

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 19 September 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 have previously provided the Commission with details of my experience, qualifications and my role at the Fraser Coast Regional Council in my Statement of 29 August 2011.

**Item 1: List any existing declared drainage problem areas and briefly describe their size, location, characteristics and the nature of development in these areas.**

3. I have read the Statement of Mr Wayne Sweeny dated 30 August 2011 and his comments in relation to declared drainage problem areas and how information about these is provided to the public in paragraph 12(a).
4. It is my understanding that at some time previously the former Hervey Bay City Council put in place a Local Law relating to drainage problem areas, being By-Law 45. A copy of that Local Law is included as attachment **MTE-2**. In summary, the local law gave the ability to Council to declare certain areas drainage problem areas, by resolution of the Council, and then regulate development of residential buildings in such areas.
5. To the best of my knowledge, it appears that drainage problem areas may have been declared for certain areas in Aldershot and Pacific Haven, however I have been unable to find a record of the Council resolution that did so. A map and list of properties identified as being in a drainage problem area has been provided to me by Council's Infrastructure and Environment Directorate, and is included as attachment **MTE-3**.
6. I understand that a number of other areas were considered for declaration as drainage problem areas but that Council did not proceed with declaring them under the provisions of the Local Law for reasons that I have not been able to ascertain.
7. In 1994 Council undertook a review of all of its local laws as required by the *Local Government Act 1993*. At its meeting of 26 October 1994, the Council resolved to repeal a number of local laws, including By-Law 45 as it was

considered that the Planning Scheme adequately dealt with flooding matters. A copy of the report considered by Council is included as attachment MTE-4.

8. By-Law 45 was repealed by gazette notice on 11 November 1994. A copy of the letter from the Queensland Department of Housing, Local Government and Planning confirming the repeal of the local law is included as attachment MTE-5.
9. It appears that despite the repealing of the local law, the Hervey Bay City Council retained a notation on its rating system about drainage problem areas for those properties previously identified as being in a drainage problem area. This included properties not formally declared under the local law. This notation has continued to be remain in place and Council continues to provide this information on property searches as advised in Mr Wayne Sweeney's Statement. There are currently 2802 properties with this type of notation included on them. A full list of the notated properties is included as attachment MTE-6.

**Item 2: Describe Council's policy for approving development in the declared drainage problem areas by reference to examples (if any) of development approvals for properties:**

- (a) flooded during the period 1 December 2010 to 31 January 2011; and
- (b) for which development applications were lodged since 2003 for a material change of use or reconfiguration of a lot.

10. I am advised by officers of the Infrastructure and Environment Directorate that of the 3003 properties noted as being in a drainage problem area, only one property experienced flooding in the stated period. This was Lot [REDACTED] on [REDACTED], located at [REDACTED] Desmond Drive, Toogoom.
11. A search of Council's records did not find any applications for material change of use or reconfiguration of a lot for Lot [REDACTED] on [REDACTED] lodged since 2003.
12. As the local law relating to declared drainage problem areas is no longer in force, Council does not consider it or its former provisions when deciding applications, if any, in areas noted on the rating system as being in a drainage problem area.
13. All development applications for material change of use and reconfiguration of a lot are considered against the relevant planning scheme provisions for flooding and the State Planning Policy 1/03. An overview of these provisions was provided in my previous Statement to the Commission dated 29 August 2011.

**Item 3: Identify whether the Station Square Shopping Centre site, the Tinana Greens subdivisional development (each of which are referred to in**

paragraph 7(a) of the Statement of Mr Wayne Sweeney dated 30 August 2011) were:

- (a) flooded during the period 1 December 2010 to 31 January 2011; and
- (b) the subject of development applications lodged since 2003 for a material change of use or reconfiguration of a lot.

14. I have received advice from officers of Council's Infrastructure and Environment directorate that neither the Station Square Shopping Centre nor the Tinana Greens development experienced flooding during the period of 1 December 2010 to 31 January 2011.

**Item 4: Provide:**

- (a) A list of development approvals for a material change of use or a reconfiguration of a lot approved since 1 January 2004, for properties located in Castaway Court or Coles Court, Toogoom.
- (b) Information about whether the Council considered possible drainage problems in this area when approving the developments listed in 4(a).

15. A search of Council's records has revealed the following approvals that meet the above criteria:

- (a) DA 513/3-091386 being a development permit for a material change of use for the purposes of an outbuilding ancillary to a house on premises located at ■ Castaway Court, Toogoom;
- (b) DA 513/3-051046 being a development permit for a material change of use for the purposes of a dual occupancy on premises located at ■ Coles Court, Toogoom;
- (c) DA 513/3-071189 being a development permit for a material change of use for the purposes of a house on premises located at ■ Coles Court, Toogoom;
- (d) DA 513/3-071388 being a development permit for a material change of use for the purposes of a house on premises located at ■ Coles Court, Toogoom.

16. In relation to DA 513/3-091386, it appears that Council did not consider potential drainage issues as the proposal was for a non-habitable building. It is likely that it was reasonably expected that roofwater discharge would be considered by the building certifier for the structure.

17. In relation to DA 513/3-051046, the assessment report notes that minimum floor levels are required to be set but does not explain the reason/s for doing so. A condition was included in the approval setting the minimum habitable floor level for the development at 4.2 metres AHD. Further, Condition 3 of the development required the development, in summary, to ensure that it did not create any worsening of stormwater overland flow either upstream or downstream of the development.

18. In relation to DA 513/3-071189, a material change of use application was only triggered as a result of the property being located within a bushfire hazard area as mapped in the planning scheme. It is likely that this is the basis for why the assessing officer's report did not consider any potential drainage issues related to the site. It is likely that it was reasonably expected that roofwater discharge would be considered by the building certifier for the structure.
19. In relation to DA 513/3-071388, a material change of use application was only triggered by the proposed house's non-compliance with the acceptable solution for setback to the front boundary. As this was the only substantive issue to be considered, the assessment did not include any consideration of drainage issues. It is likely that it was reasonably expected that roofwater discharge would be considered by the building certifier for the structure.

**Item 5: In respect of:**

- (a) the examples used in response to item 2; and  
(b) the development approvals (if any) which satisfy criteria 3(a) and 3(b);  
and  
(c) The development approvals (if any) listed in response to 4(a).  
Attach certain documents related to such approvals.

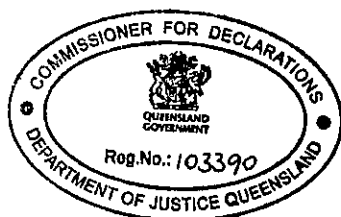
20. No examples were identified in relation to item 2.
21. There were no development approvals that satisfied criteria 3(a) and 3(b) as neither of the subject sites were subject to a flood event during the specified period.
22. A copy of the requested documents relating to the approvals mentioned in paragraph (14) of my Statement is included in electronic format as attachment MTE-7.

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 30th day of September 2011.



Justice of the Peace/ Commissioner for Declarations

JOIE HOCHMUTH

Our ref: Doc 1722553

19 September 2011

Mr Michael Ellery  
Executive Manager Development Assessment  
Fraser Coast Regional Council  
PO Box 1943  
HERVEY BAY QLD 4655

**REQUIREMENT TO PROVIDE 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 to provide a written statement, under oath or affirmation, to the Queensland Floods Commission of Inquiry, in which the said Mr Ellery:

1. lists any existing declared drainage problem areas and briefly describes their size, location, characteristics and the nature of development in these areas;
2. describes Council's policy for approving development in the declared drainage problem areas by reference to examples (if any) of development approvals for properties:
  - a) flooded during the period 1 December 2010 to 31 January 2011; and
  - b) for which development applications were lodged since 2003 for a material change of use or reconfiguration of a lot;
3. identifies whether the Station Square Shopping Centre site, the Tinana Greens subdivisional development (each of which are referred to in paragraph 7(a) of the Statement of Mr Wayne Sweeny dated 30 August 2011) were:
  - a) flooded during the period 1 December 2010 to 31 January 2011; and
  - b) the subject of development applications lodged since 2003 for a material change of use or reconfiguration of lot;
4. provides:
  - a) a list of development approvals for a material change of use or a reconfiguration of a lot approved since 1 January 2004, for properties located in Castaway Court or Coles Court, Toogoom;

- b) information about whether the Council considered possible drainage problems in this area when approving the developments listed in 4 (a);
- 5. in respect of:
  - a) the examples used in response to item 2 and
  - b) the development approvals (if any) which satisfy criteria 3(a) and 3(b),
  - c) the development approvals (if any) listed in response to 4(a)

attaches the following documents:

- a) application documents comprising IDAS forms, the letter accompanying the application, the planning report and any expert report addressing flooding, stormwater or overland flow;
- b) any acknowledgment notice;
- c) any information request;
- d) the following types of documents forming part of a response to an information request – covering letter, planning report and any expert report addressing flooding, stormwater or overland flow;
- e) any referral agency responses;
- f) any decision notice and any negotiated decision notice;
- g) any correspondence between Council and the applicant or its consultants or representatives with respect to hydrology, hydraulics, flooding, stormwater or overland flow;
- h) any internal assessment documents, memoranda, file notes or internal correspondence with respect to hydrology, hydraulics, flooding, stormwater or overland flow; and
- i) the Council officer's assessment report.

In addressing these matters, Mr Ellery is to:

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

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 4 pm, 28 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).



Commissioner  
Justice C E Holmes

CHAPTER 45

DRAINAGE PROBLEM AREAS  
Definitions

1. In this Chapter, unless the context otherwise indicates or requires, the following terms have the meanings respectively assigned to them, namely:-

"Drainage Problem Area"-Land declared by resolution of the Council under this Part to be a drainage problem area, provided that such resolution has not been revoked by subsequent resolution of the Council;

"Land"-Includes a tract of land or any area, as well as an allotment or a number of allotments of land whether contiguous or not;

"Rate Book"-Includes a book or set of rate cards or other documents kept by the Council as, or as part of a Rate Book;

"Residential Building"-A building which, or any part of which, is normally used or so designed or equipped that it is capable of being used for human habitation and a domestic garage or out-building ordinarily used in connection with a residential building;

"Residential Purposes"-Means the purpose of a residential building as herein defined.

declaration by Council

2. When, in the opinion of the Council, expressed by resolution, any land-

(a) is so low-lying;

(b) is so affected, whether frequently or infrequently by floods; or

(c) is, or forms part of an area which is so difficult or expensive to drain,

that it is undesirable that any or any further building construction for residential purposes should take place thereon without the permission of the Council, the Council may, by resolution, declare such land to be a drainage problem area.

Service of notice

3. (i) A resolution as lastmentioned in By-law 2 of this Chapter shall not be passed unless-

2.45.2

(a) The Clerk has caused a written notice under this By-law to be served upon every person shown in the Rate Book as th owner of land included in the drainage problem area proposed by the Council to be declared;

(b) the Clerk has caused an advertisement to be published at least once in a newspaper circulating in tha Area; and

(c) the Council has considered all written objections lodged with the Clerk under this By-law.

(ii) A notice under this By-law shall-

(a) Set forth the terms or general tenor of the proposed resolution;

(b) set forth the provisions of subparagraph (1) of by-law 4 of this Chapter; and

(c) state that, if the person upon whom the notice is served objects to the passing of the resolution, he may lodge with the Clerk, within a period which shall be specified in the notice but shall not be less than thirty (30) days from the date of service thereof, a written objection stating the facts, circumstances and arguments on which such person relies to support his opposition to the passing of the resolution.

(iii) An advertisement published under this By-law shall-

(a) Set forth the terms or general tenor of the proposed resolution; and

(b) state that written objections lodged under the provisions of this clause may be so lodged with the Clerk within a period which shall be specified in the advertisement but shall not be less than thirty (30) days from the date of publication thereof.

(iv) A written objection under this By-law-

(a) May be lodged by a person upon whom a notice under this clause has been served, within the period specified in such notice;

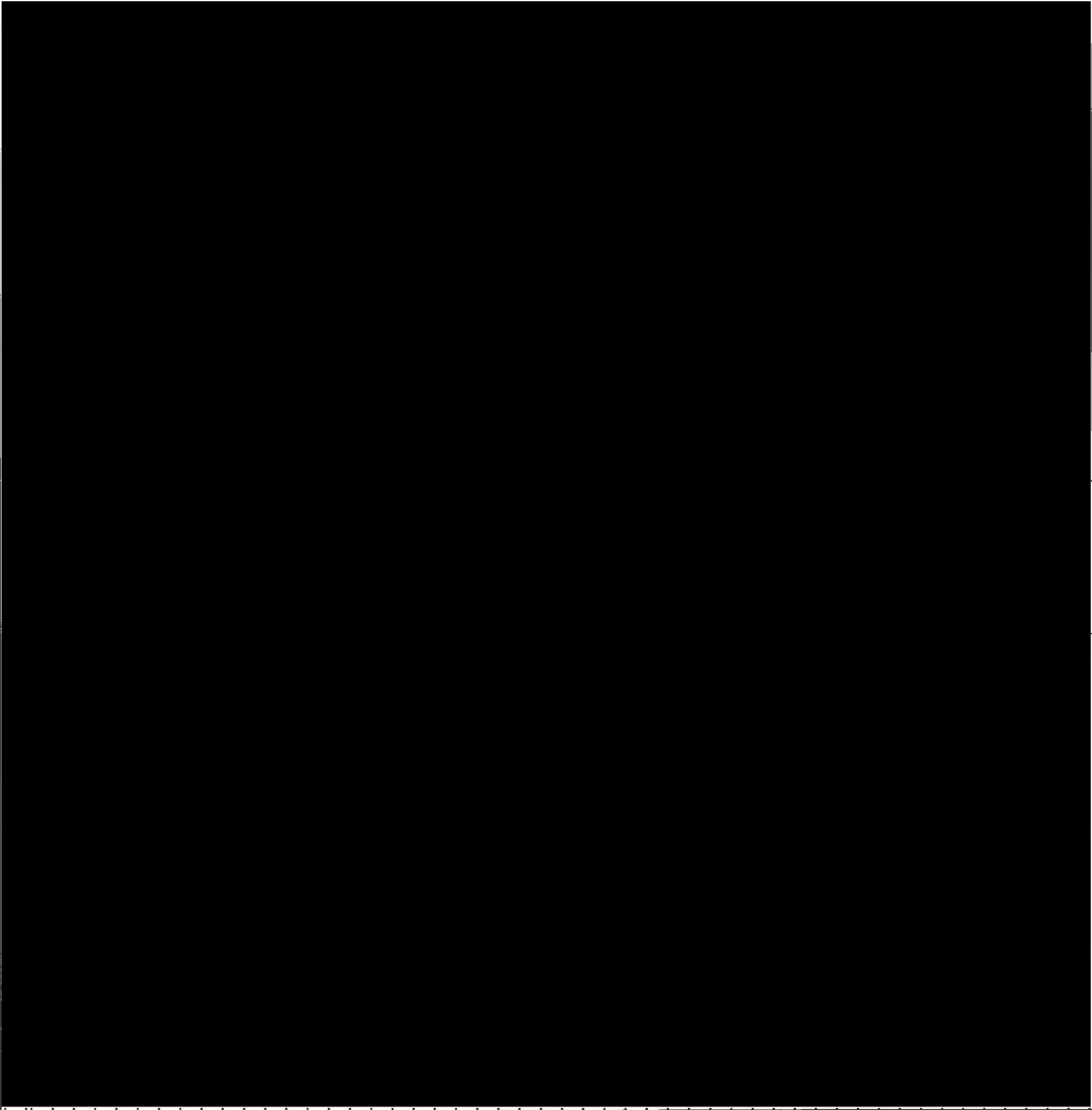
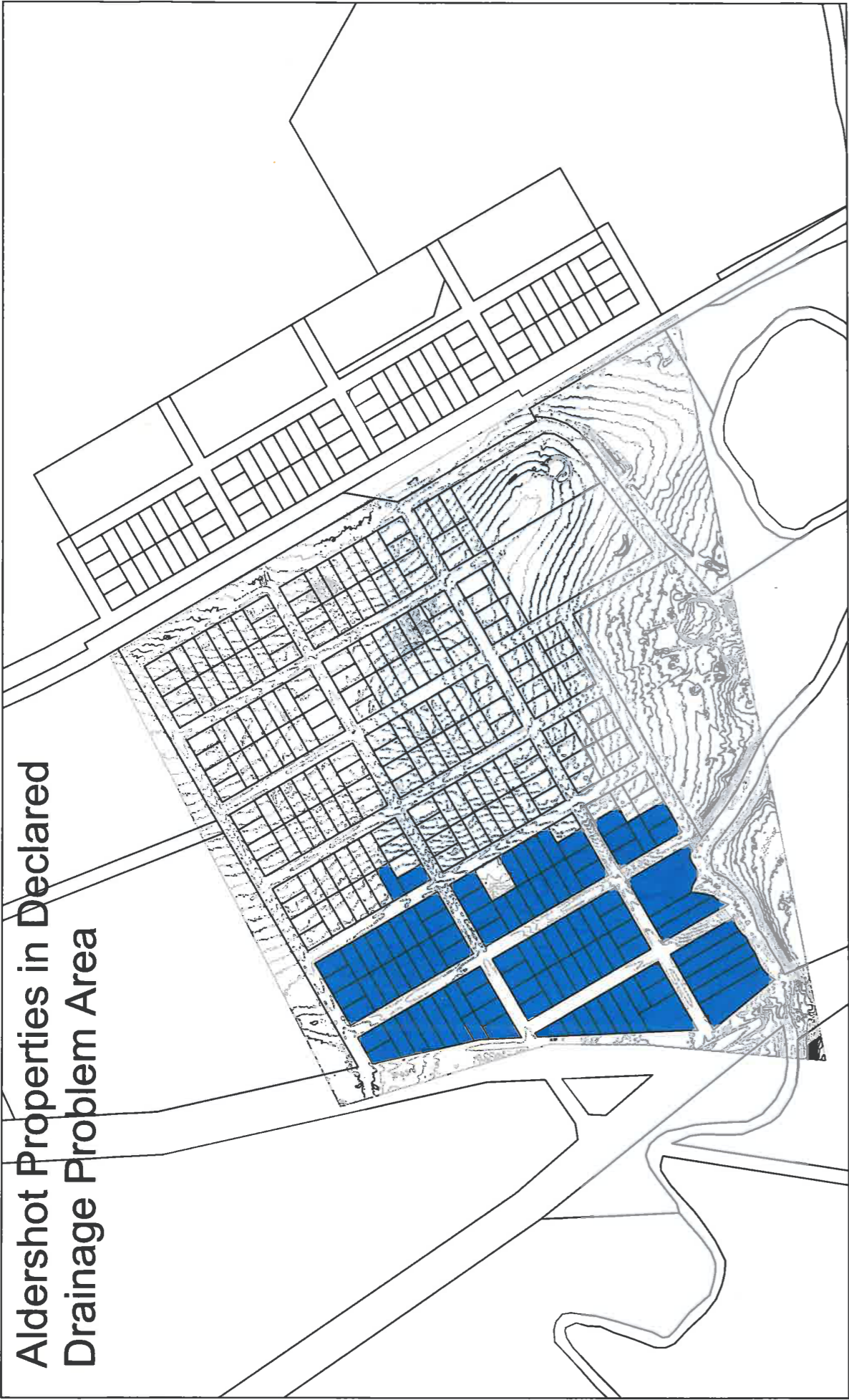
(b) may be lodged by any other person who has any legal or equitable interest in any land included in the proposed drainage problem area, within the period specified in an advertisement under this By-law;

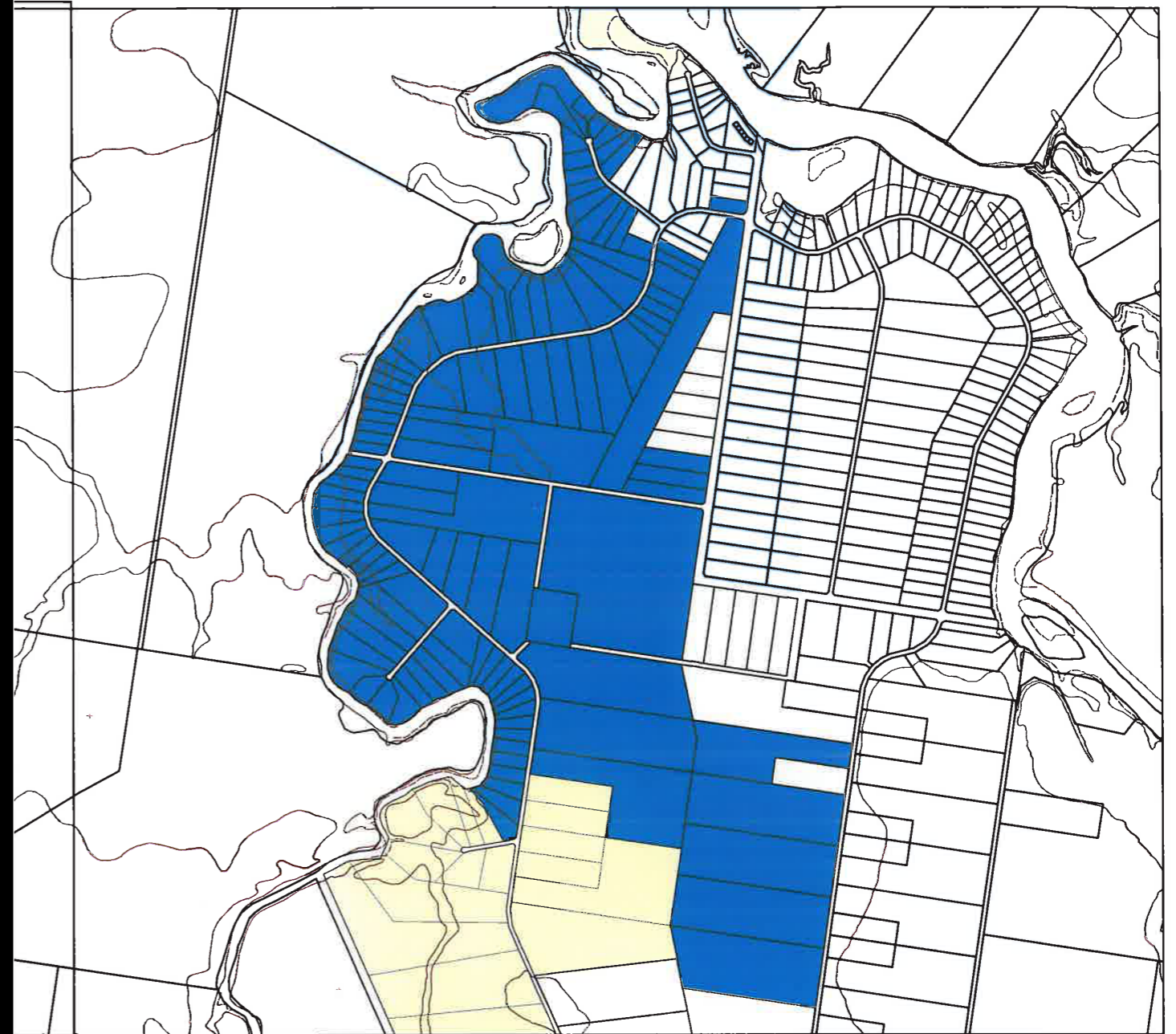
(c) shall state the facts, circumstances and submissions on which the person lodging the objections relies to support his opposition to the passing of the proposed resolution.

2.45.3

Prohibitions in a drainage problem area

4. (i) In a drainage problem area a person shall not-
- (a) Erect a building for residential purposes;
  - (b) change the use of a building from a non-residential purpose to a residential purpose; or
  - (c) rebuild or enlarge an existing building used for residential purposes,
- except with the written permission of the Council and in accordance with the conditions, if any, to which such permission is subject.
- (ii) The Council may in its absolute discretion-
- (a) Refuse its permission under this clause; or
  - (b) grant its permission under this clause unconditionally; or
  - (c) grant its permission under this clause subject to reasonable and relevant conditions.
- (iii) A person to whom the permission of the Council has been granted under this clause shall comply with the conditions (if any) to which such permission is subject.
- (iv) Subject to the provisions of subsection (16D) of section 33 of the Act, when a person to whom the permission of the Council has been granted under this By-law fails to comply with the conditions to which such permission is subject, the Council may, either in addition to or in lieu of taking or exercising any other proceeding or remedy, cancel such permission.
- (v) The Building Inspector shall not approve a building application for a building for residential purposes if such building is situated in a drainage problem area unless the written permission of the Council under this Part has been obtained and is in force.
-





Pacific Haven Properties  
in Declared Drainage  
Problem Area



## Hervey Bay City Council

### POLICY & RESOURCES COMMITTEE

Councillors Bezant, Brooks, Crowle, Hollingsworth, Kleinschmidt, Laxton, Lewis, Lyness, Nioa, Sorensen, Struik (Chairman)

Councillors are advised that the next meeting of the **POLICY & RESOURCES COMMITTEE** will be held in the Council Chambers, Tavistock Street, Torquay on **WEDNESDAY, 12 OCTOBER 1994** at **8.30 AM**

6 October, 1994

N J LETHLEAN  
CHIEF EXECUTIVE OFFICER

#### BUSINESS

#### APOLOGIES

#### OPEN ITEMS

#### ITEM NO.

#### PAGE NO.

#### BUSINESS FROM PREVIOUS MEETINGS

P&R 1	Repeal of Pre-Existing Local Laws Report No. P&R 70 (Item P&R 9 - 09/94)	102/1	1 - 2
P&R 2	Tourism Advisory Committee - Structure & Representation Report No. P&R 75 (Item STAT 4 - 04/94; P&R 11 - 06/94)	504/7	3 - 6

HERVEY BAY CITY COUNCIL

MEETING: POLICY & RESOURCES COMMITTEE  
DATE OF MEETING: 12 OCTOBER 1994

REPORT NO: P&R 70  
RF JES

ITEM NO: P&R 1

FILE NO: 102/1

PROGRAM: EXECUTIVE SERVICES

SUBJECT: REPEAL OF PRE-EXISTING LOCAL LAWS

RESPONSIBLE OFFICER: CHIEF EXECUTIVE OFFICER

AUTHOR: CHIEF EXECUTIVE OFFICER

FINANCIAL DETAILS			
Account No:	N/A	Expenditure to Date:	N/A
Budget Allocation:	N/A	Committed Expenditure:	N/A
		Unexpended Balance:	N/A

REFERENCE:

Item P&R 9 - 09/94

PURPOSE:

To recommend the repeal of a number of Pre-Existing Local Laws that are redundant or no longer in use.

BACKGROUND:

A report was submitted to the September Policy & Resources Committee Meeting explaining the procedures to be adopted in relation to a review of Local Laws. The review has continued in respect of those Local Laws for which there will not be a corresponding Model Local Law prepared by the Department of Housing, Local Government and Planning. It should be remembered that the majority of Council's Local Laws were adopted in 1966 when the area was known as Burrum Shire and prior to the adoption of the Planning Scheme for Hervey Bay City.

COMMENTARY:

The relevant staff have been consulted in the course of the review of Local Laws and in the case of the Laws relating to jetties and public conveniences, the Police were consulted and confirmed that they duplicated matters under Police control (largely behavioural issues). The following Pre-Existing Local Laws fall into the categories of being redundant or no longer in use.

- 
- |             |  |
|-------------|--|
| Chapter 14A | - Establishment and Control of Crematoriums (covered by Town Planning controls and the Cremation Act)                      |
| Chapter 15  | - Common Seal (replaced by Council Policy)   |
| Chapter 16  | - Discarded or Disused Machinery, Second-Hand Materials etc. (not in use, adequately controlled under the Planning Scheme) |
| Chapter 21  | - Jetties (the contents of this Local Law are controlled by the Police)  |
| Chapter 23  | - Litter (superseded by the Litter Act)  |
| Chapter 32  | - Private Works (to be replaced by Council Policy)   |
| Chapter 33  | - Public Conveniences (the contents of this Local Law are controlled by the Police)  |
| Chapter 45  | - Drainage Problem Areas (not in use, adequately controlled by the Planning Scheme)  |

### **CONCLUSION:**

It is appropriate to repeal each of the above Pre-Existing Local Laws and it is intended to recommend accordingly.

### **RECOMMENDATION:**

1. That Council hereby resolves that Pre-Existing Laws (Repealing) Local Law No 2 be made repealing the following Pre-Existing Laws which have been reviewed under Section 779 of the Local Government Act, 1993 and deemed to be redundant:

Chapter 14A	- Establishment and Control of Crematoriums
Chapter 15	- Common Seal
Chapter 16	- Discarded or Disused Machinery, Second-Hand Materials etc.
Chapter 21	- Jetties
Chapter 23	- Litter
Chapter 32	- Private Works
Chapter 33	- Public Conveniences
Chapter 45	- Drainage Problem Areas
2. That the repeal of the Pre-Existing Local Laws be published in the Gazette.

102/1

**N J LETHLEAN**  
**CHIEF EXECUTIVE OFFICER**



**Queensland Department of Housing  
Local Government and Planning**

MTE - 5

Your Reference: 102/1 P&R  
1-10/94 RF JES  
Our Reference: LAA/4027;4028;  
4029;4030;4031;4032;  
4033;4034  
Enquiries: Mrs Christine Mobley  
Extension: [REDACTED]

LOCAL GOVERNMENT SERVICES

Mr H J Lethlean  
Chief Executive Officer  
Hervey Bay City Council  
PO Box 45  
TORQUAY QLD 4655

HERVEY BAY CITY COUNCIL  
TO IMANA FOR ACTION

14 NOV 1994

CEHO

11 November 1994

FILE No. 102/1 (P2) 15  
COPIES: .....



Dear Mr Lethlean

I refer to your letter of 31 October 1994 concerning the Council's review of its pre-existing local laws under section 779 of the Local Government Act 1993.

In this regard, I advise the notice of the making of local law "Pre-Existing Laws (Repealing) Local Law No. 2", pursuant to section 779(6) of the Act, was today published in the Government Gazette. A copy of such notice is attached for your information.

It would be appreciated if the Council could now provide the Minister with five (5) certified copies of the local law, pursuant to section 779(9) of the Act. An example certification is also enclosed for your information.

Yours faithfully

[REDACTED]

*CM* Maurie Tucker  
General Manager  
Local Government Services

CURRENT FILE LOCATION	CEHO
NO ACTION REQUIRED	.....
ACTION COMPLETE - FILE	.....
REPLY SENT	.....
RETURN WITH FILE	.....
BRING FORWARD - DATE	.....
REFER TO	.....
INITIAL	.....DATE .....



**HERVEY BAY CITY COUNCIL (MAKING  
OF LOCAL LAW REPEALING  
REDUNDANT PROVISION) NOTICE  
(NO.1) 1994**

**Short Title**

1. This notice may be cited as the *Hervey Bay City Council (Making of Local Law Repealing Redundant Provision) Notice (No.1) 1994*.

**Commencement**

2. This notice commences on the date it is published in the Gazette.

**Making of local law repealing redundant provision**

3. Pursuant to section 779 of the *Local Government Act 1993* the Hervey Bay City Council made local law "Pre-Existing Laws (Repealing) Local Law No. 2" by resolution on 26 October 1994, which repeals the following pre-existing local laws which were reviewed and identified as redundant provisions:-

Chapter 14A - Establishment and Control of Crematoriums;

Chapter 15 - Common Seal;

Chapter 16 - Discarded or Disused Machinery, Second-Hand Materials  
&c;

Chapter 21 - Jetties;

Chapter 23 - Litter;

Chapter 32 - Private Works;

Chapter 33 - Public Conveniences; and

Chapter 45 - Drainage Problem Areas.

**Inspection**

4. A certified copy of the local law is open to inspection at the local government's public office and at the department's State office.

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**ENDNOTES**

1. Published in the Gazette on 11 November 1994.
2. Not required to be laid before the Legislative Assembly.
3. The administering agency is the Queensland Department of Housing, Local Government and Planning.

The Chief Executive Officer must certify the required number of copies of the local law (7 copies, 5 of which must be forwarded to the Minister) to be the local law as made by the local government.

### **Example Certification**

*"This and the preceding (x) pages bearing my initials is a certified copy of (name of local law) adopted/made, in accordance with the provisions of the Local Government Act 1993, by the Council of the \_\_\_\_\_ of \_\_\_\_\_ by resolution dated \_\_\_\_\_"*

**NOTE:** Certificate must contain the Chief Executive Officer's signature and the seal of the local government.

Attachments MTE-6 and MTE-7  
not included, as they are too  
voluminous to upload to website.