

QUEENSLAND FLOODS  
COMMISSION OF INQUIRY

**STATEMENT OF MICHAEL THOMAS ELLERY**

I, **Michael Thomas Ellery**, of 77 Tavistock Street, Torquay in the State of Queensland, Executive Manager Development Assessment, Fraser Coast Regional Council, do solemnly and sincerely declare that:-

1. I have been provided with a copy of the letter dated 10 August 2011 from the Commissioner, Queensland Floods Commission of Inquiry requiring a sworn statement and documents from me which is attachment **MTE-1** and which details the topics my statement should cover.
2. I am a qualified town planner and Executive Manager for the Development Assessment Department of the Fraser Coast Regional Council ("Council"). I have been employed by Council and its statutory predecessor the Hervey Bay City Council since 8 August 2006. I have worked in local government for approximately 19 years.
3. The Fraser Coast Region covers an area of 7,125 sq km from the Gunalda Range to the south, past Howard on the Bruce Highway to the north, east to Fraser Island and west to near Biggenden and has population of more than 92,000 residents. It contains the major population centres of Hervey Bay and Maryborough as well as numerous coastal and rural settlements.
4. In my position as Executive Manager Development Assessment I am responsible for overseeing the implementation of the Council's four planning schemes, including the provision of expert planning advice to our customers, processing development applications made pursuant to either the planning scheme or Schedule 3 of the *Sustainable Planning Act 2009*, and other matters generally related to town planning and development assessment.

**Item 1: A summary of the assessment criteria contained in Council's planning scheme(s) and how such criteria are used to assess applications for development in the natural hazard management area.**

5. All four planning schemes address natural hazard management in different ways, reflecting that they were drafted by four different councils (the predecessor councils to the Council). The following is a summary of the provisions of each of the four planning schemes applicable to the Council's jurisdiction as they relate to flooding:

**Hervey Bay Planning Scheme**

6. The Hervey Bay City Planning Scheme 2006 (as amended) has not been endorsed by the Minister for Local Government and Planning as having appropriately reflected SPP1/03 for flood provisions.

7. The primary instrument of the planning scheme for flood hazard management is the Works, Services and Infrastructure Code. Assessment criteria for flooding matters are contained under the heading of “Flood Management”, and consist of Performance Criteria PC8-PC13. The specific use codes for residential uses also contain performance criteria seeking to ensure that development appropriately considers flooding impacts. The specific use codes for non-residential uses do not generally have specific criteria relating to flood management. Principles of flood hazard management are also embedded in the Desired Environmental Outcomes of the Planning Scheme.
8. For assessable development, both the specific use code (for example, the House Code) and the Works, Services and Infrastructure Code are two of the codes triggered as relevant assessment criteria. In the instance where houses are self-assessable, the development must comply with (as well as the other self-assessable criteria) Acceptable Solution 8.1 of the Works, Services and Infrastructure Code relating to minimum floor levels and Acceptable Solution 5.1 relating to location of the house and site access being outside a flow path. Failure to comply with either of these criteria would trigger the need for a further assessment, the exact type of application being dependent on the zoning of the land, its location and the planning controls applicable to the subject site.

#### **Maryborough City Plan**

9. The Maryborough City Plan 2000 (as amended) has not been endorsed by the Minister for Local Government and Planning as having appropriately reflected SPP1/03 for flood provisions.
10. The primary instrument of the planning scheme for flood hazard management is the Flood Management Code. Assessment against the code is triggered for any property shown on Map F1 of the code as being affected by the adopted flood event. The code provides for separate assessment criteria relevant to operational works, material change of use, building work and reconfiguring a lot. Any development proposal on a property identified on Map F1 as being affected by flooding will trigger a code assessable application in addition to any other triggers contained in remainder of the planning scheme.
11. The specific use codes for House and Medium Density Residential contain assessment criteria relating to minimum floor levels, the location of the buildings and site access being outside a flow path.
12. Desired Environmental Outcome 35 of the Planning Scheme provides for the overarching strategy to hazard management for the scheme.

#### **Tiaro Shire Council Planning Scheme**

13. The Tiaro Shire Council Planning Scheme 2005 (as amended) as administered by the Fraser Coast Regional Council has not been endorsed by the Minister for Local Government and Planning as having appropriately reflected SPP1/03 for flood provisions.

14. There is no specific code relating to terrestrial flood matters, the Natural Hazards Overlay Code only applies to bushfire, landslip and inundation caused by a storm surge event. In relation to storm surge, the Natural Hazards Overlay Code provides performance criteria for any development on land below 5 metres AHD.
15. The zone codes, the Dwelling House Code and the Building Works Code contain assessment criteria that require habitable rooms to have a minimum level 300 mm above the Q100 flood level or 300 mm above the highest known flood level if the Q100 is not known.
16. The Reconfiguring a Lot Code contains some criteria relating to flooding, including the need to provide building pads above the highest known flood and to provide flood free access to any lots created.
17. Desired Environmental Outcome 11 of the Planning Scheme provides for the overarching strategy to hazard management for the scheme.

#### **Woocoo Shire Planning Scheme**

18. The Planning Scheme for the Shire of Woocoo 2006 (as amended) has not been endorsed by the Minister for Local Government and Planning as having appropriately reflected SPP1/03 for flood provisions.
19. The zone codes, the Building Matters Code and the House Code all contain an assessment provision requiring the level of all habitable rooms to be set at 500 mm above the recorded 1893 flood level for Maryborough and District.
20. Specific Outcome 8 of the Reconfiguring a Lot Code requires each allotment to be adequately drained, the probable solution for this performance criterion is that each lot created has a flood free building pad and flood free access back to a constructed road.
21. Desired Environmental Outcome (j) of the Planning Scheme provides for the overarching strategy to hazard management for the scheme.

#### **Item 2: A description of how the natural hazard management area, as it relates to flood affected land, is reflected in the planning scheme.**

22. The Maryborough City Plan reflects the natural hazard area for flood through the inclusion of map F1 as part of the Flood Management Code. This map identifies premises located within the estimated highest recorded Flood Line.
23. There is no mapping of the natural hazard area for flood in the Hervey Bay, Woocoo or Tiaro planning schemes.

**Item 3: Details of Council's defined flood event including a description of:**

- a) **how the defined flood event was chosen;**
- b) **the way in which the council's defined flood event was calculated or determined.**

- 24. The defined flood event in the planning schemes for the former local government areas of Tiaro Shire, Maryborough and Hervey Bay City adopt a Q100, consistent with State Planning Policy 1/03. The Planning Scheme for the former local government area of Woocoo Shire, adopts a Flood Event based on the historical 1893 flood.
- 25. The Hervey Bay City Planning Scheme adopts the Q100 flood level consistent with State Planning Policy 1/03; it also applies a minimum 300mm freeboard.
- 26. The Maryborough City Plan adopts the Q100 flood level but also has assessment triggers referenced to the highest recorded flood being the historical 1893 flood event. Freeboard is indicated but not specified.
- 27. The Tiaro Shire Planning Scheme adopts the Q100 or the highest recorded flood level whichever is the greater for subdivisional development. The house code adopts the Q100 flood level or if unknown, the highest known flood. It also applies a 300mm freeboard.
- 28. The Woocoo Shire Planning generally adopts the highest recorded 1893 flood level but applies a freeboard of 500mm. However, there is also reference in places to the Q100 event and a flood level adopted by Council. To my knowledge no other flood level has been adopted for this planning scheme area.
- 29. I have no direct knowledge of the circumstances surrounding the adoption of the above flood levels, other than in the case of adoption of the Q100 level it appears that this was chosen to reflect the requirements of State Planning Policy 1/03.

**Item 4: A description of any planning requirements to have evacuation routes and/or early warning systems for areas identified to be at high risk of flooding, including information about how the existence of such evacuation routes and/or early warning systems are communicated to occupiers of areas at high risk of flooding.**

- 30. There are currently no provisions in any of the four planning schemes relating the provision of evacuation routes or early warning systems. Assessment of any application that might trigger consideration of these matters would rely on the provisions of the State Planning Policy 1/03.

**Item 5: A description of any controls or standards used to assess the storage of chemicals or other Environmentally Relevant Applications for development below the Q100 flood line or the Council's defined flood event.**

31. Where a development that involves the storage of chemicals is proposed on land below the applicable flood line (dependent on the applicable planning scheme) and that development is triggered as assessable development, assessment of those elements of the proposal relating to the storage of chemicals below the flood line would be undertaken against the State Planning Policy 1/03. There are no specific provisions in any of the four planning schemes relating to this matter.

**Item 6: A description of conditions imposed by Council on the approval of development applications to ensure that hazardous materials affected by flood water do not affect public safety and/or the environment.**

32. The following paragraph provides a typical example of the type of condition that would normally be applied to any application involving the potential for storage of hazardous materials on or near the adopted flood line:
33. *Do not manufacture or store in bulk hazardous materials on the site unless otherwise approved in writing by the Assessment Manager.*

**Item 7: A description of how levee banks are regulated in the Council area using specific examples.**

34. Although levee banks are not specifically considered in any of the four planning schemes applicable to the Fraser Coast, all schemes potentially regulate any earthworks necessary to create a levee bank. The Maryborough, Woocoo and Tiaro Planning Schemes all contain a Filling and Excavation Code whilst in the Hervey Bay Scheme the Works, Services and Infrastructure Code contains a number of provisions relating to earthworks. Whether these codes and their provisions are triggered as either self-assessable or assessment criteria depends on the scheme, the zoning of the land and any applicable overlays, and the individual site's location.
35. For example, in the Hervey Bay Planning Scheme area in every zone the table of assessment makes filling and excavation self assessable if the proposed works involve 100m<sup>3</sup> or less of filling or excavation and comply with Acceptable Solutions 14.1(a), 14.2(a), 14.3(a), 15.1 and 15.2 of the Works, Services and Infrastructure Code. If the self assessable criteria are not complied with, then the works are triggered as code assessable development for operational works. Some of the overlays also make earthworks assessable, including the Acid Sulfate Soils Overlay and the Cultural Heritage Overlay.
36. If assessment is triggered, the applicable locality code (Urban, Rural, Coastal Township or Fraser Island) is triggered as an applicable code as is the Works, Services and Infrastructure Code. The main applicable provisions are contained in Performance Criteria PC14-PC18 of the Works, Services and Infrastructure Code. The provisions of the code do not preclude levee banks

but may involve considerations such as whether by constructing a levee bank a neighbouring property, whether up stream or down stream, is impacted upon by alteration of the natural hydrology (including whether the levee would increase flooding on other properties) or alteration of existing overland flow paths.

37. Although the triggers for assessable development are different, the other three planning schemes take a similar approach.
38. Schedule 4, Table 4, Item 1 of the *Sustainable Planning Regulation 2009* makes Operational work or plumbing or drainage work (including maintenance and repair work) development that cannot be regulated under the Sustainable Planning Act if the work is carried out by or on behalf of a public sector entity authorised under a State law to carry out the work. As such, it may be open to the Council or a State agency to carry out works to create levees as exempt development if it can show where they are authorised to do so under a State law, such as the *Disaster Management Act*.
39. Temporary levee banks, such as those created using sand bags, are not regulated by the planning schemes.

**Item 8: Details of Council infrastructure (sewers, roads, stormwater etc) that was affected by flooding during the period 1 December 2010 to 31 January 2011.**

40. I understand that an answer to this item has been provided by Mr Wayne Sweeney of Council in his statement to the Queensland Floods Commission of Inquiry.
41. I do not have any direct knowledge of the details requested.

**Item 9: A description of the measures used by Council to protect Council infrastructure (sewers, roads, stormwater etc) and to ensure such infrastructure functions during a defined flood event.**

42. I understand that an answer to this item has been provided by Mr Wayne Sweeney of Council in his statement to the Queensland Floods Commission of Inquiry.
43. I do not have any direct knowledge of the details requested.

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

Signed



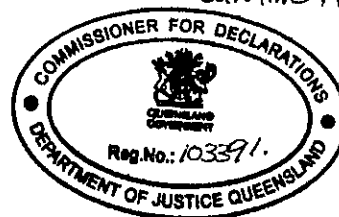
Michael Thomas Ellery

Taken and declared before me, at Hervey Bay this 29th day of August 2011.



~~Justice of the Peace~~ Commissioner for Declarations

Caroline Anne Lynch



Our ref: Doc 1675982

10 August 2011

Mr Michael Ellery  
Executive Manager of Development  
Fraser Coast Regional Council  
C/- King & Company Solicitors  
Attn: [REDACTED]  
GPO Box 758  
BRISBANE QLD 4001

#### REQUIREMENT TO PROVIDE A STATEMENT TO COMMISSION OF INQUIRY

I, Justice Catherine E Holmes, Commissioner of Inquiry, pursuant to section 5(1)(d) of the *Commissions of Inquiry Act 1950* (Qld), require Mr Michael Ellery, Executive Manager of Development, to provide a written statement, under oath or affirmation, to the Queensland Floods Commission of Inquiry, in which the said Mr Ellery:

- provides all information in his possession and identifies the source or sources of that information;
- makes commentary and provides opinions he is qualified to give as to the appropriateness of particular actions or decisions and the basis of that commentary or opinion;

in respect of the following topics:

1. A summary of the assessment criteria contained in council's planning scheme(s) and how such criteria are used to assess applications for development in the natural hazard management area.
2. A description of how the natural hazard management area, as it relates to flood affected land, is reflected in the planning scheme.
3. Details of Council's defined flood event including a description of:
  - a) how the defined flood event was chosen;
  - b) the way in which the council's defined flood event was calculated or determined.
4. A description of any planning requirements to have evacuation routes and/or early warning systems for areas identified to be at high risk of flooding, including information about how the existence of such evacuation routes and/or early warning systems are communicated to occupiers of areas at high risk of flooding.
5. A description of any controls or standards used to assess the storage of chemicals or other Environmentally Relevant Applications for development below the Q100 flood line or the Council's defined flood event.



6. A description of any conditions imposed by Council on the approval of development applications to ensure that hazardous materials affected by flood water do not affect public safety and/or the environment.
7. A description of how levee banks are regulated in the council area using specific examples.
8. Details of council infrastructure (sewers, roads, stormwater etc) that was affected by flooding during the period 1 December 2010 to 31 January 2011.
9. A description of the measures used by Council to protect Council infrastructure (sewers, roads, stormwater etc) and to ensure such infrastructure functions during a defined flood event.

Mr Ellery may also address other topics relevant to the Terms of Reference of the Commission in the statement, if he wishes.

The statement is to be provided to the Queensland Floods Commission of Inquiry by 5 pm, Thursday 1 September 2011.

The statement can be provided by post, email or by arranging delivery to the Commission by emailing [info@floodcommission.qld.gov.au](mailto:info@floodcommission.qld.gov.au).

A large black rectangular redaction box covering the signature area.

Commissioner  
Justice C E Holmes