

**QUEENSLAND FLOODS
COMMISSION OF INQUIRY**

SECOND STATEMENT OF GARY STUART WHITE

I, **GARY STUART WHITE**, of [REDACTED] in the State of Queensland, Government Planner, solemnly and sincerely affirm and declare:

Introduction

1. I make this statement (**Second Statement**) pursuant to the requirement dated 28 September 2011 to provide information to the Queensland Floods Commission of Inquiry (the Requirement).
2. I make this Second Statement in addition to the statement (**First Statement**) declared by me on 2 September 2011 and pursuant to a requirement dated 25 August 2011 to provide information to provide information to the Queensland Floods Commission of Inquiry.
3. For the purposes of providing this second statement, I have had access to:
 - a) The records of the Department of Local Government and Planning; and
 - b) The Department of Local Government and Planning's officers,

to obtain the requisite information. Unless otherwise stated, the matters in this Second Statement are based on my own knowledge and the information derived from the above sources.

4. My response to this requirement is however qualified by the length of my tenure in the position of Government Planner, GMQ, DLGP (formerly the Department of Infrastructure and Planning (DIP)) since 30 July 2010, and as Deputy Director-

General (Planning) in the former DIP. I commenced this position on or about 7 July 2008.

5. For ease and convenience I will address items 1 and 2 in relation to the Brisbane City Council's planning scheme, as contained in the requirement, as follows:

Brisbane City Council's planning scheme

- a. **The correspondence between the Department of Local Government and the Department of Community Safety with respect to the State Planning Policy 1/03, insofar as it relates to flood, being appropriately reflected in the Brisbane City Council's planning scheme from 2003 to present.**
 - b. **The regard had to advice from the Department of Community Safety with respect to the State Planning policy 1/03, insofar as it relates to flood, being appropriately reflected in the Brisbane City planning scheme from 2003 to present.**
6. I understand that in 2000 Council prepared a local planning instrument (City Plan) in accordance with the repealed IPA. City Plan was adopted in late 2000.
 7. In relation to flooding issues the preparation and adoption of amendments to Brisbane City Council's City Plan 2000 (the scheme) following the introduction of State Planning Policy 1/03 – *Mitigating the Adverse Impacts of Flood Bushfire and Landslide* (the SPP) are most relevant. This process is outlined in Schedule 1 of the repealed *Integrated Planning Act 1997* (IPA).
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8. The Minister for Local Government and Planning (the Minister) adopted the SPP on 19 May 2003, with the SPP having effect from 1 September 2003.
 9. The Council generally proposed two rounds of amendments to its scheme per year – one mid-year and one at the end. The relevant amendments related to SPP 1/03 are

the Mid 2004 Amendments. This amendment package was adopted with effect from 1 January 2006.

10. The correspondence and documentation relevant to items 1 and 2 are set out below for the Brisbane City Plan Mid-2004 Amendment, General Planning Scheme Amendments since 1 January 2006, Planning Scheme Amendments related to Local Area Plans and Neighbourhood Plans, along with other relevant material.

Brisbane City Plan Mid-2004 amendments

11. On 16 June 2004, the then Department of Local Government, Planning, Sport and recreation (the Department), received proposed Mid 2004 Amendments to the scheme from the Council, for consideration of State interests and approval to publically notify, pursuant to Schedule 1 of the IPA. Proposed amendment C6 sought to include reference to the SPP in section 4.3 of Chapter 1 of the scheme. A copy of the covering letter and the relevant portions of the proposed amendments are attached and marked as **Attachment 1**. A full copy of the amendments to the scheme as proposed is available on request.
12. On 22 June 2004, the Department via email provided the proposed Mid 2004 Amendments to State agencies for a Whole of Government review pursuant to section 11(1) of the IPA. This was the first State interest check prior to public notification of the proposed planning scheme amendments by Council. A copy of the email providing the proposed amendments to State agencies is attached and marked **Attachment 2**.
13. On 22 July 2004, the Department via email provided the Council with State agency ~~comments from the first State interest check for the proposed Mid-2004 Amendments~~ to the scheme. A copy of the correspondence provided to the Council is attached and marked as **Attachment 3**.
14. On 26 July 2004, the Department received comments via email from the Department of Emergency Services (DES) as part of the first State interest check for the proposed Mid 2004 amendments to the scheme. DES stated that insufficient information on

natural hazard risk management and mapping precluded agreement to the proposition that SPP1/03 was reflected in the scheme. A copy of the comments made by DES is attached and marked as **Attachment 4**.

15. On 27 July 2004, the Department provided the Council with an amended table of State agency comments for Council's perusal and comment. The comments provided included the comments received from DES in relation to the SPP. DES stated in the State Agency suggested solution/outcome sought column, "delete reference to State Planning Policy 1/03 – Mitigating the Adverse Impacts of Flood, bushfire and Landslide in proposed amendment number C6." A copy of the email to the Council and the comments provided is attached and marked as **Attachment 5**.
16. On 9 August 2004, the Department received correspondence from the Council advising its response to the comments raised by State agencies on the proposed Mid 2004 City Plan amendments. The Council advised that it had "no objection to deleting the reference to the SPP" in proposed amendment C6. A copy of the email is attached and marked as **Attachment 6**.
17. On 16 August 2004, the Department responded to DES' comments provided to the Department on 26 July 2004, attaching comments received from the Council confirming that the Council had no objection to deleting the reference to the SPP proposed in amendment C, amendment C6. A copy of the email is attached and marked **Attachment 7**.
18. On 17 August 2004, the Department received advice from DES via email that DES did not have any further comment about the proposed amendments at that stage. A copy of the email is attached and marked as **Attachment 8**.

19. On 24 August 2004, the Department received from the Council modified versions of attachments C & E incorporating changes to amendments C6 and E5. Amendment number C6 did not include reference to the SPP. A copy of the proposed amendments provided to the Department are attached and marked as **Attachment 9**.

20. On 12 November 2004, the Minister signed a briefing note in agreement that State interests had been considered in respect to the proposed amendments and allowed Council to publicly notify the 'modified version' of the Mid 2004 amendment package subject to modifications. The briefing note states that DES generally supported the proposed amendments, however that some work was to be carried out with regard to the interpretation and implementation of the SPP. It also stated that this precludes any agreement from DES that amendment C6, proposed to amend section 4.3 of City Plan, be included in the Mid 2004 amendment package. The briefing note also states that Council forwarded a 'modified version' of amendment C6, which incorporated the deletion of reference to the SPP. A copy of the briefing note is attached and marked as **Attachment 10**.

21. By letter dated 12 November 2004, the Minister notified the Council that it may publically notify the proposed Mid 2004 Amendments pursuant to s 11(2) of Schedule 1 of the IPA. This approval was subject to the 'modified version' of the Mid 2004 Amendments as forwarded to the Department on 24 August 2004 being the version publically notified. A copy of the letter to the Council is attached and marked as **Attachment 11**.

22. On 17 May 2005, the Council adopted the proposed Mid 2004 amendments following the recommendation of the Urban Planning and Economic Development Committee of 10 May 2005. This resolution, at paragraph 3, includes references to the new Acid Sulphate Soils State Planning Policy only. A copy of the Council resolution is attached and marked as **Attachment 12**.

23. The Minutes of Proceedings for the 4157th meeting of the Council includes a table of contents. Paragraph 17 states that a summary of the revised amendments is at ~~Attachment B submitted and that the revised amendments, incorporating~~ modifications in response to the submissions and feedback, are at Attachments C to H submitted. Paragraph 20 provides a recommendation to respond to amendments to the Queensland Heritage Act, Child Care Act and the Introduction of "a" new State Planning Policy. A copy of the Minutes of Proceedings for the 4157th meeting table of contents is attached and marked as **Attachment 13**

24. On 20 May 2005, Council provided the Minister with the proposed Mid 2004 City Plan amendments to the scheme, as modified in response to submissions. This included Council's resolution to proceed with the modified amendments recommended on 10 May 2005 and presented to Council on 17 May 2005. In accordance with section 18(4) of Schedule 1 of IPA, the Council requested advice as to whether any State interests are adversely affected by the modified amendments. A copy of the letter and the resolution of Council is attached and marked as **Attachment 14**.
25. On 23 May 2005, the Council provided the Department via email, with copies of the Mid 2004 Amendments for consideration of State interests. A copy of the email is attached and marked as **Attachment 15** (Unfortunately a search of the Department's files was unable to find the attachments to this email).
26. On 31 May 2005, the Department provided the proposed Mid 2004 amendment package for reconsideration of State interests and Ministerial approval to adopt. The correspondence acknowledges the whole-of-government first State interest review and that Council had subsequently prepared a 'modified version' of the amendment package to address concerns raised by State agencies. The email stated that, if the Department has not received a response from your agency by COB 23 June 2005, it will be assumed your agency has no issues. A copy of the email providing the proposed amendments to State agencies is attached and marked as **Attachment 16** (Unfortunately a search of the Department's files was unable to find the attachments to this email).
27. The Department does not have a record of any comments from DES or the EPA before or after the COB 23 June 2005 deadline, as part of this second State interest review.
28. On 28 July 2005, the Minister signed a briefing note recommending that she determine that State interests would not be adversely affected by the Mid 2004 Amendments to the scheme and sign letters notifying Council that it may adopt the proposed Mid 2004 Amendments to the scheme. The briefing note states that on 20 May 2005 Council forwarded the 'modified' version of the Mid 2004 amendment

page for reconsideration of State interests and approval to adopt. The briefing note also states that Departmental officers reviewed the 'modified' version of the Mid 2004 amendment package, determined to undertake a targeted State interest review, and that no State agencies raised issues with the proposed amendments. A copy of the briefing note and associated letters is attached and marked as **Attachment 17**.

29. By letter dated 28 July 2005, the Department notified the Council, pursuant to section 18(4)(a) of Schedule 1 of the IPA that the Council may adopt the Mid 2004 amendment package, as forwarded to the Department of Local Government, Planning, Sport and Recreation on 20 May 2005. A copy of the letter and relevant portions of the Mid 2004 Amendments approved for adoption are attached and marked as **Attachment 18**.
 30. The scheme as in force on 1 July 2005 (Amended 1 July 2003) did not include the SPP in the list of state planning policy that were identified as being explicitly recognised by and consistent with the scheme. A copy of chapter 1 of the scheme as in force on 1 July 2005 is attached and marked as **Attachment 19**.
 31. The Minutes of Proceedings for the 4169th meeting of the Council includes a table of contents. Paragraph 71, states the package, as set out in Attachments C to H submitted, includes amendments to reflect recent changes to State legislation and State Planning Policies. These include references to the revised Child Care Act; the new Acid Sulphate Soils State Planning Policy and the new assessment processes under the Queensland Heritage Act. Paragraph 74, provides amendments required as a result of amendments to the Queensland Heritage Act, Child Care Act and the introduction of 'a' new State Planning Policy. A copy of the Minutes of Proceedings for the 4169th meeting, table of contents is attached and marked as **Attachment 20**.
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32. The scheme as in force on 1 January 2006 included both the SPP 1/03 and State Planning Policy 2/02 – Planning and Managing Development involving Acid Sulphate Soils in the list of state planning policies that were identified as being explicitly recognised by and consistent with the scheme. A copy of chapter 1 of the scheme as in force on 1 January 2006 is attached and marked as **Attachment 21**.

General Planning Scheme amendments since 1 January 2006

33. I understand that the following planning scheme amendments, since 1 January 2006, are the most relevant to flooding issues, and how these issues have been dealt with by the Department.
34. Further examples of planning scheme amendments dealing, to a lesser extent, with flooding issues can be provided to the Commission by the Department, upon request.
35. **Amendments to reflect the South East Queensland Regional Plan 2005 – 2026 -**
On 19 April 2006, the Minister approved a briefing note allowing the Council to incorporate priority amendments to the Scheme via a shortened amendment process. These amendments were necessary to ensure that the Scheme reflected the South East Queensland Regional Plan 2005 – 2026. No record has been able to be located of any input into the review and adoption process provided by DES. A copy of the briefing note is attached and marked as **Attachment 22**.
36. **Mid-2005 Amendment Package** – On 13 August 2006, the Minister approved a briefing note allowing the Council to incorporate the proposed amendments to the Scheme known as the mid-2005 amendments. No record has been able to be located of any input into the review and adoption process provided by DES and the briefing note states that all State interests were finalised prior to the approval to notify. A copy of the briefing note is attached and marked as **Attachment 23**.
37. **End-2005 Amendment Package** - On 21 November 2006, the Council adopted amendments to the Scheme, known as the end-2005 amendments (to be effective from 1 January 2007), which, inter alia, amended the Filling and Excavation Code and the Waterways Code to direct applicants to the Compensatory Earthworks Planning Scheme Policy. This planning scheme policy ensures that earthworks do not impact on the water carrying capacity or flooding characteristics of a channel that can impact on adjoining properties. A copy of the decision of the Council is attached and marked as **Attachment 24**.

38. 2006 Area Classification Amendments –

- a. On 6 November 2006, the Department received from DES comments in relation to proposed area classification changes to the Scheme. DES advised that the “proposed area classifications will allow land use intensification to occur. In terms of reflecting the SPP, it is important that when reclassifications of areas are made that will lead to intensification of land use in areas that are also natural hazard management areas, the SPP is adhered to so that natural hazards relevant to the area can continue to be mitigated effectively.” The DES comments went on to identify a specific reclassification of concern. A copy of the DES comments is attached and marked as **Attachment 25**.
- b. On 11 January 2007, the Department provided DES with the Council’s response to the issues raised by DES. The Council responded to the general concerns raised by DES by agreeing and stating: “Definitive mapping of areas of natural hazards is yet to be completed”. However, it is proposed that the City Plan provision for natural hazard will be a development code. Therefore, it will apply to all land affected by a natural hazard irrespective of Area classification.” With regard to the specific area of concern raised by DES, the Council stated: “102 Schools Road falls outside the Council’s flooding regulation lines (please see attached maps). Also the site has been developed with a house and was inadvertently classified Parkland. Changing the area classification would correct this anomaly.” A copy of the email from the Department to DES and the comments provided by the Council are attached and marked as **Attachment 26**.
- c. On 29 April 2007, the Minister signed a briefing note allowing the Council to adopt the proposed area classification changes. The briefing note states that: “DES indicated reclassifications for intensification of land use in areas that are also natural hazard management areas, must adhere to the SPP to ensure effective mitigation.” A copy of the briefing note is attached and marked as **Attachment 27**.

39. End-2006 Amendment Package –

- a. On 2 January 2007, the Department received from the Council notice of the resolution of the Council, dated 28 November 2006, to adopt amendments to the Scheme and details of the proposed amendments (known as the end-2006 amendments). The Council advised the Department that the proposed amendments included:
- i. Amendments to the Scheme to improve flood hazard immunity standards in the Stormwater Management Code;
 - ii. Updates to the Subdivision and Development Guidelines; and
 - iii. Amendments to the West End Woolloongabba Local Plan to refer to the new West End Riverside Parks Master Plan Planning Scheme Policy.

A copy of the correspondence received from the Council (including summaries of the proposed amendments) is attached and marked as **Attachment 28**.

- b. On 25 May 2007, the Minister signed a briefing note allowing the Council to publically notify the proposed amendments known as the end-2006 amendments. The briefing note stated that: "Following review, Departmental officers consider the proposed amendments will not adversely affect State interests." A copy of the briefing note is attached and marked as **Attachment 29**.
- c. On 18 February 2008, the Council advised the Department that following the public notification of the end-2006 amendments to the Scheme, the Council had resolved to proceed with the amendments without modification. A copy of the letter from the Council and a summary of the relevant section of the proposed amendments is attached and marked as **Attachment 30**.
- d. On 18 February 2008, the Council provided the Department with a copy of the Council's Planning Scheme Policy, Subdivision and Development Guidelines (the Guidelines), amended to reflect the proposed end-2006 Scheme amendment package. A copy of the letter from the Council, a copy of the resolution of the Council adopting the amendments to the Guidelines, relevant section of the amendment

package and a copy of the amended Chapter 1 – Flood Affected Land of Part A of the Subdivision and Development Guidelines is attached and marked as **Attachment 31**.

- e. By briefing note dated 13 March 2008, Departmental officers recommended to the Minister that the Minister approve the adoption of the amendments package as originally submitted. A copy of the briefing note (unsigned) is attached and marked as **Attachment 32**.

40. **Amendments dealing with assessment of houses in waterways** – On 17 February 2007, the Minister approved a briefing note allowing the public notification of proposed amendments to the Scheme to address issues associated with the assessment of detached dwellings in a mapped waterway. The purpose of the amendments was to avoid a large number of unnecessary development applications for detached houses where those houses are proposed on lots which have already been assessed against the waterway provisions as part of the subdivision application. A copy of the briefing note is attached and marked as **Attachment 33**.

Planning Scheme Amendments related to Neighbourhood Plans

41. I understand that the following planning scheme amendments in relation to Neighbourhood Plans, pre and post the January 2011 floods, are the most relevant to flooding issues, and how these issues have been dealt with by the Department.
42. Further examples of planning scheme amendments dealing, to a lesser extent, with flooding issues can be provided by the Department, upon request.

43. Newstead and Teneriffe Waterfront Neighbourhood Plan

- a. On 12 February 2010, the Department received from the Council the Council's response to the issues raised by State agencies during the first State interest review. DES provided comments stating (among other things) that: "Council should ensure development within the neighbourhood plan areas achieves SPP compliance within flood hazard areas." The Council noted this comment. A copy of the first

State interest review table with State agency comments and the Council response to them is attached and marked as **Attachment 34**.

- b. On 20 March 2010, the Minister signed a briefing note allowing the Council to publically notify the draft Newstead and Teneriffe Waterfront Neighbourhood Plan. The briefing note provided a summary of the comments made by DES and stated that: "BCC noted the comments from DCS. DIP is satisfied with the Council response." A copy of the briefing note is attached and marked as **Attachment 35**.
- c. On 24 September 2010, the Department received from DES comments for the second State interest review of the draft Newstead and Teneriffe Waterfront Neighbourhood Plan. In the comments provided, DES stated: "DCS officers have reviewed the documents provided and have no further State interests concerns. DCS requires no further information." A copy of the comments are attached and marked as **Attachment 36**.
- d. On 24 November 2010, the Minister signed a briefing note allowing the Council to adopt the draft Newstead and Teneriffe Waterfront Neighbourhood Plan. A copy of the briefing note is attached and marked as **Attachment 37**.

44. South Brisbane Riverside Neighbourhood Plan

- a. On 11 March 2010, the Department received comments from DES in relation to the draft South Brisbane Riverside Neighbourhood Plan. A copy of the email to which the comments were attached is attached and marked as **Attachment 38**. The attachment to the email is unable to be located at the time of writing.
- b. On 23 April 2010, the Department received from the Council the Council's response to the comments provided by State agencies during the first State interest review. The comments from DES noted that many areas within the neighbourhood plan area are flood prone and stated that: "the current draft neighbourhood plan does not address the specific constraints of flood prone land in the area or provide any specific mechanisms in the code to ensure that development mitigates

the risk of flood hazard.” DES also notes that some neighbourhood plans (for example, the West End – Woolloongabba District Local Plan Code) do include requirements to address particular areas of flood prone land. In response, the Council commented that “advice from Council’s Water Resources Unit has confirmed that it is not standard practice to add any specific provision to the NP code in terms of flooding. This is because flooding is covered adequately under either the House Code or under the Stormwater Management Code and the Guidelines.” Further comments were made in relation to the provision of emergency services. A copy of the first State interest review table of State agency comments with the response provided by the Council is attached and marked as **Attachment 39**.

- c. On 4 August 2010, the Minister signed a briefing note allowing the Council to publically notify the draft neighbourhood plan. The briefing note stated that the Department was satisfied with the response provided by the Council to the comments made by DES. A copy of the briefing note is attached and marked as **Attachment 40**.
- d. On 14 February 2011, the Department received from DES comments in relation to the second State interest review. The comments provided by DES stated: “It is noted that DCS state interests are not adversely impacted by this draft plan. The DCS interests articulated through the SPP are maintained through the requirement for development to meet the acceptable solutions of the Subdivision Code in the Scheme. The Subdivision Code includes specific constraints for flood prone property.” Further comments were provided in relation to access for emergency service vehicles. A copy of the comments is attached and marked as **Attachment 41**.
- e. On 11 March 2011, the Minister signed a briefing note allowing the Council to adopt the draft South Brisbane Riverside Neighbourhood Plan. The briefing note included mention of the explanatory note to be included in the neighbourhood plan as a result of the flooding in January 2011. This explanatory note was included to ensure the public was aware of the potential to change the plan as a result of either the Flood Inquiry Commission or the Council’s own investigations into

flooding. A copy of the briefing note is attached and marked as **Attachment 42**.

45. Moggill Bellbowrie District Neighbourhood Plan

- a. On 10 June 2011, the Department received from the Council the draft Moggill Bellbowrie District Neighbourhood Plan for first State interest review. DCS provided comments stating (among other things) that: *“Because flooding is dealt with by other codes and guidelines in the City Plan, Council’s determination that the Neighbourhood Plan has “due regard” to SPP 1/03 is not validated until Ministerial endorsement of the entire City Plan occurs. As a result, DCS recommends that Council remove this statement. SPP 1/03 remains the default assessment tool for Brisbane City Plan 2000 and also overrides the TLPI where inconsistencies occur unless mitigation provisions in these instruments offer a higher level of protection than those in SPP 1/03 .”* The Department did not support the removal of the non-statutory flood note as it was considered necessary to alert the general public and assessment managers to the possibility that the plan may change in the near future. Council subsequently retained and included both relevant parts of the non-statutory flood note. A copy of the first State interest review table with State agency comments and the Council response to them is attached and marked as **Attachment 43**.

- b. The Department as part of the first State interest review, noted the Moggill Bellbowrie District Neighbourhood Plan proposed intensification of land uses within areas that had been identified by QRA and the Brisbane TLPI-mapping as being affected by the January 2011 flood event. The Department requested that the affected areas be removed from the Moggill Bellbowrie District neighbourhood plan, or alternatively that sufficient justification be provided to support the intensification in accordance with SPP 1/03. Council's response is attached and marked as **Attachment 43**. The Minister is yet to consider State interests for this plan.

- c. The Minister is yet to consider the State interests for this plan and therefore in accordance with the usual protocol this neighbourhood plan has not been released for public consultation. I request that the paragraphs regarding this plan and the relevant attachments within these paragraphs are not released to the public at this stage. If it is deemed necessary to release these details publicly, I ask that I be notified before such a step is taken.

46. Darra Oxley District Neighbourhood Plan

- a. On 10 June 2011, the Department received from the Council the draft Darra Oxley District Neighbourhood Plan for first State interest review. DCS provided comments stating (among other things) that: *“Because flooding is dealt with by other codes and guidelines in the City Plan, Council’s determination that the Neighbourhood Plan has “due regard” to SPP 1/03 is not validated until Ministerial endorsement of the entire City Plan occurs. As a result, DCS recommends that Council remove this statement. Parts of the Darra Oxley Neighbourhood Plan are covered by BCC’s Temporary Local Planning Instrument (TLPI) 01/11 – Brisbane Interim Flood Response. Consideration to the provisions of the TLPI must be considered for development in the identified areas. SPP 1/03 remains the default assessment tool for Brisbane City Plan 2000 and also overrides the TLPI where inconsistencies occur unless mitigation provisions in these instruments offer a higher level of protection than those in SPP 1/03.”* The Department did not support the removal of the non-statutory flood note as it was considered necessary to alert the general public and assessment managers to the possibility that the plan may change in the near future. A copy of the first State interest review table with State agency comments is attached and marked as **Attachment 44**.
- b. The Department as part of the first State interest review, noted the Darra Oxley District Neighbourhood Plan proposed intensification of land uses within areas that had been identified by QRA and the

Brisbane TLPI mapping as being affected by the January 2011 flood event. The Department requested that the affected areas be removed from the Darra Oxley District neighbourhood plan. See **Attachment 44** for the Departments comments. The Minister is yet to consider State interests for this plan.

- c. The Minister is yet to consider the State interests for this plan and therefore in accordance with the usual protocol this neighbourhood plan has not been released for public consultation. I request that the paragraphs regarding this plan and the relevant attachments within these paragraphs are not released to the public at this stage. If it is deemed necessary to release these details publicly, I ask that I be notified before such a step is taken.

47. For ease and convenience I will address items 3 and 4 in relation to the Ipswich City Council's planning scheme, contained in the requirement, as follows:

Ipswich City Council's planning scheme

- 3) **The correspondence between the Department of Local Government and the Department of Community Safety with respect to the State Planning Policy 1/03, insofar as it relates to flood, being appropriately reflected in the Ipswich City Council's planning scheme from 2003 to present.**
- 4) **The regard had to advice from the Department of Community Safety with respect to the State Planning policy 1/03, insofar as it relates to flood, being ~~appropriately reflected in the Ipswich City planning~~ scheme from 2003 to present.**

48. I understand that in the late 1990s, the Ipswich City Council commenced preparation of a new planning scheme so as to produce a consolidated set of planning instruments for the amalgamated Council. The amalgamated scheme was finalised in 1999 and included the Springfield Structure Plan and the Ipswich City Centre Structure Plan.

49. I understand that under the Ipswich Planning Scheme 1999, where land was affected by the adopted flood level:

- a) all development required approval by the Council;
- b) as a condition of development or subdivision approval, the Council would require the transfer to the Council or to the Crown, of all of that land below the adopted flood level for drainage and/or park purposes.

Ipswich Planning Scheme 2004 (gazetted 5 April 2004)

50. On 6 February 2003, the DLGP forwarded the draft Ipswich City Council planning scheme (**Ipswich Planning Scheme 2004**) to the State agencies for a Whole-of-Government review pursuant to section 11(1) of Schedule 1 of IPA. This was the first State interest review prior to public notification of the proposed planning scheme by Council. A letter from DLGP to the Department of Emergency Services (**DES**) (now the Department of Community Safety) is attached and marked as **Attachment 45**.

51. On 10 March 2003, DLGP received comments from DES, Department of Natural Resources and Mines (**DNRM**) and the Environment Protection Agency (**EPA**).

52. DES comments, received by the Department on 10 March 2003, stated that when SPP1/03 is adopted the draft Ipswich Planning Scheme 2004 may require amending to achieve outcomes 4-6 of the draft SPP. A copy of the letter from DES is attached and marked as **Attachment 46**.

53. On 25 March 2003, DLGP responded to an email from Council to the DLGP requesting a meeting with the DLGP on 26 March 2003 to discuss the State agencies comments. A copy of this email is attached and marked as **Attachment 47**.

54. On 13 May 2003, Council forwarded an amended version of the draft Ipswich Planning Scheme 2004, incorporating State interests identified during the first State interest review. This version of the scheme did not include SPP1/03 (as SPP1/03 came into effect on 1 September 2003).

55. On 19 May 2003, the Minister for Local Government and Planning adopted SPP1/03 under the IPA with effect from 1 September 2003.
56. On 27 May 2003, the Minister considered and approved the public notification of the draft Ipswich Planning Scheme 2004 under section 11 of Schedule 1 of the IPA. A number of outstanding matters of State interest were identified and the Minister approved conditions to these matters. The reflection of SPP1/03 in the draft Ipswich Planning Scheme 2004 was not among the identified matters. A copy of the briefing note approved by the Minister is attached and marked as **Attachment 48**.
57. On 27 May 2003, the Minister notified the Council that they could commence public notification of the draft Ipswich Planning Scheme 2004 in accordance with section 12 of Schedule 1 of the IPA. A copy of this letter is attached and marked as **Attachment 49**.
58. On 11 December 2003, Council submitted to the Minister the draft Ipswich Planning Scheme 2004 in accordance with the requirements of sections 18(3) and 18(4) of Schedule 1 of the IPA. The submitted scheme had been amended to incorporate issues raised in submissions made by the public.
59. The DLGP assessed the draft Ipswich Planning Scheme 2004 and determined that a targeted second State interest review should be undertaken as Council had addressed most of the State interests raised during the initial State interest review and modifications made by Council response to public submissions were minor.
60. On 4 December 2003, the DLGP contacted the State agencies involved in the first State interest review by email, notifying them that the Department envisaged that a full State interest review would not be required. The email states if an agency believed it needed to review the final draft of the Ipswich Planning Scheme 2004 or if the agency wished to discuss the matter further, they should contact the DLGP. A copy of the email is attached and marked as **Attachment 50**. The DLGP did not receive a response from DES.

61. A number of matters were raised by State agencies during the second State interest review. No matters were raised from the targeted agencies with respect to SPP1/03. A copy of the second State interest review comments appear within the briefing note approved by the Minister on 16 February 2004 and is attached and marked as **Attachment 51**. However, it should be noted that DES was not a targeted agency for the purposes of the second State interest review.
62. In response to the matters raised by State agencies during the second State interest review, Council made further minor modifications to the draft Ipswich Planning Scheme 2004 and it was resubmitted to DLGP on 16 January 2004.
63. On 16 February 2004, the Minister authorised the adoption of the Ipswich Planning Scheme 2004 by Council. This included identification of issues relevant to flooding (see Appendix 1 of **Attachment 51**). The Minister identified and advised Council that the DLGP was satisfied that SPP1/03 was appropriately reflected in the Ipswich Planning Scheme 2004 (**Attachment 51**).
64. On 18 February 2004, the Minister wrote to the Council and advised that Council may adopt the draft Ipswich Planning Scheme 2004. The Minister further advised that the scheme appropriately reflected SPP1/03. A copy of the letter is marked and attached as **Attachment 52**.
65. On 2 April 2004, the Manager (South-East Queensland Planning Division) wrote to the State agencies advising that on 18 February 2004, the Minister authorised the adoption of the draft Ipswich Planning Scheme 2004, noting that Council adopted the proposed planning scheme. The letter also noted that the scheme was considered by the Minister to appropriately reflect SPP1/03. A copy of the letter is marked and attached as **Attachment 53**.
66. On 5 April 2004, Council adopted their IPA planning scheme, incorporating State interests including SPP1/03.

Ipswich Planning Scheme 2006

67. On 14 December 2005, Council adopted a consolidated planning scheme pursuant to Section 2.1.8 of the IPA combining significant amendments made to the Ipswich Planning Scheme 2004 in a new planning scheme document. I understand that the flooding provisions were essentially the same as those adopted in 2004 except for some changes were made to Overlay 5 which reflected more accurate and up-to-date data.
68. The consolidated planning scheme (Ipswich Planning Scheme 2006) took effect on 23 January 2006.
69. The Ipswich Planning Scheme 2006 addressed flooding issues via the use of a specific flooding overlay referred to as OV5 – Flooding and Urban Stormwater Flow Path Areas and an associated code – the Development Constraints Overlay Code. It also addressed flooding related issues by restricting subdivision of land under the Q100 (through the Reconfiguring a Lot Code). A summary of the scheme's inclusion of flooding related issues is marked and attached as **Attachment 54**.
70. Attached and marked as **Attachment 55** are excerpts from the Ipswich Planning Scheme 2006, dealing with the management of floodable land.

General planning scheme amendments to the Ipswich Planning Scheme since 2006

71. I understand that the following planning scheme amendments, since 1 January 2006, are the most relevant to flooding issues, and how these issues have been dealt with by the Department.

72. Further examples of planning scheme amendments dealing, to a lesser extent, with flooding issues can be provided by the Department, upon request.
73. On 5 May 2007, Council submitted amendments to the Ipswich Planning Scheme 2006 to the DLGP for review in accordance with Section 9(2) of Schedule 1 of the IPA. The operational amendments included amendments to Overlay OV5 – Flooding

and Urban Stormwater Flow Path Areas (see Table 1: Planning Scheme Amendments Package No. 2 of 2007 in **Attachment 56**). A copy of Council's submission is attached and marked as **Attachment 56**. A copy of a memorandum outlining the purpose of the amendments and a list of flooding related amendments is also attached and marked as **Attachment 57**.

74. On 24 May 2007, the DLGP sent the draft scheme amendments to other State agencies, including DERM and DES for their review and comments as part of the first State interest review process under IPA.
75. On 20 June 2007, the DES responded by stating that the scheme "does not raise any issues for the Department of Emergency Services". A copy of the DES response is attached and marked as **Attachment 58**.
76. On 17 August 2007, the DLGP sent coordinated comments from the first State interest review to Council requesting their response to each comment. A copy of the response table is attached and marked as **Attachment 59**.
77. In late August 2007 (evidence of exact date is not available), Council submitted a response to the first State interest review comments. Council's comments appear under the heading of "Council Comments" in this document and are attached and marked as **Attachment 60**.
78. On 3 April 2008, the DLGP notified Council that it may publically notify the scheme amendments. A copy of the Ministerial briefing note and letter to Council are attached and marked as **Attachment 61**.
- ~~79. On 22 August 2008, Council provided a summary of public submissions and requested the DLGP to consider the revised amendment package as part of the second State interest review. One of the public submissions specifically raised concerns about the flooding overlay amendments. A copy of Council's letter is attached and marked as **Attachment 62** and a copy of the public submission related to flooding issues is attached and marked as **Attachment 63**.~~

80. On 27 February 2009, Council adopted the amendment to the Ipswich Planning Scheme 2006.

81. There has been other correspondence which is not attached because it reflects work carried out pursuant to instructions issued by Crown Law's legal team in preparation for the hearings for the Queensland Floods Commission of Inquiry.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1867*.

Signed

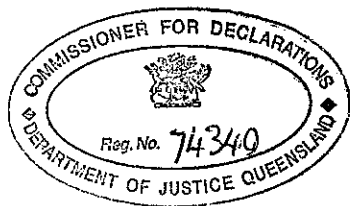


Gary Stuart White

Taken and declared before me, at Brisbane this

7th

day of October 2011.



~~Solicitor/Barrister/Justice of the
Peace~~/Commissioner for Declarations