundamental principles of democracy and trust demand that government be conducted openly:

They require that the public be informed of the actions and purposes of government, not because the government considers it expedient for the public to know, but because the public has a right to know. Openness in government is the indispensable prerequisite to accountability to the public. It is a democratic imperative. The right to vote is without substance unless it is based on adequate information. If government is to be truly government for the people, if the public is to be able to participate in government and to experience its benefits, the public must be properly informed about government and its affairs.²¹

Earlier sections of this report have addressed the statutory and historical factors that enable the Brisbane City Council to operate in a manner different from other councils and, as reflected by the facts here, to conduct important business in confidential E&C Committee meetings, of which membership is restricted to the majority political party and from which several other elected representatives are excluded. Such party political interests are not relevant to most other Queensland councils, but have been the norm in larger councils in England for most of the twentieth century.

Importantly for present purposes, all the local governments in Queensland except the BCC are subject to the requirement that council meetings and meetings of council committees are open to the public, apart from carefully defined exceptions (LG Act, ss. 462 and 463). Section 229 of the LG Act defines the role of the councillors, but is not applicable to the Brisbane City Council; nor is there any other corresponding provision in the City of Brisbane Act.

The public interest

Obviously there will be circumstances where it will be justifiable for a government to keep certain information confidential. In this respect, the public interest should, in the Commission's view, be the determining factor in government decisions about whether information should be released. In the context of the courts' equitable jurisdiction to protect government information from public disclosure, a Chief Justice of the High Court has stated:

It may be a sufficient detriment to the citizen that disclosure of information relating to his affairs will expose his actions to public discussion and criticism. But it can scarcely be a relevant detriment to the government that publication of material concerning its actions will merely expose it to public discussion and criticism. It is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticize government action.

Accordingly, the court will determine the government's claim to confidentiality by reference to the public interest. Unless disclosure is likely to injure the public interest, it will not be protected.²²

Decisions about where the public interest properly lies, and whether information should or should not be disseminated to the public, will often not be straightforward matters to determine. They will often involve a balancing exercise of competing factors and differing views.

The present facts demonstrate the sorts of perceptions that can readily arise in the minds of some when a decision is made by a government at a particular time not to release information, and that information then makes its way into the public domain at some later time. This consequence was noted by public sector ethicist Noel Preston, who said the following about the BCC's actions in this case:

Though it might be argued that the Brisbane administration's main crime was slowness to resolve a matter of critical public importance, the saga demonstrated how the failure to be forthcoming about internal government processes leads to the perception of a cover-up.²³

While the CMC's investigation found no evidence of official misconduct by any person, it is a matter of record that the subsequent unauthorised dissemination of detailed information about the flood studies generated concerns that the BCC councillors and officers had been motivated by improper purposes in initially suppressing the information.

Critics of the BCC's decision not to release the flood study information have asserted that members of the public had a right to know of this information and have the opportunity to consider how it affected them. It was also said that, if the BCC had concerns about the accuracy of the studies, an appropriate disclaimer could have been issued with the release of the information, highlighting that concerns existed and further work was being undertaken.

On the other side, the BCC witnesses asserted that their approach was an entirely responsible one. They pointed to the significant concerns that the BCC officers and E&C Committee councillors held about the reliability of the information then to hand, the perceived need to await further information, and the reliance placed by the public upon the BCC to provide accurate information to people about technical matters such as flooding, rather than releasing information accompanied by a disclaimer as to responsibility for its accuracy.

As noted above, the encouragement of open government is now viewed as a generally desirable objective, in improving the integrity of the public sector:

... the international advocacy of more open government has become so prominent in recent years that it could now be said to be the defining feature of contemporary democratic discourse.²⁴

Accordingly, in the Commission's view, a helpful general starting point would be for relevant decision-makers to approach the balancing exercise involved in these decisions from the stance that information should ordinarily be released to the public, unless there are compelling reasons, in the public interest, to the contrary.

Abbreviations

| | |
|---------------|---|
| BCC | Brisbane City Council |
| CBA | <i>City of Brisbane Act 1924</i> |
| CEO | Chief Executive Officer (of BCC) |
| CMC | Crime and Misconduct Commission |
| DNRME | Department of Natural Resources, Mines and Energy |
| E&C Committee | Establishment and Coordination Committee (of BCC) — also known as Civic Cabinet |
| ICC | Ipswich City Council |
| LGA | <i>Local Government Act 1993</i> |
| SEQWater | South East Queensland Water Corporation Limited |
| SKM | Sinclair Knight Merz |
| UMD | Urban Management Division |

Endnotes

- ¹ G Greenwood & J Laverty, *Brisbane 1859–1959, a history of local government*, City of Brisbane, 1959, p. 449.
- ² *ibid.*, p. 469.
- ³ *Queensland Parliamentary Debates*, 1924, p. 1494.
- ⁴ JR Cole, *Shaping a city: Greater Brisbane 1925–1985*, William Brooks, Brisbane, 1984, p. 71.
- ⁵ JD Tucker, ‘Changing practices and conceptions of the executive function in urban government: the Greater Brisbane experience’, *Australian Journal of Public Administration*, vol. 53, no. 4, December 1994, pp. 512–513.
- ⁶ Greenwood and Laverty, p. 521.
- ⁷ JD Tucker, *Aspects of the Brisbane City Council’s administrative organization*, Queensland Regional Group of the Royal Institute of Public Administration, Brisbane, 1973, p. 37.
- ⁸ Brisbane City Council, *Annual report 2002–03*.
- ⁹ *ibid.*
- ¹⁰ The term ‘DNRME’ is used in this report to refer to the current department and also earlier forms of that department.

-
- ¹¹ Australian height datum (AHD) — the survey height datum adopted by the National Mapping Council of Australia as the reference datum for defining reduced levels (0.0 AHD is approximately mean sea level).
- ¹² This firm is now known as Sinclair Knight and Partners.
- ¹³ Areal reduction factors seek to account for the uneven distribution of rainfall across catchments.
- ¹⁴ The Cooperative Research Centre for Catchment Hydrology was established under a Commonwealth Government scheme in 1991. Its website describes its mission as ‘To deliver to resource managers the capability to assess the hydrologic impact of land-use and water management at whole of catchment scale’. The website lists a number of national projects. The Brisbane City Council is one of the parties to the research centre. Others include DNRM; equivalent agencies in other states; universities; the CSIRO; and the Bureau of Meteorology. The website contains a statement that the parties have committed some \$40.9m over seven years to the funding of the centre.
- ¹⁵ Divisional Manager, UMD.
- ¹⁶ Professor Apelt had earlier provided an opinion to the *Courier-Mail* in relation to the June 1999 study.
- ¹⁷ Engineers Australia is also known as the Institution of Engineers, Australia.
- ¹⁸ *Transparency International source book 2000*, chapter 24: ‘The right to information — information, public awareness and public records’, <www.transparency.org.au/>. Transparency International is a global coalition with a presence in over 80 countries, dedicated to increasing government accountability and curbing corruption.
- ¹⁹ Under section 5 of the *City of Brisbane Act 1924*, the Brisbane City Council consists of its members, being the mayor and 26 other councillors.
- ²⁰ *Report of a commission of inquiry into possible illegal activities and police misconduct* [the Fitzgerald Report], Crime and Misconduct Commission, Brisbane, 1989, p.126.
- ²¹ *Report of the royal commission into the commercial activities of government and other matters* [the WA Inc. Report], Government of Western Australia, 1992, Chapter 2, p. 2-2.
- ²² *Commonwealth v. John Fairfax and Sons Ltd (1980) 147 CLR 39*, per Mason CJ at 52.
- ²³ *Courier-Mail*, Saturday 5 July 2003, p. 25.
- ²⁴ R J Ives, *Contemporary Review*, November 2003, p. 265.