WITNESS STATEMENT OF TIMOTHY CLARKE FOOTE

This written statement is provided in response to a Requirement, dated 23 September 2011, pursuant to section 5(1)(d) of the *Commissions of Inquiry Act 1950* (Qld) to provide a written statement, under oath or affirmation, to the Queensland Floods Commission of Inquiry.

I, Timothy Clarke Foote, Planner of [redacted], Ipswich, in the State of Queensland, swear as follows:

Introduction and Qualifications

1. I am employed by Ipswich City Council (**ICC**) as the Team Coordinator-Development (East team) for the City of Ipswich. I commenced in this role on 15 November 2010. I work in the Development Planning branch of the Planning and Development Department and report to the Development Planning Manager, Ms Joanne Pocock.

2. I hold the following qualifications:

   - Bachelor of Regional and Town Planning with Honours from the University of Queensland (1998);
   - Certificate IV in Business (Frontline Management) (2005).

3. I am a full member of the Planning Institute of Australia.

4. I commenced employment with ICC in October 2001. From November 1998 to October 2001 I worked for Caboolture Shire Council as a Development Planner assessing development applications.

5. Between October 2001 and April 2005 I held positions as a Development Planner and Senior Development Planner in the East development team at ICC. In these capacities I was involved in the assessment of development applications.

6. From April 2005 until November 2010 I was the Team Coordinator-Development for the Citywide team. In that position I had the day-to-day management responsibility for the planners working in the Citywide team and had responsibility for the assessment and determination by the Citywide team of development applications made pursuant to the Ipswich Planning Scheme.

7. In my current role I have the day-to-day management responsibility of the planners working in the East Development team and have responsibility for the assessment and determination by the East team of development applications made pursuant to the Ipswich Planning Scheme.

[redacted] [redacted]

8. In 2006, in my capacity as Development Team Coordinator-Citywide I was the Delegated Officer involved in the consideration of a development application (MCU 1727/05) for 45 Alice Street, Goodna. The development planner with primary responsibility for the consideration of the application was [redacted], who reported to me. I in turn reported, at that time, to Mr Brendan Nelson as Development Manager.

9. However, at the time of preparation and consideration of the ICC planning assessment memorandum dated 14 July 2006 (attachment TCF-7 to my statement) I was overseas on leave and the assessment was overseen by [redacted]s Acting Development Team Coordinator-Citywide.

10. The sources of information for the matters set out in this statement are:

    (a) my personal knowledge and recollection of relevant events; and

    (b) my review of the relevant ICC development application files, a copy of which I understand have been produced to the Commission pursuant to a Requirement notice dated 9 September 2011.

45 Alice Street, Goodna - Application No. 1727/05/MCU

Application Background and Overview

11. The subject land comprises an area of 2823m^2 located immediately to the north-west of the intersection of Alice Street and Spalding Crescent at Goodna. The site is situated within a residential area, with the land immediately to the north owned by ICC for drainage purposes and the land to the west of the site (Warren Park) owned by ICC for open space and drainage purposes.

12. From 1958 to 2002 the subject land was used as a sawmill, a use recognised by Council as a lawful non-conforming use.

13. At the time of lodgment of the application (23 March 2005) for a material change of use to two (2) child care centres, the land was located within the Residential Medium Density (RM2) zone of the 2004 Ipswich Planning Scheme and was affected by the development constraint overlay OV5 - 1 in 100 flood line.

14. The RM2 zone is intended to provide for medium density housing with an overall density that does not exceed 50 dwellings per hectare at two (2) storeys in height.

15. The subject land has long been subject to a residential zoning. With respect to Council's historical planning schemes, the subject land was identified as:

[redacted] [redacted]

(a) Town Plan of Ipswich 1976 - Residential 1 zone;

(b) Town Plan of Ipswich 1989 - Residential A;

(c) Consolidated Ipswich Planning Scheme 1995 - Residential A;

(d) Ipswich Planning Scheme 1999 - Residential Medium Density (RM1) - Eastern Corridor Structure Plan;

(e) Ipswich Planning Scheme 2004 - Residential Medium Density (RM2); and

(f) Ipswich Planning Scheme 2006 - Residential Medium Density (RM2) - current zoning.

16. The proposed development comprised two (2) adjoining child care centres for a proposed 119 children and the employment of 18 full-time staff. Building "A" located on the southern half of the site was to accommodate 44 children and building "B" located on the northern half of the site was to accommodate 75 children.

17. Twenty eight car parks are centrally located on the site for use by staff and visitors to both centres. Access to the car park is from Spalding Crescent located to the east of the site.

18. A site plan of the proposed development, showing the location of the two (2) centres and the car park is included as part of annexure TCF-6.

19. Council issued a material change of use of premises development permit for a Community Use - two (2) child care centres on 14 August 2006 (annexure TCF-10). The applicant sought (unsuccessfully) to negotiate condition 19 of the permit (infrastructure contributions).

20. A development permit for operational works was approved by Council on 18 February 2008 and a development permit for building works was approved on 24 April 2008. The child care centres were developed and operational at the time of the 2011 flood event.

21. The subject site slopes from RL13.0m AHD to RL11.5m AHD. As a result the land is located above the Q20 flood line (RL10.5m AHD) but below the Q100 flood line (RL14.7m AHD). Council records indicate that the 1974 flood reached a level of 18.6m at this location, and information received from the Queensland Reconstruction Authority indicates a 2011 flood level of approximately 16.5m AHD. I am informed by the owner of the Centre, [redacted] that no-one was required to be evacuated from the Centre in connection with the 2011 flood. The children and staff were sent home, and the Centre closed at 2:00pm on Tuesday, 11 January 2011. The Centre was inundated at around 2:40am on Wednesday, 12 January 2011.

[redacted] [redacted]

22. The subject land adjoins an overland flow path, comprising an unnamed gully/depression which runs through Warren Park to the west of the site. The land is located above the level of the 1 in 100 event (RL11.97m AHD) for local flooding of the adjoining overland flow path. The defined 1 in 100 flood line of 14.7m AHD arises from the backflow impact of a Brisbane River flood. The Brisbane River is located approximately 900 metres to the north of the site.

23. The proposal was an impact assessable application. Forty-four properly made submissions were received during the public notification of the development application. Flooding of the site, together with traffic, parking, need and amenity were raised in a number of the public submissions.

24. The application was not accompanied by a flood report. In its Information Request dated 10 May 2005 (annexure TCF-2) the applicant was requested by Council to submit a site specific flood investigation for the proposal, prepared by a RPEQ experienced in hydraulic engineering, which addressed the potential impact of flood levels. In its Information Request, Council identified the Q100 level for the site as 14.7m AHD. The applicant was also requested to address stormwater issues and to submit preliminary hydraulic calculations prepared by a RPEQ in accordance with QUDM which identified the increase in stormwater runoff generated by the development.

25. A stormwater and flood report prepared by Tabletop Architects Planners Engineers dated 24 February 2006 (annexure TCF-3) was produced by the applicant in response to this request.

26. The flood report assessed the site by reference to the Q100 level for a local flood event and concluded that the site could achieve normal Q100 immunity from local flood events in the adjoining overland flow path through setting appropriate building levels (RL12.15 for building B and RL12.73 for building A) and by constructing a solid wall along the road frontage from the eastern corner, across the south west corner of the property and along the western boundary to the northwest corner. The Tabletop report also noted that mitigation of Brisbane River [Q100] backup flooding could not be achieved at a local level.

27. In assessing the development application against the Zone Code, the Ipswich Planning Scheme (section 4.6.3(5)) seeks that each non-residential use, such as a child care centre:

(a) fulfils a local community need; and

(b) is accessible to the population it serves; and

(c) where possible co-locates with other non-residential uses but does not contribute to undesirable commercial ribbon development; and

[redacted] [redacted]

(d) does not have a significant detrimental impact on the amenity of nearby residents, including through the generation of odours, noise, waste products, dust, traffic, electrical interference or lighting; and

(e) maintains a scale and appearance in keeping with the residential amenity and character of the locality with adequate buffering or screening to nearby residential uses (both existing and proposed).

28. I consider that the development of the child care centres as approved satisfied the specific outcomes of the Planning Scheme. The development:

(i) fulfils a local community need;

(ii) is easily accessible to the surrounding population;

(iii) does not contribute to undesirable commercial ribbon development;

(iv) does not detrimentally impact upon the amenity for nearby residents; and

(v) maintains a scale and appearance that is in keeping with the surrounding residential amenity.

29. In addition, the development as approved:

(a) constitutes a sensible and non-intrusive development of a site zoned residential medium density and located between the Q20 and Q100 flood lines;

(b) represents, having regard to the site having been continuously the subject of a residential zoning for the past 30 years, a better planning outcome, consistent with that zoning, than simply having the site used as a park or for recreational purposes. The planning decision to develop the site as two (2) child care centres represents a superior outcome than having the site rendered effectively sterile; and

(c) did not increase the number of people residing on land below the 1 in 100 flood line, as the development was for a non-residential purpose.

30. In terms of the potential adverse impact of flooding at the site, the land use was, in my opinion, appropriate having regard to the proposed use being more harmonious with the amenity of the local area than the historical use of the site (as a sawmill for over 50 years), the potential land uses having regard to the zoning, and the flood characteristics of the site. The conditions imposed on the development as part of the application approval ensured that:

(a) the buildings were constructed above the 1:100 local flood event;

[redacted] [redacted]

(b) flood warning signs were erected in the car park; and

(c) a flood escape plan be developed and periodically rehearsed.

31. Moreover:

(a) the approval conditions provided for hours of operation from 6:30am - 6:30pm Monday to Friday, ensuring children would not be located on the premises at night or on weekends;

(b) the site is not subject to local flash flooding. The Tabletop report identified that the time of flood rise from when water first enters the property at the end of the wall in the north-west corner until it peaks at RL11.97 (Q100) is 34 minutes;

(c) the backwater flow from a Brisbane River flood event resulting in the Q100 flood line being exceeded (as occurred in the 2011 event) takes approximately 12 hours, with the result that no emergency evacuation would be required for the management of such an event; and

(d) access to and egress from the car park is via Spalding Crescent, located to the high side of the site (on the other side of the site from Warren Park as noted in the site plan at annexure TCF-6) ensuring that vehicles can be safely removed from the site in the event of a local Q100 flood event.

32. I am informed by Mr Saridakis that the Centre has a flood evacuation policy and that the staff and children rehearse the evacuation procedure on a monthly basis. This rehearsal involves the children holding onto a rope and being walked up along Alice Street to the top of the hill near the intersection of Alice and Bertha Streets.

33. As part of its assessment process Council prepared a memorandum (annexure TCF-9 to my statement) summarising the response to issues raised by submitters.

34. A Council assessment checklist for Impact Assessable Development was completed by the Development Planner (and the Acting Development Team Coordinator ( ). A copy of this assessment checklist is annexure TCF-8 to my statement.

35. Attached to my statement are copies of the following key documents in relation to this application:

TCF-1: Development application dated 11 March 2005 (lodged 23 March 2005)

TCF-2: ICC Information Request dated 10 May 2005

TCF-3: Letter [redacted], Midson & Partners to ICC dated 24 February 2006 enclosing Stormwater and Flood report prepared by Tabletop Architects Planners Engineers

TCF-4: Letter [redacted], Midson & Partners to ICC dated 28 February 2006 enclosing revised site plan

TCF-5: Memorandum Assistant Development Engineer to Development Team Coordinator dated 4 May 2006

TCF-6: Email [redacted] Midson & Partners to ICC dated 1 June 2006 enclosing revised site plans

TCF-7: Memorandum Development Planner to Development Team Coordinator dated 14 July 2006

TCF-8: ICC Assessment Checklist

TCF-9: ICC comment on issues raised by submitters

TCF-10: ICC Development Application Decision Notice dated 14 August 2006.

Question 1: The known Q100 and Q20 flood levels at or around the time of the application

36. These levels are:

- Q100 flood level - 14.7m AHD
- Q20 flood level - 10.5m AHD.

Question 2: The known site level or levels

37. The site slopes from approximately RL13m AHD in the south-eastern corner of the site to approximately RL11.5m AHD in the north-western corner of the site. Based on the Council approved operational works plans, the finished pad level for building A (southern building) was RL12.35m AHD and the finished pad level for building B (northern building) was RL12.2m AHD. The plans approved as part of the Building Works development permit by Building Certification Consultants Pty Ltd identify the finished floor level of building A to be RL12.73m AHD and the finished floor level of building B to be RL12.25m AHD.

Question 3: What assessment process was followed specific to flood impacts

38. The subject land was affected by development constraint overlay OV5 - 1 in 100 flood line of the 2004 Ipswich Planning Scheme. Council's Development Engineers were responsible for

[redacted] [redacted]

the assessment of flood impacts and for providing information and draft conditions to the assessing officer to inform the decision making process.

39. In assessing the application, Council's Development Engineer identified that the land was affected by the Q100 flood level and proposed that "*a site specific flood investigation should be undertaken for the proposal (prepared by a RPEQ experienced in hydraulic engineering) which addresses the potential impact on flood levels such that there is no detrimental effects on surrounding properties*".

40. Council's Information Request dated 10 May 2005 (annexure TCF-2) requested that the applicant submit a site specific flood investigation for the proposal. This request identified the Q100 in this location as 14.7m AHD.

41. In response to Council's Information Request the applicant submitted a Stormwater and Flood Report prepared by Tabletop Architects Planners Engineers (RPEQ2210). Council's Development Engineers assessed the submitted report and provided a recommendation that the proposed development be approved, subject to conditions.

42. The Engineering Assessment report was forwarded to the Development Planner, [redacted] who prepared the assessment report, including the assessment checklist. A number of conditions from the Engineering Assessment report relating to the mitigation of flooding were included in the planner's recommendation to ensure compliance with section 11.4.7(1)(d) of the Planning Scheme [land situated between the 1 in 20 Development Line and the 1 in 100 Flood Line - Commercial, Industrial and Other Non-Residential Uses] which allows for non-residential uses to be located between the 1 in 20 development line and the 1 in 100 flood line.

Question 4: What consideration was given to:

(a) the proximity of the site to the Brisbane River and any other local water courses;

(b) the flood risk or the potential impact of flooding on the use proposed for the site;

(c) the frequency with which flooding has occurred at the site in the past.

(a) Proximity to the Brisbane River and other local water courses

43. The Tabletop flood report identified that the site is impacted by backup flooding from the Brisbane River, located approximately 900 metres to the north of the site, as well as by flooding from the adjoining overland flow path.

44. Council's Development Engineering report dated 4 May 2006 (annexure TCF-5) identified that "*the site was inundated in the 1974 flood, is not below the ARI of 20 years flood level, is not*

[redacted] [redacted]

subject to an ARI of 20 years overland flow, and is subject to Q100 flooding of the local creek as well as backwater from the Brisbane River".

(b) Potential flood risk

45. The Tabletop flood report identified that Q100 immunity could be achieved for local flood events in the overland flow path to the west of the subject land by adopting the recommendations contained in the report. As such, the report did not identify risk or potential impact on the proposed use from flooding of the adjacent overland flow path.

46. The Tabletop report identified that mitigation of Brisbane River backup flooding could not be achieved at the local level.

47. Council's Development Engineers concurred with the flood report, and in accepting that the site was susceptible to flooding in a defined 1 in 100 flood event, recommended on engineering grounds that the development application be approved subject to the imposition of reasonable and relevant conditions on the development permit.

48. These conditions, which included conditions specific to ensuring the safety of children and others associated with the proposed child care centres, are detailed in my response below to Commission question no. 8.

(c) The frequency of past flooding at the site

49. The submitted flood report contained no details with respect to the frequency of previous flood inundation on the site. Nor was this information obtained or required by Council for assessing the application. Council's Engineering Assessment report identified that the site was inundated in the 1974 flood and was subject to Q100 flooding of the adjoining overland flow path to the west of the site as well as from backwater from the Brisbane River.

(d) The flood warning time at the site

50. Section 4.2.5 of the Tabletop flood report identified that the time of flood rise from "*when water first enters the property at the end of the wall in the north-west corner until it peaks at RL11.97 (Q100) is 34 minutes*". This time is based on a Q100 event for local flooding in the adjoining overland flow path. As the buildings were required to be constructed above the 11.97m level (conditioned to have a base floor level 300mm above this level), there would be additional local flood warning time for evacuation of the centre. I expect that the flood warning time in respect of a backwater flood event from the Brisbane River would be in the order of 12 hours.

[redacted] [redacted]

51. Also relevant to this question are:

(a) condition 6 of the development permit which only permitted the centre to operate between 6:30am and 6:30pm (Monday to Friday) and therefore evacuation, if required, would generally be undertaken during day light hours; and

(b) conditions 27(j) and 27(k) which made express provision for flood warning signs to be erected in the car park and for a flood escape plan to be developed and rehearsed.

Question 5: The measures proposed to mitigate the potential for flooding at the site by reference to the location of proposed habitable floor levels

52. As the development was non-residential in nature (child care centres) the development does not incorporate habitable rooms. However, the Tabletop flood report recommended setting appropriate minimum floor levels (RL12.15 for building B and RL12.73 for building A) which were above the Q100 from flows in the adjoining overland flow path (RL11.97m). The report did not recommend that the floor levels of the proposed buildings be above the Q100 level of RL14.7m as constructing buildings above this level would not have been conducive to a child care centre development where stairs and ramps are generally avoided for safety reasons.

53. The conditions of the development permit (condition 24(i)) required that "*the construction of all buildings or other structures are to be constructed with a base floor level 300mm above the storm level associated with an ARI of 100 years*". Council thereby imposed a condition that required a slightly higher floor level than that proposed by the applicant's consulting engineer.

Question 6: The measures proposed to mitigate the impact of flooding on the proposed use

54. To achieve Q100 immunity from local flood events in the overland flow path, the flood report recommended:

(a) setting appropriate minimum floor levels as detailed previously in this statement; and

(b) constructing a solid wall along the road frontage from the eastern corner, across the south-west corner of the property and along the western boundary to the north-western corner.

55. Compliance with the flood report recommendations was conditioned as part of Council's development permit along with a number of other conditions related to flooding as detailed in my response to question 8 below, including the buildings being constructed with a base floor level 300mm above the storm level associated with an ARI of 100 years. This condition required the floor level of building B (the northern building) to be built slightly higher than

[redacted] [redacted]

that proposed to achieve a greater freeboard from potential flooding. Signage was also required to be erected to make visitors to the site aware of the potential for flooding, and an evacuation plan was required to be established and rehearsed.

Question 7: What process the Council used to assess the adequacy of any expert reports

56. The stormwater and flood report by Tabletop Architects Planners Engineers was forwarded upon receipt to Council's engineers for assessment purposes.

57. The Council development engineers accepted the flood report, its contents as to the flood related constraints impacting the site according with the Council engineers' own knowledge of those constraints. No reason was identified for a further report to be obtained from the applicant nor did the Council have any reason, in the circumstances of this application, to commission its own report.

58. The report was assessed by the development engineers in conjunction with undertaking an overall engineering assessment of the application. The engineers subsequently prepared their assessment report dated 4 May 2006.

59. The Engineering Assessment report (annexure TCF-5) recommended that, based on engineering grounds, the development application be approved subject to conditions. The conditions recommended by the engineers, as related to potential flooding issues, included requiring an amended plan of development, complying with the submitted flood report, achieving minimum floor levels, installing signage and developing a flood escape plan.

60. The Engineering Assessment report was forwarded to Council's Development Planner, [redacted], for incorporation in an assessment report for the development (annexure TCF-7). The assessment report, including assessment checklist, was prepared by [redacted] for review by the Acting Team Coordinator, [redacted] The assessment report identified that:

"*The site is affected by flooding (Q100 levels) over the whole of the site. Upon review of the submitted 'Stormwater and Flood Report', Q100 flood immunity can be achieved by constructing a solid wall along the road frontage from the eastern corner, across the south-west corner of the property and along the western boundary to the north-west corner. For safety and aesthetic reasons, it is recommended that the proposed elevated play area (over hanging the Q100 level stormwater flow path area) be deleted from the proposal. It is recommended that all walling/fencing along the south-west corner of the site maintain alignment with the specified Q100 flood immunity level as detailed on 'Wall and Floor Details for Q100 Immunity' plan no. 5946 R01, prepared by Tabletop Architects.*

A condition is recommended to require that building levels are a minimum 300mm above the Q100 levels and that elevations and treatment details for the south-west corner of the site

[redacted] [redacted]

(fronting Alice Street) be submitted to the satisfaction of the Development Manager prior to commencement of any works. An operational works approval will be required in relation to stormwater management on site".

61. As a cross-check, the assessment checklist attached to the assessment report identified that "*Q100 immunity from local flood events in the adjoining waterway can be achieved by;*".

62. The conditions imposed are consistent with the provisions of section 11.4.7(1)(d) of the Planning Scheme [land situated between the 1 in 20 Development Line and the 1 in 100 Flood Line - Commercial, Industrial and Other Non-Residential Uses] that permits non-residential uses to be located between the 1 in 20 development line and the 1 in 100 flood line.

Question 8: What conditions were included with respect to protection from impacts of flooding

63. Council's development permit included the following relevant conditions:

Condition 2(a)(i) Site Development – this condition required amendments to the plan submitted by Tabletop Architects regarding the flood mitigation measures.

(a) *Site Plan Job Number 5518 Drawing Number A01 D, drawn by Tabletop Architects and dated 1 June 2006, subject to the following amendment to the satisfaction of the Development Manager:-*

(i) *The Developer shall submit an amended Site Plan demonstrating that the proposed elevated section for the outdoor play area for proposed Building A has been deleted. All walling/fencing along the south-western corner boundary shall align with the south-western corner truncation detailed in the submitted 'Wall and Floor Details for Q100 Immunity' Plan No. 5946 R01, prepared by Tabletop Architects. These details shall be submitted prior to application for Operational Works Approval.*

Condition 24(h) Stormwater – this condition required the development to be designed and constructed in accordance with the submitted flooding report prepared by Tabletop Architects Planner Engineers.

(h) *The proposed Development shall be designed and constructed in accordance with the flooding report prepared by Tabletop Architects Planners Engineers titled 45 Alice Street, Goodna – Stormwater and Flood Report dated February 2006. As illustrated in this report it examines the stormwater and local flooding impacted on the subject site by a storm event with an ARI of 100 years.*

[redacted] [redacted]

Condition 24(i) Stormwater – this condition required all buildings to be constructed with base floor level 300mm above the storm level with an ARI of 100 years.

(i) *The construction of all buildings or other structures are to be constructed with the base floor level 300 mm above the storm level associated with an ARI of 100 years.*

Condition 24(j) Stormwater – this condition required the sealed surface to be constructed to convey stormwater flows into the existing drainage channel.

(j) *The Developer shall install an appropriate sealed surface within the proposed clear flow path located in the south west corner of the subject property. This area is illustrated on Plan No: R01, in the stormwater and flood report prepared by Tabletop Architects Planners Engineers. This area will be used to transfer the stormwater flow into the existing drainage channel, therefore the sealed surface shall be designed to withstand the force of a high velocity flow of water without being removed.*

Condition 27(j) General – this condition required signs to be erected in the car park advising users of flooding.

(j) *Signs are to be erected in the carpark to advise users that this carpark is subject to some flooding of the local creek due to storms with an ARI of less than 100 years. Also the Brisbane River has backwater flooding for those storms with an ARI in excess of 20 years.*

Condition 27(k) General – this condition required a Flood Escape Plan and procedure to be developed and periodically rehearsed.

(k) *A Flood Escape Plan and procedure is to be developed and periodically practiced/rehearsed in case of flooding of the site. This plan is to include permanently displayed signs and directions for staff and visitors/parents to follow.*

Question 9: The basis for Council's statement in relation to the 1974 flood "advice"

64. This is a standard clause included in ICC development approvals where the subject site was inundated by the 1974 flood. I refer in that regard to paragraphs 37 - 42 of the witness statement of Ms Joanne Pocock. The advice has been included on development approvals for as long as I have been employed by ICC. I am unable to assist the Commission as to the genesis of the advice.

[redacted]

[redacted]

I make this statement conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1867* (Qld).

Signed and declared by Timothy Clarke Foote at Ipswich in the State of Queensland this 7th day of October 2011 before me:

[redacted]

....

Deponent Witness