QUEENSLAND FLOODS
COMMISSION OF INQUIRY

STATEMENT OF GARY STUART WHITE

I, **GARY STUART WHITE**, of c/- 63 George Street Brisbane in the State of Queensland, Government Planner, solemnly and sincerely affirm and declare:

Purpose of Statement

1. The purpose of this statement is to provide to the Commission of Inquiry a:

   - summary of the statutory planning process, its antecedents, and principles as they apply in Queensland;
   - summary of the Department of Local Government and Planning's review of those submissions made to the Commission of Inquiry which have some connection with the statutory planning process; and
   - list of responses that I as the Government Planner, on behalf of the Department of Local Government and Planning submits satisfies the Commission of Inquiry requests.

Duty to Commission of Inquiry

2. This statement is made under oath and is prepared by Gary Stuart White and my qualifications and experience are set out in Appendix 1.

3. I make this statement in my capacity as Government Planner within the Queensland Department of Local Government and Planning. Although my statement is not intended to be submitted to a Court of Law, I acknowledge that I have read and understood an extract from the Queensland Uniform Civil Procedure Rules, in particular Rules 427 and 428 addressing "Expert Evidence" and "Requirements for Report". I am familiar with the giving of evidence having done so on more than 30 occasions to the Planning and Environment Court and its predecessors.

4. I confirm that I have received and read the requirement to provide information to the Commission of Inquiry and make this statement with the most up to date information available to assist the Commission of Inquiry discharge its Terms of Reference efficiently and in the public interest.

Assumptions Made and Actions Taken in Preparing this Statement

5. In the preparation of the statement I have:

   - caused to have prepared a list of the public submissions to the Commission of Inquiry, in particular those applying to the statutory

planning process. A list of the relevant submissions is attached at Appendix 2;

- read and familiarized myself with a full copy of each of the submissions referred to in Appendix 2;
- relied on existing operational policies and practices within this Department;
- reviewed and relied on the documents provided in the appendices of my statement; and
- relied on my 34 year familiarity with the development assessment process and statutory planning procedures in Queensland.

Declaration to Commission of Enquiry

6. I solemnly and sincerely declare to the Commission of Inquiry that:

    - the factual matters contained in the statement are, as far as I am aware, true;
    - I have made all enquiries considered appropriate;
    - the opinions expressed in this statement are genuinely held by me;
    - the statement contains reference to all matters I consider significant; and
    - I understand my duty to the Commission of Inquiry and have complied with the duty.

The Statutory Planning Process

7. I acknowledge the pieces of legislation affecting development and resource management in Queensland will speak for themselves, and have certain legal understandings as to their effect. I acknowledge it will be the role of the Commission of Inquiry to interpret those documents.

8. However, I believe it would be helpful to summarise the statutory planning process in other than legal terms to provide some context to opinions expressed by me elsewhere in this statement.

9. This section of my statement provides that summary.

10. In the former British Commonwealth countries, the planning traditions evident in most statutory planning legislation characterise the planning process into two (2) broad functions:

    - Forward Planning; and
    - Development Assessment and Implementation.

11. Simply put, ***Forward Planning*** describes the making of town plans and the formulation of strategies as to how towns and regions might change over time.

Political and governmental policy and community engagement drives the preparation of "planning schemes", "regional plans", "strategies", "policies" and the like.

12. Inherently, these planning instruments are forward looking and aspirational. They are "high level" and anticipate or rely on the subsequent development assessment and implementation process for delivery. Information used to make decisions often becomes more detailed from the forward planning stage to development assessment.

13. ***Development Assessment and Implementation*** is the means by which the policies and strategies contained in the forward planning instruments are put into place. The development assessment process is a regimented process of assessing proposed developments against the forward planning instruments.

14. The components of a development assessment system in various countries, and indeed in the states of Australia, will have both subtle variations and often peculiar steps appropriate to the political or cultural context of the system of government. In my experience however, there are developmental circumstances which most development assessment systems (in the former British Commonwealth countries) must commonly accommodate. They are:

    - not all forms of development require identical assessment i.e. some are straight forward, some require care;
    - there are major projects and there are simple projects which demand different assessment resources;
    - the process of getting a project to construction is a long one, and many influences affect the final form and detail of a particular project from the original concept through to bricks and mortar; and
    - there are many stakeholders in the process. They include the proponent, the consent authority, other authorities, the community and the occupiers of the project.

15. It results that development assessment processes must accommodate all of the above. To do so necessitates setting levels of assessment for particular classes of use in particular areas; deciding what level of review is necessary by third parties and stakeholders; and for <u>all</u> projects, not just the major ones (even though they need the procedural support more), to have flexibility in the assessment system to accommodate changes and requirements over the life of a particular process.

More About Forward Planning

16. Sometimes described as *Strategic Planning*, it is at this level of the planning process that planning principles are written and reflected in the preferred future form or structure of a city region or town. Maps and diagrams are used to convey the preferred planning outcome and give spatial meaning to their interpretation.

17. There are many planning principles. Of relevance to the Terms of Reference before the Commission of Inquiry are principles of:

- basing decisions on good information;
- minimising risk to communities;
- equity of access to those services required for living; and
- providing certainty and clear expectations.

18. The forward planning process must have access to sound reliable ***information***. By its very nature it uses both empirical and values based information across natural and manmade processes (flood, bushfire exposure, ecological conditions, soil conditions, cultural heritage, traffic, demographics to name a few)to 'paint a picture' of development trends and opportunities that ought be analysed and reviewed in the plan-making. Like all forward planning activities of government, it is only as good as the information that is accessed and how it is analysed.

19. Wherever possible, communities should not be exposed to ***risk*** to life and property loss. It is a fact however that communities live with risk; for example airports are close to communities they serve for good economic and convenience reasons and this means planes fly overhead of built up areas on approach and take off. Parks on the river and using a Brisbane example, community assets such as SouthBank, are affected by flood events, but investment in such assets is on-going. Communities accept risks like this, in my opinion, because of the value or benefit those assets provide.

20. This theme also applies to the principle of ***equitable access*** to community services. Community facilities such as shops, schools, agencies, and churches tend to be grouped in centres. Historically, centres such as Ipswich, Rockhampton, Cairns, Laidley and Gympie to name but a few, are regularly effected by rising river, creek or sea water; yet these communities still concentrate both public and private investment into those centres because of:

    - the extent of public and private commitment there already;
    - their convenient location and long community association; and
    - the benefit and value a community gains from access to each centre.

21. Planning for growth in existing developed areas where such risks exist and have existed over many generations provides challenges not found in say greenfields locations (such as North Lakes and Springfield, two SEQ examples) where planning of the new urban structure and town layout can proceed anew, and development free of risk or physical constraint can be practically achieved. In existing developed towns, it is effectively impossible, in my experience, to affect a risk free community without serious intervention.

22. In all communities however, all reasonably ***expect clear knowledge of outcomes***, of information about risks, and what development may occur around them. Investment in communities by residents, development interests and by all stakeholders relies on a plan conveying as far as practicable clear information about future change and about development entitlements.

23. Much of the above might be deemed 'common sense' or just 'good practice' and it is fair to acknowledge that, but the resources allocated to planning scheme preparation in my professional lifetime have increased ten-fold in response to community interest and the need for greater precision in information and hence, outcome. Information needs of planning scheme preparation require money and manpower to deliver the necessary guidance for any community.

24. What money is spent, and what it is spent on, is not decided in a vacuum. Local communities know best what is necessary to investigate certain issues (for example, Fraser Coast Regional Council will know more about the Great Sandy Region than any State agency; similarly, the effects of mining activities are best understood by Mt Isa and Moranbah and the like) but the State has flagged formally what it believes must be addressed in the process.

25. The Queensland Government has, in my professional lifetime, regularly increased its demands of local government in plan-making and development assessment. It does this by formally advising what planning principles are of significance to the State, and what ought to be addressed. This department's second submission to the Commission of Inquiry sets this history out in some detail, but in my opinion it is significant to the Commission of Inquiry that State Planning Policies have been published by the State since 1992; and Regional Plans and Regional Planning policies are now part of the statutory planning hierarchy (the first statutory Regional Plan only came into force in 2005). By stating, for example, that flood hazard mitigation is important, the onus on those involved in the preparation of a town plan to investigate these matters is clearly articulated to the plan proponents and stakeholders.

26. This Department's clear objective with forward planning documents is to ensure there is a clear link or "line of sight" from the more general policies to the local and site specific policies. From higher level spatial areas like regions to local government areas, districts, neighbourhoods and centres.

More About Development Assessment

27. Most members of the community intersect with the planning process when either being interested in a development application nearby to their place of residence, or making a development application themselves, usually for a house.

28. "Development Approval" or "DA" is a commonly used term in planning circles and has some familiarity in the wider community .It is used to describe the formal notice issued primarily by local government (and in some cases State agencies and certifiers) when they approve development. It is a widely used property industry term which has meaning in law and in practice. It is also important to note that a building approval under SPA is also a development approval.

29. In Queensland, the Sustainable Planning Act, Local Government Planning Schemes, the *Building Act 1975* and associated building assessment provisions, such as the

Building Code of Australia (BCA) are the documents that get used most in development assessment.

30. SPA creates opportunities for issue of the following categories of approval:

    - preliminary approval; or
    - development permit.

31. Only a development permit confers rights to use the land for the approved use. A preliminary approval anticipates further applications being made.

32. Development permits can be issued under SPA for:

    - a material change of use;
    - building;
    - plumbing;
    - subdivision; and
    - operational works (construction of non-building elements such as landscaping and surface car park areas).

33. The 'material change of use' permit is the "planning" or development approval i.e. one of the most common forms of 'DA'.

34. Understandably, the issue of permits for building, plumbing and operational works will ordinarily follow the issue of a planning approval. Building Codes Queensland (BCQ) oversees the *Building Act 1975*, which outlines a range of building assessment provisions, including the BCA and the Queensland Development Code, with which all building development applications and self-assessable building work across the State must comply. BCQ also oversees the *Plumbing and Drainage Act 2002*, which includes requirements for plumbing work, including on-site sewerage facilities, water saving measures (including greywater use) and sub-meters.

35. Development Permits and Preliminary Approvals are in most cases accompanied by conditions. They will include the need to develop in accordance with the plans approved, and to respond to conditions which may seek to:

    - mitigate impacts;
    - address issues of concern raised during assessment; and
    - set appropriate levels of performance.

36. The conditions are a direct outcome of the assessment process. Generally the local government, during the assessment process, compares the merits of the proposal against a Local Planning Scheme's provisions, and/or standard building provisions, takes into account the advice or directions of State Agencies to whom the application might be referred. If an application is publicly notified (not all are) the effect of the consideration of any formal submissions is often encapsulated in the conditions generally, or by a specific condition.

37. There is liaison and formal representations between the local government, any agencies of the State to whom the application was referred, and the proponent, often leading to changes in plans and adjustments.

38. So, a development permit (or "DA") is the output of an assessment process that:

- has the input of many; and
- is linked to conditions; and
- is often affected by stakeholder input.

39. In my opinion, the Development Permit package (letter, conditions and stamped plans and documents) that is issued as a Decision Notice, has the nature of a framework to proceed.

40. Whether it is a small development (like a duplex, or a corner shop) or large (like a high-rise CBD based tower) there are subsequent steps involved before soil is turned and foundations laid. In my experience, once building issues such as fire safety and suppression, work place health and safety, and structural integrity are involved, there are changes to plans. Also, the tender process and CPI changes to construction costs, affect viability, and these economic pressures inevitably necessitate changes. Prospective tenants, particularly commercial operators, bring with them expectations of the ability to alter fit outs, and rearrange openings (doors and windows etc) and internal layouts.

41. In practical terms, there are always changes to plans that attach to a development permit or DA.

42. That is why I refer to the package as a 'framework'. The plans set out a 3D expectation of how high, wide and bulky a building(s) will be, and give expectations about its look, function and use. The conditions also set expectations about how it will operate.

43. Like working with clay or plasticine, the reality is that there will be "giving and taking" in the final product, as the design responds to the pressures described above.

44. The system, however, does not anticipate unlimited changes. Ultimately some judgement is required as to whether a change, or a number of changes represent a development generally in accordance with a DA, or represent the need to seek some form of additional review and approval by the planning authority.

45. The integrity of the approval, with all its procedural antecedents, must be honoured. The relevant legislation allows changes to be formally sought and gives some guidance as to the bounds that will apply.

Summary - Observations and Comments about the Process

46. The reliance on good and reliable information is paramount. Whilst there are many checks and balances (such as agency and stakeholder review, local government assessment etc) across the statutory planning process from forward planning to development assessment, the system relies on information being available and being part of the professional judgement or 'call' made throughout the process.

47. The level of information increases from the plan-making stage to the development assessment stage. For flooding matters, it is my experience that a certain degree of analysis is conducted at plan-making stage in anticipation that development proponents would commission more detailed analysis at DA stage. Noting earlier comments that the quality of a planning scheme, code is only as good the data/information it is based upon.

48. There has to be sufficient information at plan –making stage for 'no-go' decisions to be made, and for flood affected areas to be identified and minimum floor levels to be set, so the building assessment provisions take effect. But for large scale subdivisions or development involving amendments to the contours of land, additional customised assessments are necessary and routinely asked for by local government in Queensland.

49. Generally speaking, development control in greenfield areas should achieve constraint free living.

50. Planning and development control in existing communities often necessitates a lasting acceptance of exposure to risk, in acknowledgement of the community benefits that otherwise flow from using those existing facilities because of their optimal location and long standing investment.

51. At each stage of the development assessment process, there are opportunities for review and comment by agencies.

52. The State Government has a long record of formally raising issues of State planning significance in the planning process. Increasingly, the Government encourages a connection or "line of sight" between the broader levels of planning policy and those at the more local level. Please see "line of sight" diagram at Appendix 3.

Requirement to provide Statement to Inquiry – 25 August 2011

53. This section of my statement formally responds to the specific matters I am required to give account of, as set out in the Queensland Floods Commission of Enquiry letter addressed to me dated 25 August 2011. For each response, I have used the reference number (e.g. 2) of the Commission's 25 August correspondence and reproduced the request in full.

In relation to paragraph 1 of the Requirement - his role and position within the Department of Local Government and Planning (DLGP), and his role in providing advice to the Government. This is to include clarification of who he reports and provides advice to (for example, directly to Ministers).

54. I am currently the Government Planner, Growth Management Queensland (GMQ), Department of Local Government and Planning (DLGP).

55. I have held the position of Government Planner, GMQ, DLGP, (formerly the Department of Infrastructure and Planning (DIP)) since March 2010.

56. Prior to holding the position of the Government Planner, I held the position of Deputy Director-General (Planning) in the former DIP. I commenced this position on or about July 2008.

57. My qualifications include a Bachelor of Regional and Town Planning UQ and a postgraduate Diploma in Business Management QIT (QUT).

58. As the Government Planner, GMQ, DLGP I have overall responsibility and accountability for the Planning Services, Planning Policy and Building Codes Queensland Divisions.

59. This role carries the following responsibilities and accountabilities as it relates to GMQ:

- coordination, leadership and strategic advice to government in relation to State, regional, and local planning; and building standards; and
- coordination and integration of a whole-of-Government approach to preparation and delivery of agreed plans, planning processes and key projects;
- formulation and coordination of State planning instruments (e.g. Regional Plans), regulations, associated polices, and supporting documents;
- oversight of the preparation of local government planning instruments; and key liaison with local governments and their planning delivery frameworks because of their key role in the delivery of planning outcomes for Queensland;
- engagement with stakeholders who have an interest and role in the delivery of planning matters in Queensland; and
- ensuring planning and building policy and objectives are consistent with urban design and infrastructure frameworks.

60. In this role, I provide advice to all divisions within the Department when required and report directly to the Chief Executive Officer of Growth Management Queensland (division of the Department). I regularly provide advice to the Director-General and Minister of the Department on planning matters when required.

In relation to paragraph 2 of the Requirement - the role of DLGP in determining land use in planning schemes, including:

(a) An outline of the process a local government authority must follow when creating a planning scheme, including the role of DLGP in the creation of a planning scheme (for example, state interest checks across departments, briefing notes and the role of DLGP in providing advice to the Planning Minister).

61. A planning scheme is a local planning instrument that provides for development to be planned and undertaken in a strategic way, encompassing the entire local government area.

62. Under the *Integrated Planning Act 1997* (IPA) a planning scheme was required to be reviewed every eight years and is required to be reviewed every 10 years under the *Sustainable Planning Act 2009* (SPA) to ensure that it responds appropriately to changes at a local, regional and state level.

63. A local government can amend its planning scheme at any time. There are three types of amendments to a planning scheme including:

- administrative amendment;
- minor amendment; and
- major amendment.

Administrative amendment

64. For an amendment to a planning scheme to be considered an administrative amendment it is an amendment:

– that corrects or changes:

- an explanatory matter about the planning scheme;
- the format or presentation of the planning scheme;
- a spelling, grammatical or mapping error in the planning scheme;
- a factual matter incorrectly stated in the planning scheme;
- a redundant or outdated term;
- inconsistent numbering of provisions in the planning scheme; and
- cross-references in the planning scheme.

– to reflect an amendment to the mandatory components of the standard planning scheme provisions (SPSP) or an amendment to a non-mandatory or optional component of the SPSP used in the planning scheme;

- to include a statement that a state planning instrument, or part of one, is appropriately reflected in the planning scheme, if the Planning Minister has advised the local government that the Minister is satisfied that the planning scheme reflects the state planning instrument.

The Minister administering SPA (Planning Minister) has no role in the process for making and adopting an administrative amendment.

Minor amendment

65. For an amendment to be considered a minor amendment to a planning scheme, the Minister administering SPA (Planning Minister) must be satisfied that the proposed minor amendment:

- reflects a current development approval, master plan for a declared master planned area or an approval under other legislation;
- reflects a change that is directly responding to a regional plan for a designated region that applies in the local government area;
- reflects a state planning policy, or part of a state planning policy;
- reflects changes to the planning scheme in response to a Ministerial direction if in the Minister's opinion, the subject of those changes involved adequate public consultation, or
- has involved adequate consultation with the public and the State.

If the local government considers that an amendment is minor, it must submit the proposed amendment to the Planning Minister for consideration together with written justification about why the local government considers the amendment to be minor.

The Planning Minister is then required to consider whether the amendment is minor and advise the local government in writing that:

- it may adopt the proposed minor amendment with or without conditions;
- the local government may not proceed further with the minor amendment; and
- the amendment is a major amendment and the process for making a major amendment must be followed.

A state interest review is not mandatory. Where the Planning Minister considers the amendment to be a major amendment, the process for making a major amendment is required to be followed.

Making a planning scheme or major amendment

66. A major amendment to a planning scheme is an amendment that is not a minor amendment or an administrative amendment.

The process for making and majorly amending a planning scheme includes:

Stage 1 – Planning and preparation stage (local government responsibility)

- Local government prepares the proposed planning scheme or amendment. When preparing the proposed planning scheme or amendment, state agencies have a role in assisting local governments to ensure that state and regional interests are *appropriately integrated.*

Stage 2 – First state interest review

- Planning Minister receives the proposed planning scheme or amendment for first state interest review.
- The Department of Local Government and Planning (DLGP), on behalf of the Planning Minister provides the proposed planning scheme or amendment to state agencies for consideration on whether state interests would be adversely affected. In most instances this includes: the Department of Transport and Main Roads; Department of Environment and Resource Management; and Department of Community Safety.
- State agencies with carriage of a state planning instrument, including state planning policies, are required to review the proposed planning scheme or amendment to confirm whether its state interests have been appropriately reflected.
- DLGP undertakes an internal technical assessment of the workability of the planning scheme or amendment and ensures that any statutory regional plan for the area has been appropriately reflected.
- DLGP collates and categorises (state interest/ best practice/ for information) state agency comments and resolves any conflicts.
- DLGP provides the state agency comments to the local government for response.
- DLGP reviews local government response and resolves outstanding issues between local and relevant state agencies.
- DLGP prepares briefing note detailing key state interests raised and any outstanding issues for consideration by the Planning Minister.
- Planning Minister considers whether state interests would be adversely affected and advises the local government it may:
  - notify the proposed planning scheme or amendment;
  - notify the proposed planning scheme amendment subject to conditions; or
  - not proceed further with the proposed planning scheme.

Stage 3 – Public consultation (local government responsibility)

- Public consultation for at least 30 business days which includes placing a notice is a locally circulating newspaper and on the local government's webpage.
- Following public consultation, local government decides whether to:

- proceed with no changes or with changes that do not result in the proposed planning scheme or amendment being significantly different to the version released for public consultation;
- proceed with changes which would result in the proposed planning scheme or amendment being significantly different to the version released for public consultation; or
- not proceed.

- Local government to give written notice to the Planning Minister.

Stage 4 – Second state interest review

- Planning Minister considers proposed planning scheme or amendment and advises whether a second state interest review is required or whether the local government can proceed to adoption;
- If a second state interest review is required, it is limited to:
  - matters which have already been identified during first state interest review;
  - potential adverse impacts on state interests as a result of changes made following first state interest review; or
  - any new state planning instruments which have come into effect since first state interest review.
- DLGP undertakes a targeted state interest review, seeking comments only from those state agencies affected by the particular issue/unresolved matters.
- DLGP collates and categorises (state interest/ best practice/ for information) state agency comments and resolves any conflicts.
- DLGP provides the state agency comments to the local government for response (if required).
- DLGP reviews local government response and resolves outstanding issues between local and relevant state agencies (if required).
- DLGP prepares briefing note detailing key state interests raised and any outstanding issues for consideration by the Planning Minister.
- Planning Minister advises the local government that it may:
  - not proceed with the proposed planning scheme or amendment;
  - may adopt the proposed planning scheme or amendment; or
  - may adopt the proposed planning scheme or amendment subject to conditions.
- If advising the local government it may adopt the proposed planning scheme or amendment, the Planning Minister must also advise which state planning instruments or parts of instruments, are appropriately reflected in the proposed planning scheme.

Stage 5 – Adoption (local government responsibility)

- Local government decides whether to adopt of not proceed with the proposed planning scheme or amendment.
- A notice is required to be placed on the local government's website, in a local newspaper and the gazette advising whether adopting or not proceeding.

- The local government also sends certified copies and an electronic copy to the Chief Executive of DLGP once it has adopted with a copy of the notice.

(b) How designations are decided in a planning scheme. Please illustrate the difference between the creation of an Integrated Planning Act 1997 (QLD) (IPA) planning scheme, the amendment of an IPA planning scheme, and the creation of a Sustainable Planning Act 2009 (QLD) (SPA) planning scheme.

67. Local government has the primary responsibility for preparing a proposed planning scheme or amendment and is recommended to consult with state agencies and get their input where relevant.

68. In the preparation of its planning scheme or amendment, the local government is required under section 89 of SPA to address core matters in the preparation of a planning scheme. This includes obtaining and/or undertaking the necessary studies and background reports on issues such as: affordable living; biodiversity; climate change; cultural heritage; flooding and stormwater management; rural land; and transport.

69. These studies and reports are what guide the drafting of the proposed planning scheme. They ensure there is a direction and framework that is reflected through the complete document to ensure consistency and a common goal is achievable for the future development of the local government area.

70. Planning schemes are largely organised having regard to two layers – zones and overlays. In some cases, local government areas also use a third layer local plan areas. Zones provide the primary organising layer and are based on broad land use allocations. All parts of a planning scheme area are included in a zone, and for each zone assessment categories are identified in tables and assessment criteria specified in a corresponding code.

71. Overlays provide the secondary organisational layer and are based on special attributes of land that need to be protected from the effects of development, or that may constrain development due to an environmental hazard or the value of a resource. Like zones, the assessment categories are identified in tables and the relevant assessment criteria is specified in codes for each type of overlay.

72. Throughout the process of drafting the local government often releases information, including studies and draft versions of the new planning scheme to the public for comment and liaises with community representatives and industry stakeholders to seek input into planning scheme issues.

73. The amount and method community and stakeholder input is requested is dependant on the local government, but is mandatory following the first state interest review when the proposed planning scheme is required to undergo a public consultation stage.

74. The way in which zones are decided has not changed significantly between IPA and SPA planning schemes. SPA has however re-introduced the need for a strategic framework within planning schemes.

75. A strategic framework is a local government's forward planning policy statement that directs development assessment decisions to achieve long term (25+ years) management of preferred land use outcomes.

76. The strategic framework is the most important component of the planning scheme as it provides the organisational structure to ensure that there is a direct line of sight from state legislation and desired regional outcomes through to site based development. The strategic framework ensures the integration of state and regional planning outcomes into the planning scheme. They provide the mechanism to vertically integrate the planning scheme (i.e. tables of assessment, zones, local plans, overlays, codes) with local, regional and state planning outcomes.

77. Preparing a strategic framework provides a local government the opportunity to discover and analyse the future development of their local government area. This includes recognising where they are now, from economic, social and environmental sustainability perspectives; defining where they want to go economically, socially and environmentally; and how they are going to achieve these objectives and outcomes.

(c) Examples relating to point 2(b) by reference to the Ipswich, Brisbane City and Bundaberg City planning schemes

Examples relating to Bundaberg Planning Scheme

78. Land use designations under the Bundaberg City Plan 2004 were made by the then Bundaberg City Council and submitted to the Minister for the Local Government and Planning.

79. The role of the then Department of Local Government Planning Sport and Recreation was to review the proposed land use designations by Council in light of State interests. Where State interests were not considered to be appropriately reflected the Department required Council to amend/alter a particular designation.

80. The Bundaberg City Council commenced the Bundaberg City Plan 2004 under the former Local Government (Planning and Environment) Act 1990, and then proceeded under the transitional provisions of the Integrated Planning Act 1997.

81. Bundaberg City Council applied to the Minister for Local Government and Planning to amend the Bundaberg City Plan 2004 under the Integrated Planning Act 1997. The Department of Local Government and Planning reviewed the

amendment 1/2006 which proposed a number of operational amendments to the planning scheme including those listed below. The amendment was checked against State interests prior to proceeding to public notification and prior to Ministerial approval for adoption in 2007.

82. Bundaberg Regional Council anticipate a Sustainable Planning Act 2009 planning scheme to be finalised early 2013. Bundaberg Regional Council are currently undertaking a range of background planning and scoping studies to inform the development of the planning scheme.

83. The actual documents referenced in these examples have been forwarded to the Commission pursuant to the requirement issued to Jack Noye dated 15th of August 2011.

Examples relating to Ipswich and Brisbane City Planning Schemes

84. Land use designations under both the Ipswich Planning Scheme and Brisbane City Plan are made by each respective Council and submitted to the Minister responsible for Local Government and Planning.

85. The role of the Department of Local Government and Planning is to review the proposed land use designations by Council and determine whether the proposed planning scheme conflicts with State interests.

86. The State interest review enables the Minister to review the proposed planning scheme or major amendment to consider whether State interests would be affected by the proposal.

87. Liaison between local and State government is expected to have commenced prior to the formal State interest review. As such, state agencies and local governments should have a high level of understanding of how State interests have been reflected in the proposed planning scheme and of any potential or outstanding issues.

88. In reviewing the Planning Schemes for compliance with State interest, a State interest is defined as:

- an interest that the Minister considers affects an economic or environmental interest of the State or a part of the State, including sustainable development; or
- an interest that the Minister considers affects the interest of ensuring there is an efficient, effective and accountable planning and development assessment system.

89. Where an issue of conflict of the State is identified, the Department may require Council to amend/alter a particular designation.

90. The Ipswich Planning Scheme 2006 was prepared under the *Integrated Planning Act 1997* and is compliant with the 2005 SEQ Regional Plan, having addressed the implications of the urban footprint and policy framework in terms of land use decisions in the planning scheme area. The 2006 scheme provided a number of operational amendments to the former Ipswich Planning Scheme made under IPA which was adopted on the 5th of April 2004. As such, the 2006 scheme is largely the same as the 2004 scheme.

91. Ipswich City Council recently applied to the Minister for Local Government and Planning to amend the Ipswich Planning Scheme 2006 under the *Integrated Planning Act 1997.*

92. The Department of Local Government and Planning reviewed the amendment "Operational Amendment 04/09" which proposed a number of operational amendments to the planning scheme including overlay mapping, land use definitions, zoning designations and other changes. The amendment was checked against State interests prior to proceeding to public notification and prior to Ministerial approval for adoption.

93. The Brisbane City Plan was prepared under the *Integrated Planning Act 1997.*

94. Brisbane City Council has undertaken extensive amendments including neighbourhood planning which plans for local areas within Brisbane City. The process has been undertaken in accordance with the statutory process for amending planning schemes. It is acknowledged that the Brisbane City Plan does not comply with all relevant State Planning Policies.

95. The actual documents referenced in these examples have been forwarded to the Commission pursuant to the requirement issued to Jack Noye dated 15th of August 2011.

(d) The role of DLGP as a concurrence agency for IPA section 3.1.6 preliminary approvals to override the planning scheme, by reference to the assessment of development application no. DRS/USE/H05-933802, 3.1.6 preliminary approval, granted to Mirvac Queensland at Tennyson

General overview of referral process

96. Referral coordination was a process by which the chief executive of then Department of Local Government, Planning, Sport and Recreation (DLGPSR) determined whether:
- a State coordinated information request will be made for a development application; and
- the content of the request.

97. Officers of DLGPSR acting on behalf of the chief executive made this determination following consultation with the assessment manager and any IDAS referral agencies for the application. Advice from third parties (including other State agencies) was also be sought to assist with the determination.

98. On and before 30 March 2007, referral coordination was triggered on development applications in three ways:
- if the application involves three or more concurrence agencies; or
- all or part of the application is for:
  - a material change of use (assessable development against a planning scheme) for a purpose prescribed under schedule 7 of the *Integrated Planning Regulation 1998* (IPR); or
  - a material change of use (assessable against a planning scheme) or reconfiguration, if the premises is prescribed in schedule 8 of the IPR.
- all or part of the application is for a preliminary approval under section 3.1.6.

Under IPA

99. Under the now repealed IPA, an applicant could request a preliminary approval overriding the planning scheme (under section 3.1.6) if the application involved a material change of use requiring impact assessment. The approval could:
- change the level of assessment for the subsequent development (e.g. from impact to code assessment or from code assessment to exempt development);
- identify codes that apply to subsequent development on the land.

100. Prior to 31 March 2007, DLGPSR could only provide third party advice in relation to section 3.1.6s and referral coordination. An assessment manager or concurrence agency could request anyone for advice in relation to an application however the advice provided had no weight and it was at the discretion of the assessment manager or concurrence agency if it was to be taken into consideration.

101. From 31 March 2007, under the Integrated Planning Regulation 1998 (IPR), following the commencement of the Integrated Planning and Other Legislation Act 2006 (IPOLAA 2006), development for which preliminary approval is sought under section 3.1.6 of IPA, the chief executive administering the IPA became an advice agency under the referral jurisdiction of the purposes of the IPA.

102. As an advice agency, the chief executive could:
- offer advice about the proposal;
- recommend that the assessment manger attach conditions to the approval;

- recommend that the assessment manager refuse the application; and
- advise that it has no comment about the application.

Under SPA

103. DLGP (chief executive) can only assess development applications within its jurisdiction. The chief executive's jurisdiction is the purpose of IPA includes:
    - coordinating and integrating planning at the local, regional and State levels; and
    - managing the process by which development occurs; and
    - managing the effects of development on the environment (including managing the use of premises).

104. With the introduction of SPA on 18 December 2009, the provisions available under section 3.1.6 of IPA were transferred into section 242 of SPA providing a preliminary approval may affect a local planning instrument.

105. From 18 December 2009, under the *Sustainable Planning Regulation 2009* (SPR), development for which preliminary approval is sought under section 242 of SPA, the chief executive administering the SPA became a concurrence agency under the referral jurisdiction of the purposes of the SPA.

106. As an concurrence agency, the chief executive can within the limits of the concurrence agency's jurisdiction:
    - ask the applicant to give further information needed to assess the application;
    - tell the assessment manager 1 or more of the following:
        - the conditions that must attach to any development approval;
        - that any approval must be for part only of the development;
        - that any approval must be a preliminary approval only;
        - a different relevant period.
    - or tell the assessment manager:
        - the concurrence agency has no requirements relating to the application; or
        - to refuse the application.

107. DLGP (chief executive) can only assess development application within its jurisdiction. The chief executive's jurisdiction is the purpose of SPA includes:
    - managing the process by which development takes place, including ensuring the process is accountable, effective and efficient and delivers sustainable outcomes;
    - managing the effects of development on the environment, including managing the use of premises; and
    - continuing the coordination and integration of planning at the local, regional and state levels.

108. DLGP is not the assessment manager weighing up whether the application has merit against the codes in the planning scheme. DLGP is to assess the

application to the extent relevant to the development and within the limits of its jurisdiction.

Mirvac Development at Tennyson

109. On 16 November 2005, Mirvac (the applicant) applied pursuant to IPA to Brisbane City Council (BCC) (the assessment manager) for the following at 21 Softstone Street, Tennyson also described as Lot 566 on SP104107 and Lot 1 on SP164685:
    - development approvals-
        - Material Change of Use – Preliminary Approval (buildings A, B & C, Park)
        - Material Change of Use – Development Permit (State Tennis Centre)
        - Material Change of Use – Development Permit (buildings E & F, Park)
        - Material Change of Use – Development Permit (building D, Shop, Restaurant, Park)
        - Carrying out Operational Works – Development Permit (Disturbance to Marine Plants)
    - proposal-
        - Override the planning scheme for development of a major tennis centre, Multi-unit Dwellings and associated Centre Activities;
        - State Tennis Centre and associated facilities including administration officers, conference facilities, café and outdoor lighting; and
        - Residential apartments (393 dwelling units in 6 Multi-unit Dwellings) including resident's gymnasium and recreation building, café/restaurant, shop or office.

110. On 12 December 2005, the then Department of Local Government, Planning, Sport and Recreation (DLGPSR) received the application requesting referral coordination under IPA.

111. The following agencies were consulted in preparation of the information request:
    - BCC (Assessment Manager)
    - Environmental Protection Agency (EPA) (Concurrence agency)
    - Department of Primary Industries and Fisheries (DPI&F) (Concurrence agency)
    - Department of Main Roads (DMR) (Concurrence agency)
    - Queensland Transport (QT) (Concurrence agency)
    - Department of Natural Resources and Mines (DNRM) (Advice agency)
    - Energex (Advice agency)
    - Powerlink (Advice agency)
    - DLGPSR (Third party)

112. On 1 February 2006, DLGPSR sent an information request to the applicant. DMR, Powerlink and DLGPSR required no further information.

113. On 8 August 2006, DLGPSR received the changed application requesting referral coordination under IPA (Appendix 4). As such DLGPSR on 9 August 2006, requested the state agencies to advise whether additional information was required from the applicant in order to assess the application (Appendix 5).

114. On 17 August 2006, DLGPSR sent an information request for the changed application was sent to the applicant (Appendix 6). DPI&F requested further information.

115. The applicant received approval subject to conditions from BCC in a Decision Notice dated 19 September 2006 (Appendix 7). The applicant made representations and was issued a Negotiated Decision Notice approving the development subject to conditions dated 6 October 2006 (Appendix 8).

116. In this process, DLGPSR undertook the referral coordination but did not provide a third party advice.

In relation to paragraph 3 of the Requirement - the role of the Queensland Planning Provisions (QPPs), particularly:

(a) How the QPPs deal with flood risk, and whether these provisions are mandatory

117. The QPP are the standard planning scheme provisions under the SPA and provide a template for the preparation of all Queensland planning schemes made under SPA through standardised:
- structure and format;
- land use and administrative definitions;
- zones;
- structure for tables of assessment;
- overlays;
- infrastructure planning provisions; and
- assessment codes and other administrative matters.

118. It is important to note that the QPP template and content are only relevant for those planning schemes where the local government has made the decision to review the planning scheme under SPA.

119. The QPP makes provisions for local government to incorporate local content and variation to reflect the context of the local government area. One of the greatest challenges of taking a standardised approach to planning schemes is to still permit flexibility to allow local governments to respond to local issues and produce locally relevant planning schemes. This is why the QPP only regulates

the format and base content (i.e. provisions of a suite of mandatory zone purpose statements and definitions) of a local governments planning scheme.

120. The current version of the QPP, version 2.0 (released October 2010)(refer Appendix 9) contains overlays. The purpose of an overlay is to address both state and local government interests by identifying areas that, inter alia, constrain land or development. The QPP provides a suite of standard overlays which local government may choose from to reflect the local context. Local governments are therefore not required to use all overlays and may propose additional overlays to address or reflect a particular local circumstance provided the overlays does not duplicate or conflict with the overlays in the standard suite.

121. Included in the QPP version 2.0 standard suit of overlays is a 'Flood hazard' overlay. This overlay deals with areas of land identified through SPP1/03 (Refer Appendix 10). In association, the QPP also provides a standardised approach to the mapping of overlays where overlay criteria are required to be visually represented such as the visual representation of land subject to flooding. QPP version 2.0 provides overlay mapping standards for both 'Flooding and inundation' (such as riverine flooding) and 'Overland flow paths'.

(b) How the State Planning Policy (SPP) 1/03 is dealt with in the QPPs. By way of example, if changes are made to the SPP 1/03, please explain whether existing planning schemes which were gazetted prior would need to be amended to reflect the amended SPP1/03

122. If the QPP's are amended, the planning scheme must be amended to reflect the standard planning scheme provisions within 90 business days or the Minister may amend the planning scheme (SPA section 55(2)). Hypothetically, even if a local government adopted a planning scheme consistent with QPP version 2.0, it would be required to subsequently amend its planning scheme to ensure consistency with QPP version 3.0, once that version takes effect.

123. However, the requirements in SPA sections 55 and 88(1)(a) which ensure that a planning scheme is consistent with the standard planning scheme provisions does not apply to a planning scheme made under the repealed Integrated Planning Act 1997 (IPA) or a planning scheme or planning scheme amendment which was proposed to be made prior to the commencement of SPA (see SPA section 777(1),(2) and (3)).

124. However, if a state planning policy (SPP) is amended and there is an inconsistency between a SPP policy and a local planning instrument including a local government planning scheme, the SPP prevails to the extent of the inconsistency (SPA section 43). It would be the assessment manager's responsibility to ensure that any development application is assessed against the SPP as it exists at the time of lodgement (SPA sections 313(2)(d)(ii) and

314(2)(d)(ii)) or as amended after lodgement but prior to the commencement of the decision stage (SPA section 317).

(c) The extent that major infrastructure and essential services are protected against flood risk in land use determinations

125. The QPP does not mandate minimum habitable floor levels or likewise for any form of development, including infrastructure. This is a matter for local government.

126. The QPP does not designate land for major infrastructure or other forms of community infrastructure but provides for a consistent manner for lands designated for community infrastructure to be identified in planning schemes across Queensland.

127. Under section 207 Chapter 5 of the SPA, the Minister designating land for community infrastructure must be satisfied that adequate environmental assessment and community consultation has been undertaken and this section identifies a number of processes which may be used to achieve this. As part of this process, the potential flood hazard circumstances would normally be considered as part of the environmental assessment process.

(d) Whether any changes have been made or considered to be made to the QPPs since the floods of December 2010 to January 2011

128. The Queensland Reconstruction Authority (QRA) was established to monitor and coordinate the implementation of the State Plan across government agencies in response to the December – January floods. To date, no state wide policy direction has emerged which the QPP can adopt as a regulating tool.

129. Notwithstanding the above, it is currently intended that the QPP version 3.0 will include an administrative definition for 'adverse flooding' defined as:

Flooding which may adversely affect the amenity, safety or use of a premises.

130. Draft QPP version 3.0 is anticipated to be released for public consultation in mid to late September 2011.

131. The inclusion of the administrative definition is to assist in clarifying the difference between a 'flood' (the event) as defined in the SPP1/03 and 'adverse flooding' (the outcome) defined above. That is, while a property may experience a 'flood', by developing/constructing in accordance with an overlay code associated with the 'Flood hazard' overlay (described above), the risk of the property being subject to 'adverse flooding' is theoretically reduced.

In relation to paragraph 4 of the Requirement – detailed information regarding the SPP 1/03, including:

(a) Detailed information regarding the SPP 1/03, including: The process for determining whether the SPP 1/03 has been appropriately reflected in a planning scheme, including all details of coordination and reliance on materials and advice from other departments

132. For commentary on the process of making a planning scheme or major amendment please see response to 2(a) of this statement.

133. The Department of Local Government and Planning (DLGP), on behalf of the Planning Minister provides the proposed planning scheme or amendment to state agencies for consideration on whether state interests would be adversely affected. State agencies with carriage of a state planning instrument, including state planning policies such as SPP1/03, are required to review the proposed planning scheme or amendment to confirm whether its state interests have been appropriately reflected.

134. The Department of Community Safety (DCS) reviews draft planning schemes to determine whether the SPP has been appropriately reflected, thereby achieving the State's interest in respect of natural hazard management, and conveys that advice to the DLGP. The DCS provides advice on interpreting and implementing the SPP and should be consulted by local governments about integrating the SPP into planning schemes. The DCS, in consultation with DERM on flood and landslide hazards, provides advice about the appropriate level of hazard assessment to determine natural hazard management areas when preparing planning schemes.

135. The DCS provides advice on the appropriate agencies and officers to contact in relation to specific natural hazard management issues

136. DLGP provides the state agency comments to the local government for response.

(b) The process undertaken by the Planning Minister to determine whether the SPP 1/03 has or has not been appropriately reflected in planning schemes

137. For commentary on the process of making a planning scheme or major amendment please see response to 2(a) of this statement.

138. DLGP prepares briefing note detailing key state interests raised and any outstanding issues for consideration by the Planning Minister.

139. Dependant on the stage of the planning scheme review, the Planning Minister considers whether state interests would be adversely affected and advises the local government it may:

- notify the proposed planning scheme or amendment;

- notify the proposed planning scheme amendment subject to conditions;
- not proceed further with the proposed planning scheme;
- that it may adopt the proposed planning scheme amendment
- advise the LG which State planning instruments the Minister is satisfied are appropriately reflected

(c) How the SPP 1/03 is reflected in regional plans with respect to flooding. Please make reference to the South East Queensland Regional plan by way of example

140. The South East Queensland Regional Plan ("SEQ Regional Plan") sits within the Queensland land use planning framework and reflects and informs state planning policy and priorities. It also informs local government plans and policies. It is the pre-eminent plan for the region and takes precedence over all other planning instruments.

141. The SEQ Regional Plan also informs non-statutory processes, such as planning for natural resource management and the planning of urban renewal and new growth areas at the district and neighbourhood levels.

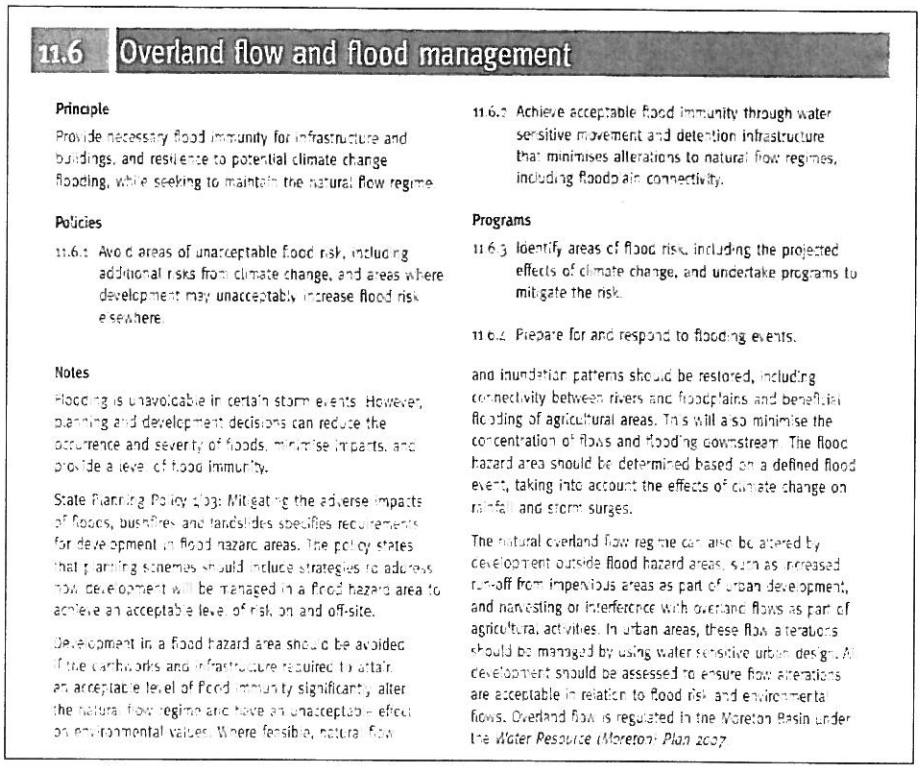
142. The plan includes a regional vision and strategic directions, followed by Sub-regional narratives, providing more detailed policy directions for individual local government areas. Each of these sections are reinforced by the Desired Regional Outcomes for the region

143. The Desired Regional Outcomes, or DRO's, set out principles; followed by the policies to be applied to guide state and local government planning processes and decision making. This section also includes notes that provide local context and references specific documents that advance regional plan policy, such as State Planning Policies.

144. It is intended that the regional plan, and State Planning Policies are utilised in the preparation of local government planning schemes to ensure a consistent policy approach and give direction on how local government authorities respond to State and regional policy.

145. The SEQ Regional Plan includes a specific DRO for water management, DRO11. Within this DRO Principle 11.6 - Overland flow and flood management, makes reference to overland flow and flood issues by way of a Principle, Policies and Programs. Reference to the SPP is specifically made in the notes within 11.6.

The extract is as follows:



11.6 Overland flow and flood management

Principle

Provide necessary flood immunity for infrastructure and buildings, and resilience to potential climate change flooding, while seeking to maintain the natural flow regime.

Policies

11.6.1 Avoid areas of unacceptable flood risk, including additional risks from climate change, and areas where development may unacceptably increase flood risk elsewhere.

11.6.2 Achieve acceptable flood immunity through water sensitive movement and detention infrastructure that minimises alterations to natural flow regimes, including floodplain connectivity.

Programs

11.6.3 Identify areas of flood risk, including the projected effects of climate change, and undertake programs to mitigate the risk.

11.6.4 Prepare for and respond to flooding events.

Notes

Flooding is unavoidable in certain storm events. However, planning and development decisions can reduce the occurrence and severity of floods, minimise impacts, and provide a level of flood immunity.

State Planning Policy 1/03: Mitigating the adverse impacts of floods, bushfires and landslides specifies requirements for development in flood hazard areas. The policy states that planning schemes should include strategies to address how development will be managed in a flood hazard area to achieve an acceptable level of risk on and off-site.

Development in a flood hazard area should be avoided if the earthworks and infrastructure required to attain an acceptable level of flood immunity significantly alter the natural flow regime and have an unacceptable effect on environmental values. Where feasible, natural flow and inundation patterns should be restored, including connectivity between rivers and floodplains and beneficial flooding of agricultural areas. This will also minimise the concentration of flows and flooding downstream. The flood hazard area should be determined based on a defined flood event, taking into account the effects of climate change on rainfall and storm surges.

The natural overland flow regime can also be altered by development outside flood hazard areas, such as increased run-off from impervious areas as part of urban development, and harvesting or interference with overland flows as part of agricultural activities. In urban areas, these flow alterations should be managed by using water sensitive urban design. All development should be assessed to ensure flow alterations are acceptable in relation to flood risk and environmental flows. Overland flow is regulated in the Moreton Basin under the *Water Resource (Moreton) Plan 2007*.

In addition, reference is also made in DRO1 - Sustainability and climate change section 1.4 Natural hazards and climate change adaptation, as follows:

1.4 Natural hazards and climate change adaptation

Principle

Increase the resilience of communities, development, essential infrastructure, natural environments and economic sectors to natural hazards including the projected effects of climate change

Policies

1.4.1 Reduce the risk from natural hazards, including the projected effects of climate change, by avoiding areas with high exposure and establishing adaptation strategies to minimise vulnerability to riverine flooding, storm tide or sea level rise inundation, coastal erosion, bushfires and landslides.

1.4.2 Reduce the risk from natural hazards, including the projected effects of climate change, by establishing adaptation strategies to minimise vulnerability to heatwaves and high temperatures, reduced and more variable rainfall, cyclones and severe winds, and severe storms and hail.

1.4.3 Planning schemes and development decisions shall be in accordance with the Queensland Coastal Plan, including the range of potential sea level rises.

Programs

1.4.4 Align and coordinate the implementation of regional policies to increase resilience to and reduce risks from natural hazards, including the projected effects of climate change, through the SEQ Climate Change Management Plan.

1.4.5 Develop performance criteria for the planning and design of development and infrastructure to manage risks from natural hazards and climate change.

Notes

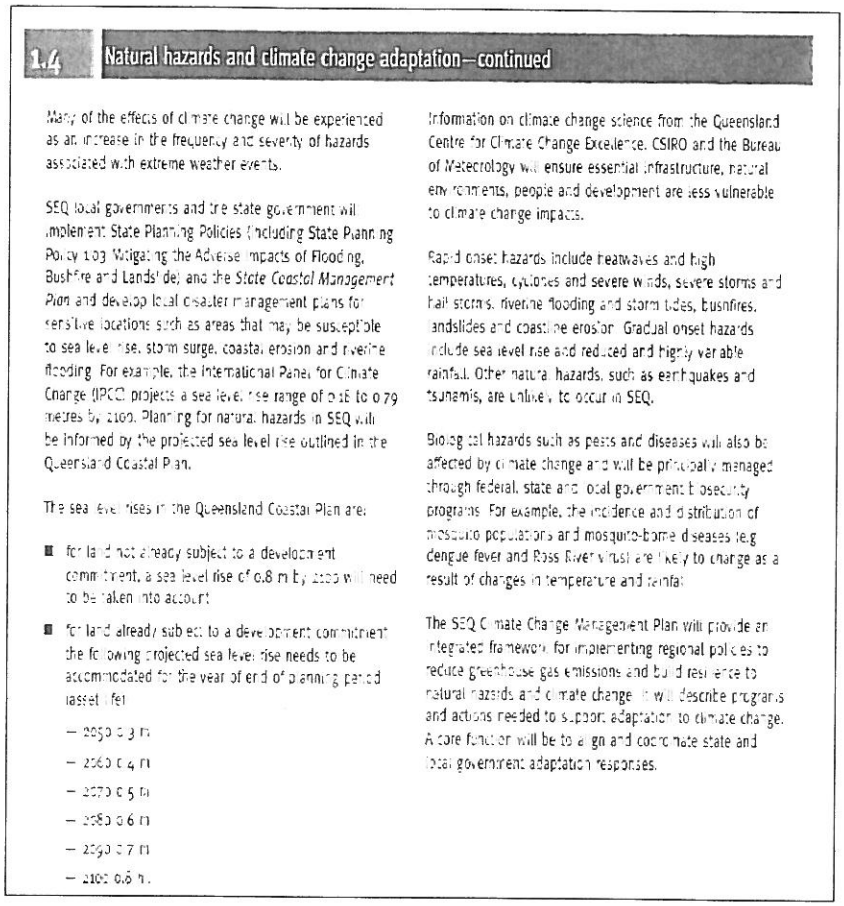
Implementation of natural hazard and climate change adaptation policies will be achieved through building community resilience, avoiding vulnerable development in hazardous areas and incorporating design measures that are suited to more varied climatic conditions.

Natural hazards such as flooding, bushfires and storm surge pose a significant risk to communities and infrastructure in SEQ. Climate change is expected to increase the frequency and severity of extreme weather events that cause these natural hazards. In addition to factors such as rising sea levels, natural hazards pose a significant risk to development in SEQ. The United Nations Intergovernmental Panel on Climate Change (IPCC, 2007) has identified SEQ as one of six 'hot spots' in Australia where vulnerability to climate change is likely to be high.

Natural hazards and the projected effects of climate change are likely to compound the effects of existing threats to communities and the natural environment, such as habitat loss and fragmentation from development. SEQ has sustained Aboriginal populations for many tens of thousands of years. Understanding how climate change has affected the region's ecosystems in past periods of climate change can inform projections and management of climate change into the future.

The planning process in SEQ can reduce the risks from natural hazards and the projected effects of climate change through:

- avoiding hazardous areas
- improving the design of developments and infrastructure
- improving community preparedness to respond to natural hazards
- enhancing the resilience of natural systems
- maximising opportunities for rural industries in the face of increasing climate variability



1.4 Natural hazards and climate change adaptation—continued

Many of the effects of climate change will be experienced as an increase in the frequency and severity of hazards associated with extreme weather events.

SEQ local governments and the state government will implement State Planning Policies (including State Planning Policy 1/03 Mitigating the Adverse Impacts of Flooding, Bushfire and Landslide) and the *State Coastal Management Plan* and develop local disaster management plans for sensitive locations such as areas that may be susceptible to sea level rise, storm surge, coastal erosion and riverine flooding. For example, the International Panel for Climate Change (IPCC) projects a sea level rise range of 0.18 to 0.79 metres by 2100. Planning for natural hazards in SEQ will be informed by the projected sea level rise outlined in the Queensland Coastal Plan.

The sea level rises in the Queensland Coastal Plan are:

- for land not already subject to a development commitment, a sea level rise of 0.8 m by 2100 will need to be taken into account
- for land already subject to a development commitment the following projected sea level rise needs to be accommodated for the year of end of planning period (asset life)
  - 2050 0.3 m
  - 2060 0.4 m
  - 2070 0.5 m
  - 2080 0.6 m
  - 2090 0.7 m
  - 2100 0.8 m.

Information on climate change science from the Queensland Centre for Climate Change Excellence, CSIRO and the Bureau of Meteorology will ensure essential infrastructure, natural environments, people and development are less vulnerable to climate change impacts.

Rapid onset hazards include heatwaves and high temperatures, cyclones and severe winds, severe storms and hail storms, riverine flooding and storm tides, bushfires, landslides and coastline erosion. Gradual onset hazards include sea level rise and reduced and highly variable rainfall. Other natural hazards, such as earthquakes and tsunamis, are unlikely to occur in SEQ.

Biological hazards such as pests and diseases will also be affected by climate change and will be principally managed through federal, state and local government biosecurity programs. For example, the incidence and distribution of mosquito populations and mosquito-borne diseases (eg dengue fever and Ross River virus) are likely to change as a result of changes in temperature and rainfall.

The SEQ Climate Change Management Plan will provide an integrated framework for implementing regional policies to reduce greenhouse gas emissions and build resilience to natural hazards and climate change. It will describe programs and actions needed to support adaptation to climate change. A core function will be to align and coordinate state and local government adaptation responses.

(d) The consequences for a land use decision for a local government authority if:

i. The SPP 1/03 is not reflected in respect to flooding:

1. In the absence of a flood map or flood study

146. In the context of where SPP 1/03 has not be reflected in a planning scheme in respect to flooding and in the absence of a flood map or flood study, the local government would not be able to consider the potential impacts on the development or resulting from it unless the applicant was requested to provide information as part of their application. Within the IDAS and prior to the decision stage, there is the ability for the local government to seek additional information that it considers relevant to the application (e.g. whether the site in question is likely to be affected by flood events at whatever scale is considered pertinent to the application). In this process, the local government has the opportunity to request information regarding flood mitigation from the applicant.

2. With the knowledge of a flood map or flood study

147. Similarly, where a map or flood study is available despite SPP 1/03 not being reflected in a planning scheme, the local government could with the knowledge

of a flood map or flood study request the applicant address the issue through the information request stage (assuming that the applicant had not already done so as part of the original application submitted).

ii. The SPP 1/03 is appropriately reflected with respect to flooding:

1. In the absence of a flood map or flood study

148. As a matter of logic until a local government adopts a flood event for the management of development and identifies the affected area in a planning scheme, the SPP1/03 does not apply.

2. With the knowledge of a flood map or flood study

149. Development is required to be assessed in accordance with the SPP1/03 as reflected in the planning scheme.

(e) The consequences for a local government if the SPP 1/03 is only partially reflected in a planning scheme and not in relation to flooding, or not reflected at all in the planning scheme, and whether DLGP has a role in ensuring compliance with SPP 1/03

150. The scenarios where SPP 1/03 is only partially reflected in a planning scheme – and not in relation to flooding – or not reflected at all in a planning scheme have the same implications for a local government and development assessment.

151. Section 6.6 of SPP 1/03 states that:

"The natural hazard management area for flood hazard is dependent on a local government adopting a flood event for the management of development in a particular locality and identifying the affected area in the planning scheme. Until this occurs the SPP does not take effect for development assessment in relation to flood hazard in that locality".

152. Consequently, the consideration of policy outcomes of SPP 1/03 do not apply in relation to flood hazards until the local government adopts a flood event for the management of development and identifies the affected area in the planning scheme. This does not necessarily mean that the potential impacts of floods will not be considered during the assessment of development applications, but that the planning decisions made by the local government do not need to reflect the outcomes sought by the State through the SPP 1/03.

153. There is a long history of councils and the State considering flood mitigation before SPP1/03; however, there was a particular emphasis on improving the quality of the flood information used by the local councils in their local planning instruments following the 1974 floods.

154. Although not a statutory instrument and therefore not having any directive authority, the IPA Guideline 1/99 - Preparing IPA Planning Schemes (published by the then Department of Communication and Information, Local Government and Planning) discussed ways that local governments could deal with flooding issues in the context of developing their first IPA planning schemes (while still leaving the prerogative to local government to suit their requirements). Consequently, most local councils addressed flood mitigation in development assessment pre SPP1/03 to some extent via their local planning instruments. SPP1/03 introduced a state-wide level of consistency in addressing the issue that was not there previously.

155. Under the SPP, it is possible to also use measures that are not identified by the SPP to address the issue. Consequently, it would be possible for a local government to include detailed flood management provisions within their planning scheme that achieves the policy outcome that is being sought without necessarily identifying flood hazard areas as stated in the SPP. The planning framework is outcome driven and so achieving the desire outcome is more important than mandating a specific manner that must be used.

156. There is no requirement under the SPA (or the IPA) for a planning scheme to adequately reflect a SPP. However, the policy position of a SPP will prevail to the extent of any inconsistencies between the two planning instruments in the decision making process for development applications. Where there is a conflict between two or more planning instruments of the same level (e.g. SPPs) within the hierarchy under the SPA, the assessment manager must decide in the manner that best reflects the policy position of both instruments (i.e. make a balanced planning judgement) and then take this into consideration with the planning scheme.

157. However, the intent under the SPA (and IPA) was that as planning schemes were being developed and amended, they would appropriately incorporate the policy positions of new/amended SPPs that were made since the planning scheme was last made/amended. It is in these situations that DLGP played a role in determining whether a planning scheme complies with SPP 1/03 by advising the Planning Minister whether the SPP was adequately reflected (based on technical advice from DERM and DCS) taking into account the balancing of other State interests and relevant planning matters. The Planning Minister would then be in an informed position on whether to advise the local government that they could state in the planning scheme that it adequately reflected the SPP. This allows for an integrated application of State and local policies in the planning of the local government area.

158. Where a planning scheme does not state that the Planning Minister has advised that the local government has adequately reflected the SPP in the planning scheme, then the local government must consider both the planning scheme and the relevant SPP under Part 5 Chapter 6 of SPA during the assessment of any development applications.

(f) Any steps that the Minister for Planning could take to ensure a planning scheme is amended to reflect the SPP 1/03 with respect to floods

159. As stated in 4e above, the SPA does not require a planning scheme to reflect an SPP. However, if a planning scheme is in conflict with the SPP, the SPP prevails. Consequently, the options for ensuring that a planning scheme is amended to reflect the SPP are limited to the following:

- through the parliamentary process, amend the SPA so that planning schemes must be amended to appropriately reflect a SPP within a certain period of time (similar to which applies to regional plans and the standard planning scheme provisions); or
- as it is the Planning Minister who approves planning schemes that are developed or amended by local governments, it is within the Minister's prerogative to not approve a planning scheme or amendment until a matter the Minister considers must be addressed is done so to the Minister's satisfaction; or
- the Minister may direct a local government to amend an existing planning scheme under Chapter 3 Part 6 of SPA to address a state interest (e.g. flood hazard management) at any time.

160. Otherwise, to provide for the consideration of the policy in development assessment until the SPP has been appropriately reflected in planning schemes, the Planning Minister may amend SPP 1/03 (under the processes outlined in Chapter 2 Part 6 of SPA) to provide for a default defined flood event (e.g. amendment of section 6.6 and inclusion of a section similar to A3.2 in Annex 3 of SPP 1/03) that applies until the SPP has been appropriately reflected in the planning scheme.

In relation to paragraph 5 of the Requirement - information regarding Community Infrastructure Designations (CIDs), particularly:

(a) The role of DLGP in CIDs. If possible, this should include examples of when a CID application was approved below the Q100 level and the reasoning for this decision, and also when a CID application was refused below the Q100 level and the reasoning for this decision

161. Any Minister (not only the Minister responsible for planning) or a local government may designate land for community infrastructure for the reasons specified in SPA s201 / IPA 2.6.1. Examples of community infrastructure include hospitals, educational facilities, railway facilities, parks and recreational facilities, government administrative offices and works depots.

162. Designated land must pass a public benefit test to ensure the designation is justified. For example, the designating minister or local government must be satisfied the community infrastructure will contribute to environmental

protection or ecological sustainability, or satisfy community expectations for the efficient and timely supply of infrastructure.

163. Pursuant to IPA s2.6.7 and SPA s207, when designating land for community infrastructure, the Minister designating the land must be satisfied that adequate environmental assessment and public consultation has occurred, any issue raised via submissions have been considered, and any relevant state, local government or master planning instruments have been considered.

164. To assist in administering the above requirements, the DLGP developed a guideline titled 'Guidelines about Environmental Assessment and Public Consultation Procedures for Designative Land for Community Infrastructure' (December 2006) (Refer Appendix 11). The guideline describes procedures a Minister may follow for conducting environmental assessment and consultation, for development that is proposed to be designated for land for community infrastructure. The Guideline also includes schedules containing checklists designed to assist in identifying matters that may need to be addressed in the assessment of the environmental effects of the proposed community infrastructure, to the extent relevant. The checklist also identifies other State agencies and Local Government as sources of advice or information that a Minister may consult with as part of the assessment. Natural hazards such as flooding are an identified matter in the checklist together with various sources of the advice/information.

165. A designation may include requirements about the use of the land, such as plans showing the development height, shape or location of works on the land, or other requirements to lessen the impacts of works or use of the land.

166. The role of DLGP in the CID process primarily deals with providing advice on the consistency of the CID with any State planning instruments, in particular Regional Plans such as the South East Queensland Regional Plan 2009-2031. State Planning Policy 1/03, Mitigating the Adverse Impacts of Flood, Bushfire and Landslide sets out the State's interest in ensuring that the natural hazards of flood, bushfire, and landslide are adequately considered when making decisions about development.

167. The SPP states, that wherever practicable, community infrastructure should be capable of performing its role in maintaining the health, safety and wellbeing of the community in the event of a natural disaster. However, locating and designing community infrastructure to withstand any natural hazard event, no matter how severe, would be unrealistic. Accordingly, the SPP Guideline sets out appropriate levels of risk for differing types of community infrastructure and provides advice on assessing community infrastructure proposals. Locating and designing community infrastructure to withstand these specified levels of risk also needs to be weighed against the need for that infrastructure to serve the community effectively in normal circumstances when there is no natural hazard event.

168. There are very limited cases in which the Minister responsible for planning has been the Minister responsible for deciding to proceed with the designation. The Department is not aware of any instances where the Minister responsible for planning has granted approval for community infrastructure below a Q100 flood line contained in a recent planning scheme.

169. However, to provide an example, the most recent Community Infrastructure Designation by the Minister was the Toowoomba Aerodrome Upgrade Project (DLGP ref. 10/38734) granted October 2010. The upgrade project report supporting the CID request included a section identifying the planning controls applicable to the project/area. Flooding was not identified as being applicable in the Toowoomba Planning Scheme. Hypothetically, if flooding was an issue, this would have been the point where this issue would be reviewed. In addition, no flooding issues/concerns were raised in submissions as part of the community consultation undertaken.

170. SPA s206 (and IPA s2.6.17) requires a local government planning scheme to include the details of land designated under a community infrastructure designation. DLGP records all community infrastructure designations on the Community Infrastructure Designation Database, which is located on the Department of Local Government and Planning website, and undertakes a review of local government planning schemes through the state interest check to confirm CID's have been incorporated in accordance with the requirements of the Act. The QPP's provide guidance on how local governments are to include details of land designations.

(b) The role of DLGP in assessing or providing advice to other State Government departments for CIDs

171. Under the repealed IPA, and also under the SPA, where the minister is the minister administering the IPA/SPA, an application to designate land for community infrastructure triggers DLGP (acting on behalf of the Minister administering the SPA/IPA) as a concurrence agency. Under both Acts, the referral jurisdiction of DLGP is to assess 'The effects of the development on the designated land, and its development for the designated purpose'. The relevant regional services team within DLGP undertakes an assessment of the designation against any State planning instruments within our jurisdiction including, where relevant, Regional Plans and SPP's.. DLGP does not undertake or act as a co-ordinating agency seeking comments from other departments on their interest, including flooding.

172. Once the designation has been acted upon, section 203 of the SPA and 2.6.5 of IPA make all further development (including reconfiguration of a lot within an overlay) exempt. This facilitates the efficient provision of the community infrastructure at the time work needs to commence. However, state-level legislation and regulatory requirements continue to apply, e.g. building and environmental management legislation.

173. A designation ceases after six years if it has not been acted upon, for example, if construction of the community infrastructure has not started, or a notice of intention to resume the land has not been given, etc. Notwithstanding, a minister may give a local government written notice reconfirming a ministerial designation.

In relation to paragraph 6 of the Requirement - particular information concerning building standards, including:

(a) The functions of Building Codes Queensland (BCQ). Please outline any existing building standards administered by BCQ for buildings or building controls in flood prone areas

174. While I am not qualified in this area, I have relied on my officers of the department to make comment and provide opinion in relation to the following paragraphs.

Functions of BCQ

175. Building Codes Queensland (BCQ) is a division within the Growth Management Queensland (GMQ) group of the DLGP. Its key functions include development, and in limited cases implementation, of policy, legislation, codes and guidelines relating to the built environment under the Building Act 1975 (BA) Building Regulation 2006 (BR), Building Code of Australia (BCA), Queensland Development Code (QDC), Plumbing and Drainage Act 2002 (PDA), Standard Plumbing and Drainage Regulation 2003 (SPDR), Queensland Plumbing and Wastewater Code (QPWC), Sustainable Planning Act 2009 (SPA) and relevant Australian Standards – i.e. standards specifically referenced by an Act or Code such as the BCA, QDC or QPWC. Those same standards can also draw upon subordinate or co-related standards.

176. In relation to the development of national building codes and standards, BCQ represents Queensland on the Australian Building Codes Board (ABCB) and the Building Codes Committee (BCC). BCQ also supports the Minister in his role as a member of the national Building Minister's Forum (BMF). BCQ has Building and Plumbing Industry Consultative Groups (BICG and PICG) with peak body members which meet up to four times a year.

177. BCQ has been advocating with the ABCB and the BCC for several years for specific national building standards relating to floods. Based on the recommendations of BCQ, this issue was raised by the Honourable Stirling Hinchliffe, former Minister for Infrastructure and Planning, at BMF meetings in 2009 and 2010. This long-standing work culminated in the BMF requesting the ABCB develop a national design and construction code for building in flood prone areas as part of its 2011 work program (Refer to Appendices 12 and 13).

Current Building controls in flood prone areas

178. Land use planning and the ability to build in a flood hazard area in Queensland are determined by Local Governments. Section 13 of the BR provides that a Local Government may, under a planning scheme, a temporary local planning instrument, or by resolution, designate a natural hazard management area (flood) and declare a minimum height to which habitable rooms (as defined under the BCA as rooms used for 'normal domestic activities' e.g. bedrooms, living rooms) must be constructed. The requirement for certain minimum habitable floor levels is then applied as part of the building development application process. There are currently no specific building control requirements for other classes of buildings in flood hazard areas and therefore building design and preparation for flood events is generally left to owners.

179. Critical to the ability to set appropriate minimum habitable floor levels in flood affected areas and the application of design and construction codes for building in such areas, is up-to-date and accurate flood mapping. For example, many Local Governments have set a minimum habitable floor level using the flood probability range of a 1 in 100 to 1 in 500 average exceedance probability (AEP), plus a 300mm freeboard. A freeboard is an additional amount used to account for potential variation in flood levels or modelling inaccuracies.

180. Subsection 13(2) of the BR requires a designation of a flood hazard management area (flood) by a Local Government to be consistent with the State Planning Policy (SPP) 1/03. The SPP 1/03 sets out requirements for such a designation, including the selection of a defined flood event. The SPP 1/03 does not mandate that a Local Government must designate a natural hazard management area (flood).

181. Subsection 13(3) of the BR requires a Local Government to keep a register of any areas it designates as a natural hazard management area (flood), and the date that each designation was made.

National Construction Code (NCC) series

182. The NCC is developed and maintained by the ABCB, of which BCQ is the representative for Queensland. The NCC consists of the BCA and the PCA.

183. The current version of the BCA under the NCC contains mandatory construction requirements for new building work. The NCC is updated on a yearly basis.

184. The BCA and QDC are adopted as mandatory building assessment provisions under section 30 of the BA. While they do not currently contain specific mandatory requirements for buildings in flood prone areas, the BCA does specify the minimum building standards for all buildings, including structural requirements.

185. The BCA prescribes that a building must be designed to withstand, from a structural perspective, the loads and actions it would reasonably be expected to be exposed to (i.e. in a flood-hazard area, the actions of flood waters). This means that a building located in a designated natural hazard management area (flood) is required to be designed from first engineering principles based on the likely impacts of flooding on the site.

BCA - Volume One (class 2 – 9 buildings)

186. Under BP1.1 (a), a building or structure must remain stable and not collapse by resisting the actions to which it may reasonably be subjected. BP1.1 (b) lists a range of actions which must be considered, including liquid pressure action, rainwater action (including ponding) and ground movement caused by swelling or shrinkage.

187. Other actions which BCQ and the ABCB consider should be taken into consideration include debris loading in areas likely to be subject to flowing flood waters, and the effect of scour on footing systems.

BCA - Volume Two (class 1 buildings)

188. As in BP1.1 (b) of Volume One, P2.1 of Volume Two also identifies the above actions as action effects on a building which must be taken into account as part of the building design.

QDC

189. The QDC regulates a range of Queensland-specific matters that are additional to, or different from, the BCA. The BA provides that the QDC prevails over the BCA to the extent of any inconsistency.

There are currently no prescriptive requirements to specifically address flooding under the QDC.

(b) An outline of any standards or controls for essential infrastructure to ensure that it is functional in a defined flood event (assuming this is 1% AEP).An outline of any standards or controls for onsite sewerage plants in flood prone areas

190. On-site sewerage treatment plants (OSTPs), regardless of whether they are in a flood prone area or not, must be installed and maintained in accordance with the legislative requirements set out in the PDA and the SPDR.

191. An OSTP cannot be installed unless the plant has chief executive approval under Part 5 of the PDA. The duration of a chief executive approval for an

OSTP is 5 years, after which time the manufacturer of the plant must apply for a renewal.

192. In addition, the installation of an OSTP requires the assessment and approval of Local Government both prior to, and after, the installation.

193. All OSTP installations need to comply with the plumbing laws and Australian/New Zealand Standard 1546 (On-site domestic wastewater treatment).

Australian Standards

Section C2.4 of Part 3 of the Australian/New Zealand Standard 1546 states:
C2.4 Surface water

194. Surface waters shall be diverted from the aerated wastewater treatment system installation. Installation shall account for cases of high ground-water table or flood-prone areas.

195. However, this appendix is an informative section only and is not mandatory.
196. Standards Australia administers the Australian/New Zealand Standards and any changes proposed to an Australian Standard are arranged through a consultative committee it establishes to manage a review.

197. Part 6A of the PDA includes provisions:
- making it an offence for a person to dismantle or take away all or part of an OSTP installed on premises unless the dismantling or taking away is authorised in writing by the Local Government or under a chief executive approval.
- requiring the owner of premises where an OSTP has been installed to ensure all conditions of a compliance certificate, issued by a Local Government when the plant was installed, are complied with.
- requiring a person to operate an OSTP in a way that complies with the SPDR.

198. Section 8B of the SPDR requires OSTP work to comply with the QPWC.

199. The QPWC provides performance solutions to meet the statutory requirements of the PDA, including criteria for OSTPs and the relevant chief executive approvals. For instance, the QPWC provides criteria to achieve performance relating to effluent quality and performance evaluation testing.

200. The QPWC also requires an OSTP to be installed so that the likelihood of surface water and stormwater entering the system is avoided. It requires the owner of premises where an OSTP is installed to take all reasonable steps to ensure the plant is kept in good condition and operates properly. Most Local Governments in Queensland send a notice to the owner of a property where an

OSTP is installed to remind the owner to have the system serviced and to send a copy of the report from the service person to the Local Government.

(c) An outline of any standards or controls for essential infrastructure to ensure that it is functional in a defined flood event (assuming this is 1% AEP)

201. In general terms, the current building assessment provisions under the BA relate to buildings, and some associated services for buildings such fire services, sanitary facilities, provision of water supply, artificial lighting and mechanical services (air conditioning and ventilation). Some services are not regulated under the building assessment provisions, for example the provision of electricity, although other services such as fire safety systems (alarms, lifts, emergency lighting) require that electricity is available.

202. In the context of buildings, the meaning of the term "essential infrastructure or services" refers to services related to fire and life safety, such as early warning systems and emergency lighting. In the broader context, essential services may include water and sewerage infrastructure networks and electricity networks. The building assessment provisions do not contain any specific provisions for these networks. Risk management for this infrastructure has not been seen as part of what the BA or the PDA regulate.

203. The building assessment provisions only apply to buildings and structures. Civil engineering works such as bridges and dams need to meet engineering standards but they are generally treated as special structures with specialist engineering designs.

204. Under the structural requirements of the BCA, all buildings are allocated "importance levels". They range from an importance level of 1 through to 4. Importance level 1 is the lowest and relates to buildings presenting a low degree of hazard to life and other property in the case of failure. Typically, domestic sheds and farm buildings fall into this importance level. Residential houses are generally importance level 2. Importance level 4 is the highest and relates to buildings that are used for post-disaster recovery. Buildings such as hospitals, dedicated cyclone shelters, fire, police and ambulance stations, attract importance level 4 under the BCA. These importance levels influence the design parameters for buildings and require consideration to be given to all actions that may be imposed on the building including actions of wind, snow, earthquakes etc. Where an action is not specifically expressed, the BCA requires that other actions or actions that could reasonably be expected to apply to a building, are considered.

Essential infrastructure – building services

205. There are few current requirements for ensuring that essential building services, including fire safety, electricity supply, water and sewerage are not affected during a flood event. This means that building designers would only consider

protecting services from the effects of flood where this is part of the design brief, it was otherwise requested by the client or where a law other than building law requires it.

206. Recent examples of commercial and apartment buildings remaining inoperative for lengthy periods following flood inundation has highlighted problems associated with locating:
- fire alarm panels and electrical main switch boards;
- fire control centre/room;
- fire sprinkler pump sets;
- electrical substations;
- lift motors; and
- in areas that have are likely to be affected by inundation.

(d) An outline of any draft provisions that have been considered or any work completed following the flood events of December 2010 to January 2011

Proposed national Standard for construction of buildings in a flood hazard areas (draft Standard)

207. In mid-2011 BCQ represented the DLGP on the ABCB reference group and provided advice on the development and implementation of the draft Standard. The draft Standard is expected to undergo a national regulatory impact statement in late 2011, and is scheduled to be finalised in early 2012. It is anticipated that the draft Standard will be included in the 1 May 2013 version of the BCA (Appendix 14).

208. The scope of the draft Standard is limited to class 1 (houses and townhouses), class 2 (units and flats), class 3 (hotels, motels and backpackers), class 4 (caretakers dwelling), class 9a (health care) and class 9c (aged care) buildings.

209. The draft Standard provides more specific performance requirements and deemed-to-satisfy provisions (DTS) for the design and construction of new buildings, in a 'flood hazard area', i.e. an area that has been designated by the relevant authority (Local Government in Queensland). Individual States and Territories will have the ability to determine how the draft Standard will apply to additions or alterations to existing buildings in a flood hazard area.

210. The performance requirements of the draft Standard provide that new buildings in a flood hazard area must be, to the degree necessary, designed, constructed, connected, and anchored to resist flotation, collapse or permanent movement resulting from the action of hydrostatic, hydrodynamic, erosion and scour, wind and other actions during the defined flood event.

211. The draft DTS provisions are limited to cases of likely flooding that involve a maximum average flow rate of 1.5 metres per second (5.4 km/hr). However, where flow rates are expected to exceed the design level of 1.5 metres per second, a special engineer's design would be needed. The ABCB has advised

that the flow rate of 1.5 metres per second has been applied in the USA (Federal Emergency Management Agency) using existing engineering principles.

212. The draft DTS provisions require the elevation of habitable floors above the flood hazard level. The elevation of a habitable floor level must be above the height of the defined flood level plus a freeboard as set by the relevant authority (Local Government). If a Local Government does not provide a defined flood hazard level then a building located in a designated flood hazard area will need to be developed from first engineering principles based on the likely flood impacts specific to the site.

213. The draft DTS provisions also outline that non-habitable areas must either be raised above the flood hazard level, or if enclosed must receive no more than 1 metre inundation during the defined flood event.

DLGP's proposed early adoption of the draft Standard

214. The DLGP has proposed to adopt the draft Standard as a new part to the QDC prior to its inclusion in the BCA. A month long public consultation period on this proposal closed on 25 August 2011. It is anticipated that, subject to relevant approvals, the new mandatory part of the QDC for buildings in a designated flood hazard management area will be introduced in late 2011.

215. It is proposed that the new QDC will apply to new buildings and additions to existing buildings, but not generally to other building alterations (for example, internal alterations to a building such as a new bathroom or the removal of a wall). The new QDC will also set a minimum freeboard of 300mm that will apply unless otherwise set by a Local Government.

216. Additional non-mandatory provisions, which are currently outside the scope of the draft Standard, are also proposed to be included in the QDC. For example, materials of a non-structural nature below the defined flood hazard level to help improve flood resilience of those areas that are inundated. It is also proposed to make a non-mandatory part for commercial buildings to minimise losses in a designated flood hazard level. A Local Government may decide to adopt the non-mandatory parts on a voluntary basis through a planning scheme, temporary local planning instrument, or by resolution. It is intended these parts will become mandatory if adopted by a Local Government.

Amendments to building laws in response to the flood events of December 2010 to January 2011

217. Urgent amendments to building and plumbing legislation were made in response to the Queensland floods and cyclones to help ensure homeowners can repair their homes as quickly and cost effectively as possible. (For public information on flood work by BCQ refer to Appendices 15-18).

218. Amendments were made to the:

- QDC so a house could be raised without a plumbing approval and without having to be upgraded to current energy efficiency standards;
- swimming pool laws under the BA that provided a six month exemption for leases of properties with non-shared pools without a pool safety certificate and also provide a six month extension for pool owners to ensure their pools are registered on the online pool register by 4 November 2011;
- BA to expand the scope of works allowed to be performed by certain local government building surveying technicians to assist flood recovery efforts in regional areas; and
- QPWC to permit home owners in natural gas reticulated areas to replace natural disaster affected electric hot water systems with another electric hot water system.

(e) The results of the consultation undertaken with the Plumbing Industry Council and BCQ regarding the installation of reflux valves to prevent sewerage surcharge from sewerage mains for properties located within low lying areas subject to possible flooding

219. A paper was presented to the Plumbing Industry Council (PIC) (Refer Appendix 19), at its eighth general meeting held on 2 February 2011, about reflux valves to prevent sewerage surcharge from sewerage mains for properties located within low lying areas subject to possible flooding.

220. The location of a reflux valve is within a property boundary and the property owner is responsible for ensuring the maintenance of the valve.

221. The paper outlined:

"problems arising from recent flooding in Queensland indicated that sewerage infiltration from sewer mains caused significant damage to properties not inundated with flood water. Overflow relief gullies (ORGs) failed to provide adequate protection against the infiltration of sewerage during the recent Queensland flood event.

222. The installation and location requirements for sanitary fixtures, in particular, reflux valves for sanitary house drains, is provided for in AS/NZS 3500.2.4.5 and is an applied provision under the SPDR.

223. The scope of AS/NZS3500.2 must be considered which states:

"A reflux valve shall be located wholly within the property".

224. Standard industry practice has been to install ORG's on all properties with no further measures against possible sewerage infiltration. However, recently this

has been challenged due to the concerns regarding health and safety issues which may arise if the ORG fails during a flood event and sewerage leaks into a building.

225. The paper recommended that:

"properties located within low lying areas subject to possible flooding install a reflux valve at the boundary connection to prevent sewerage surcharge from sewer mains. BCQ will consult with the plumbing industry on whether changes are required to the plumbing legislation to mandate the inclusion of reflux valves and, if considered favourably, whether it should apply to all sewered properties."

226. The PIC considered this paper and agreed that this issue be taken to the Plumbing Industry Consultative Group (PICG) for its consideration. The Local Government Association of Queensland representative on the PIC supported a proposal that the installation of reflux valves on ORGs be mandated.

227. A paper was discussed by the PICG at its meeting held on 30 March 2011 (Refer Appendix 20). The PICG's membership comprises representatives from:

- Master Plumbers Association of Queensland
- Plumbers Union
- Local Government Association of Queensland
- Housing Industry Association
- Master Builders Association
- National Fire Industry Association
- Building Services Authority
- Registered Training Organisations
- Queensland Water
- Association of Hydraulic Services Consultants Australia
- Institute of Plumbing Inspectors Queensland

General discussions took place concerning:

- reflux valve requirements under Australian Standard;
- cost implications (cost per valve ranges from $100-$180 plus installation);
- difficulty in retrofitting valves if mandated;
- ongoing maintenance regime;
- requirements on swimming pools;
- issues with Environmental Protection Act 1994 and capacities of sewer networks; and
- responsibilities of consumer and service providers for retrofit situations in flood affected areas.

228. The PICG Chair (Executive Director, BCQ) advised that BCQ is recommending for low lying areas that a reflux valve be installed to both the sewer and stormwater drain within the property. However, there are no plans at this stage to amend legislation to mandate these installations. The PICG agreed with this recommendation.

229. BCQ arranged for an article to be distributed in the Master Plumbers Association of Queensland's magazine (February 2011 edition) setting out the Australian Standards requirements regarding the installation of reflux valves (Refer Appendix 21). The article also recommended that owners of properties located within low lying areas subject to possible flooding should install a reflux valve at the boundary connection to prevent sewerage surcharge from sewer mains. This magazine was distributed to 5700 plumbing contractors in Queensland.

In relation to paragraph 7 of the Requirement - the role of DLGP in determining land use for Transit Oriented Developments (TODs), particularly the consideration, if any, given to the flood risk when deciding to develop an area as a TOD, provide specific examples of a TOD site that flooded in the 2011 floods, and a TOD site that did not flood in the 2011 floods

230. The Department of Local Government and Planning (DLGP) has a responsibility for coordinating integrated planning to support well managed sustainable growth and planning and development that anticipates and supports growth.

231. Transit oriented development (TOD) is a planning concept that promotes the creation of a network of well-designed, human-scale urban communities focused around transit stations. A TOD precinct has a walking and cycle-friendly core with a rail or bus station, and is surrounded by relatively high-density residential development, employment or mixed uses.

232. The term 'transit oriented development' is often used incorrectly to describe a single development adjacent to or above a transit station. TOD refers to the set of principles applying to the broader precinct surrounding the station, rather than any individual development within it. Nevertheless, it has become common practice to refer to a single development proposal (or even a single building) as a TOD.

233. Development projects next to a station or in the airspace above the transport corridor may be important catalysts for TOD, if designed well. However, they can inadvertently reduce a location's TOD potential if they block access to the station or contain uses that are not transit supportive.

234. TOD principles are to be applied to precincts within a comfortable 10-minute walk of a transit node (a radius of about 800 metres). Principles ensure mixed-

use residential and employment areas are designed to maximise the efficient use of land through high levels of access to public transport.

South East Queensland Regional Plan

235. The overarching framework for guiding planning and development within South East Queensland is the South East Queensland Regional Plan 2009-2031 (the SEQ Regional Plan). Section 1.4 of the SEQ Regional Plan deals with Natural hazards and climate change adaptation. The following Principle and Policy are particularly relevant to flooding risks:

Principle 1.4
Increase the resilience of communities, development, essential infrastructure, natural environments and economic sectors to natural hazards including the projected effects of climate change.

Policies 1.4.1
Reduce the risk from natural hazards, including the projected effects of climate change, by avoiding areas with high exposure and establishing adaptation strategies to minimise vulnerability to riverine flooding, storm tide or sea level rise inundation, coastal erosion, bushfires and landslides.

236. In addition, the SEQ Regional Plan establishes policy principles and identifies specific actions or programs that relate to transit oriented development:

SEQ Regional Plan Principle 8.9:
Apply transit oriented development principles and practices to the planning and development of transit nodes, having regard for local circumstances and character.

SEQ Regional Plan Programs:
8.9.8 - Prioritise amendments to planning schemes to support delivery of transit oriented development outcomes in activity centres and identified nodes on priority transit corridors.

8.9.9 - Identify areas in consultation with local government that are suitable for the application of transit oriented development principles.

237. The SEQ Regional Plan also provides the following commentary in relation to the location of TOD precincts:

"Transit oriented development in SEQ will be based around frequent and high-capacity public transport systems, primarily rail and busway. Regional activity centres are primary locations for the application of transit oriented development principles. It is proposed to connect transit precincts of different scales and types into 'transit corridors' across sub-regions in SEQ.

Local government should use transit oriented development principles for appropriate locations in their areas when preparing local planning strategies, planning schemes and amendments. They should determine the specific scale, intensity and land use mix for each precinct through the planning process."

Local Planning

238. Land use outcomes articulated in the SEQ Regional Planning framework is given effect primarily through incorporation in Local government planning schemes. For example, planning around the Milton Railway Station in Brisbane was subject to an amendment to the Brisbane City Council planning scheme (CityPlan 2000), adopted on 1 January 2011 – The Milton Station Neighbourhood Plan (Appendix 22).

239. The Neighbourhood Plan states that:

"Urban renewal is underway in Milton with the area around Milton railway station becoming a high density transit-oriented community. People can live and work in close proximity to public transport and in a pedestrian and cycle friendly environment.

The Milton Station Neighbourhood Plan is based on transit-oriented development principles and will:

- promote the integration of land use and transport;
- facilitate increased housing and business opportunities;
- provide new public space;
- increase densities and building heights;
- ensure a mix of land uses;
- retain the open café nature of Park Road;
- promote subtropical and sustainability design; and
- deliver streetscape improvements".

240. The Neighbourhood Plan also requires development to focus on a number of other fundamental planning principles, including:

- "Development will be designed to protect people and property from the adverse impacts of flooding."
- "Development will be designed so as to effectively manage overland flow paths and flooding constraints, and incorporate innovative integrated water management strategies without reducing the level of activation and human scale interface at the street level."

241. Within the Mixed Use Residential Precinct (the TOD Precinct) the Neighbourhood Plan requires that "...the design of the urban common will encourage both passive and active recreation, and will include flood mitigation works."

242. To comply with these principles, any development proposals in the Neighbourhood Plan area would necessarily require the proponent to undertake appropriate studies, such as stormwater management planning, to ensure any approvals meet the requirements of these principles (Refer Appendix 23: "Conceptual Stormwater Management Plan – Mixed Use Development, Railway Terrace" that accompanied the development application for the proposed mixed use development adjoining the Milton railway station ("The Milton")). Assessment of the development applications, including any supporting documentation such as stormwater or flood studies, is undertaken by the relevant assessment manager – normally the local government.

243. Typically, as is the case at Milton Station, DLGP takes a facilitating role in development incorporating TOD principles – working with local government to ensure any planning scheme amendments encourage TOD outcomes; advising potential proponents on the application of TOD principles; negotiating with the proponent on matters relating to the interface of the proposed development with the transit station; and providing advice to the assessment manager on any development applications. On rare occasions, such as the development adjoining Milton railway station, the responsible Minister may use powers under the Sustainable Planning Act 2009 to ensure that State interests (such as the development of TOD precincts in key locations) are adequately protected.

244. In some locations the State, through DLGP, may take a more active part in developing TOD precincts. This generally occurs once a site, usually in State ownership, has been identified in a key location on the existing or proposed transit network, and the appropriate approvals for developing the site have been obtained through Cabinet and the Cabinet Budget Review Committee. The following case studies discuss the process of State-led development in a TOD precinct that was affected by the January 2011 floods (Yeerongpilly), and another that was unaffected (Coorparoo Junction).

Yeerongpilly TOD

245. The Queensland Government, through Growth Management Queensland, acting in partnership with Brisbane City Council (BCC) is implementing a transit oriented development (TOD) on the Animal Research Institute (ARI) site at Yeerongpilly, to provide a model for similar developments elsewhere in Queensland. The Yeerongpilly TOD site comprises 14 hectares of land situated alongside the Brisbane River, adjoining the Queensland Tennis Centre and Tennyson Reach Development to the west and the Yeerongpilly Train Station to the east.

246. The partnership engaged consultants to prepare a Plan of Development for the TOD. The planning for the TOD prior to the January 2011 floods took into account the projected extent of flooding in a one in one hundred year flood event, making use of the Brisbane City Council Flood Map (Appendix 24). This was done by either locating uses such as open space in the flood affected

area or by requiring development to be constructed 500 millimetres above the one in one hundred year level.

247. The January 2011 flood event reached a level approximately 1.2 metres above the one in one hundred year level on the Yeerongpilly TOD site. This resulted in flooding including inundation due to backflow through stormwater pipes of approximately eight hectares of the 14 hectare site.

248. Post the January 2011 flood event, further technical investigations and hydraulic modelling was undertaken to determine the impact, if all of the proposed developable land in the TOD would be raised to be immune to floods of a similar event as that experienced in January 2011. The modelling demonstrates that there would be no adverse impacts on the surrounding area, for a distance of approximately three kilometres upstream and downstream of the site if all the roads are raised 300 millimetres and all the development sites were raised 500 millimetres above the January 2011 level (Appendix 25). The hydraulic modelling has also been peer reviewed by BMT WBM Pty Ltd (Appendix 26).

249. The draft Detailed Plan of Development has been finalised on this basis. The proposal of the draft Detailed Plan of Development and draft State Planning Regulatory Provision, the statutory document that establishes the use rights and development controls for the site, to raise all new roads and development sites above the January 2011 levels is in accordance with Brisbane City Council's Temporary Local Planning Instrument, approved by the State Government.

250. The hydrological advice also indicates that by undertaking bunding works (constructing levees) on the northern side of King Arthur Terrace there is potential to improve the existing flood impact on properties to the north of the site, on and adjacent to Ortive Street. This will provide significantly improved protection from Brisbane River flooding in an event of the magnitude experienced in January 2011. Proposed upgrades to local stormwater drainage infrastructure as part of the proposed Yeerongpilly TOD development will also allow drainage of the local catchment while excluding backflow from the Brisbane River which caused significant flooding in Ortive Street precinct in January 2011 (Appendix 27).

Coorparoo Junction TOD Background

251. The Coorparoo Junction Transit Oriented Development (TOD) site and busway station site is a 1.25ha parcel of land located along Old Cleveland Road at Coorparoo and forms part of stage 2b of the Eastern Busway. Stage 2a, from Buranda to Main Avenue, at Coorparoo, officially opened on 29 August 2011.

252. A TOD at Coorparoo Junction was identified as a key supporting action in the Government's Response to the 2010 Queensland Growth Management Summit. Growth Management Queensland is responsible for facilitating the Coorparoo Junction TOD – that is to identify a private sector developer to develop the site

in accordance with the State's desire for a TOD outcome. The developer will have the rights to develop a TOD on site, integrated with the future Coorparoo Busway Station and will also be required to construct a minimum standard of works for the busway station. Growth Management Queensland has a signed Memorandum of Understanding with Brisbane City Council to work collaboratively together to achieve a TOD outcome on site.

253. Growth Management Queensland began an Express of Interest (EOI) process in January 2011 which closed on 18 March 2011. A total of 7 EOIs were received, and from that seven, a total of three proponents were shortlisted to proceed to the next stage – a Design Competition. The shortlisted proponents – Australand Holdings Limited, Honeycombes Property Group and Leighton Properties – were publicly announced by the Deputy Premier at the Estimates Hearings on Thursday, 14 July 2011.

254. The procurement process to identify a preferred developer is shortly to advance to the second stage – a Design Competition wherein shortlisted proponents can articulate their vision for the Coorparoo Junction TOD.

Flooding Risks

255. During the January 2011 floods, the Coorparoo Junction site was not impacted. However, Holdsworth Street, to the north of the site did experience some minor flooding impacts.

256. Brisbane City Council is conducting flood mitigation investigations around Coorparoo to ensure that the precinct experiences improved flood immunity. The notion of flood immunity measures has also been incorporated into the intent of the Eastern Corridor Neighbourhood Plan, which sets out detailed planning and development outcomes for projects within the Coorparoo precinct, including the Coorparoo Junction site.

257. Prior to commencing the detailed planning that led to the adoption of the Eastern Corridor Neighbourhood Plan as an amendment to the Brisbane City Council planning scheme (CityPlan 2000), the Department worked collaboratively on the Eastern Corridor Renewal Project. This project included an assessment of all potential impacts, including flooding, on each of the potential TOD precincts, including Coorparoo Junction (Appendix 28).

258. Brisbane City Council has indicated that it is committed to improving the flood immunity of Holdsworth Street. Further, as part of the development of a TOD at Coorparoo Junction, the preferred developer will be required to ensure a high standard of flood immunity for the TOD and any busway station works.

259. Growth Management Queensland is confident that the future development of the Coorparoo Junction TOD will not result in any adverse flooding impacts on the site nor within the broader Coorparoo precinct. The preferred developer will

be required to ensure that the site is flood immune and Brisbane City Council are working hard to ensure that the broader Coorparoo precinct experiences an improvement in flood immunity.

In relation to paragraph 8 of the Requirement - the role of DLGP in determining Urban Development Areas, particularly:

(a) The consideration, if any, given to flood risk when deciding to declare an area as an Urban Development Area. Provide specific examples of a UDA site that flooded in the 2011 floods, and a UDA site that did not flood in the 2011 floods, by reference to briefing notes provided to the Planning Minister

Process for Determining a UDA

260. Prior to the establishment of the Urban Land Development Authority (ULDA) in November 2007, the State Government, through the Office of Urban Management (which no longer exists but the functions of which now reside in the Department of Local Government and Planning) identified, evaluated and recommended potential Urban Development Areas (UDAs). This was done as part of the Queensland Housing Affordability Strategy, and this approach applied for the initial suite of UDAs at Bowen Hills and Northshore Hamilton.

261. Once a UDA is declared, planning instruments and plans, policies or codes made under the Sustainable Planning Act or another Act no longer apply to the area. Instead, new development is assessed by the ULDA against an Interim Land Use Plan (ILUP) which expires 12 months after it commences. The ILUP is in force until a development scheme is adopted for the UDA. State interests are addressed in both the ILUP and development scheme.

262. In October 2009, Minister Hinchliffe, the then Minister for Infrastructure and Planning, wrote to all of his Ministerial colleagues to advise them that he had asked the ULDA and the Department of Infrastructure and Planning to commence the necessary consultation with State agencies, Local Governments and local communities to enable Cabinet to support the declaration of new sites as UDAs in stages across three proposed new program areas of regional housing diversity, resource towns housing affordability and South East Queensland strategic sites (Appendix 29).

263. Since then the ULDA has taken the lead role in identifying and evaluating potential UDAs and recommending suitable UDAs for declaration.

264. Regardless of whether the Office of Urban Management or the ULDA played the leading role in determining a UDA, the process is broadly the same. The initial assessment of whether a potential UDA is suitable for declaration considers the best available information across a broad range of matters. In relation to flood this is usually the information provided in the local government planning scheme including flood overlay maps. The initial

assessment also includes discussions with the relevant local government and other key stakeholders such as infrastructure provider agencies.

265. As part of this process the ULDA normally prepares a discussion paper setting out the key characteristics and issues for a proposed UDA. This paper provides the basis for discussion at a whole-of-Government meeting convened by DLGP. The ULDA is invited to present to and both ask and respond to questions at this meeting. A sample of the discussion papers, maps and associated correspondence prepared for the proposed Blackwater and Moranbah UDAs is provided at Appendix 30.

266. Following this initial meeting, the ULDA works closely with DLGP in determining suitable UDA boundaries, developing Government objectives to guide the planning and development of each UDA and preparing a draft ILUP. The ULDA then seeks comments on these proposals from all relevant State agencies, including DLGP.

267. The Department of Community Safety as lead agency for SPP 1/03 Mitigating the Adverse Impacts of Flood, Bushfire and Landslide generally provides comment on the need to ensure the State interest in flooding issues is addressed in the ILUP and development scheme for the particular UDA.

268. DLGP works with the ULDA to ensure comments are appropriately addressed prior to preparing the Ministerial briefing note recommending declaration of the UDA and approval of the Government objectives and ILUP.

269. More detailed information on this process is provided below for the Caloundra South UDA and the Northshore Hamilton UDA as the examples of UDA sites that respectively flooded and did not flood in the 2011 floods as requested in the Requirement to Provide a Statement. (Note: apart from some minor creek flooding the only UDAs significantly affected by flooding in 2011 were Bowen Hills where some low lying areas adjacent to Breakfast Creek were flooded, and the low lying areas of Caloundra South – see the response to Question on Notice No 25 asked on 16 February 2011 at Appendix 31).

270. Although not specifically requested, DLGP thinks the Commission should also be advised that, where flooding has been identified as a potentially significant issue, the ULDA undertakes further flood studies following declaration of a UDA as part of the process of preparing the development scheme for the UDA. This was done for the Caloundra South UDA for example.

271. Also, subsequent to the declaration of the UDA, DLGP is responsible, on behalf of the Minister, for considering and making recommendations on submissions from affected landowners in relation to the Submitted development scheme. The Submitted development scheme is prepared by the ULDA to include amendments arising from its assessment of submissions received during the public notice period for the Proposed development scheme.

272. These steps provide further opportunities for interested parties, including local governments and State agencies, to raise issues about matters including flooding if desired.

Caloundra South UDA

273. The Caloundra South UDA was declared on 22 October 2010 and covers 2,310 hectares. It is located south of the existing Caloundra urban area, the Caloundra Aerodrome and the Sunshine Coast Regional Business and Industry Park.

274. The South East Queensland Regional Plan 2009-2031 (Regional Plan) identifies Caloundra South as a Regional Development Area to be developed as a compact community supported by public transport, housing choice and affordability, employment opportunities, facilities and services.

275. Prior to the declaration of Caloundra South as a UDA, the Sunshine Coast Regional Council (SCRC) had undertaken extensive planning work in collaboration with the landowner and key State agencies, culminating in the preparation of a draft Caloundra South Structure Plan. SCRC had also undertaken public consultation on the draft Structure Plan prior to declaration of the UDA.

276. As a result of this work, flooding issues had already been extensively investigated and addressed prior to declaration of the Caloundra South UDA.

277. It is also worth mentioning that following declaration the ULDA commissioned an independent review of prior flood studies to provide a firm basis for the preparation of the development scheme for Caloundra South. The Caloundra South Review of Flood Risk Management Strategy and Stormwater Quality Management report prepared by Cardno MBK (March 2011) (refer Appendix 32) focused on the following documents relating to the Caloundra South UDA including the report previously prepared for the Sunshine Coast Regional Council:

- BMT WBM (2010), Caloundra Downs Development: Flood Risk Management Strategy, November;
- BMT WBM (2010), Caloundra Downs Stormwater Quality Management Master Planning Advice, November; and
- Sinclair Knight Merz (2010). Caloundra South Flood Study, Version 1, April.

278. The independent review concluded that the proposed development footprint "can be achieved without producing unacceptable flood level impacts". Importantly the review concluded that there was no dispute in relation to the detailed hydraulic modelling of the Caloundra South Area undertaken by Sinclair Knight Merz on behalf of SCRC. The review identified the need for further detailed flood modelling to resolve specific issues.

279. This additional detailed modelling will be undertaken as part of the development assessment process in accordance with draft ULDA Guideline No 15: Protection from Flood and Storm Tide Inundation.

Northshore Hamilton UDA

280. The Northshore Hamilton UDA was one of the initial tranche of UDAs identified by the Office of Urban Management, and was declared on 27 March 2008. The Northshore Hamilton UDA was not substantially affected by the 2011 floods.

281. The Office of Urban Management consulted State agencies, the Port of Brisbane Corporation, the Brisbane City Council and other major government stakeholders prior to recommending declaration of the Northshore Hamilton UDA.

282. Brisbane City Council mapping showed that the proposed UDA site was largely unaffected by flooding, and flooding was not identified as a major issue. During the consultation with State agencies the then Department of Infrastructure advised that the ILUP and development scheme would need to address State interests which specifically included SPP 1/03 Mitigating the Adverse Impacts of Flood, Bushfire and Landslide.

283. Flooding was addressed in both the ILUP and the development scheme which states (at page 12) that "Development is to incorporate appropriate safety features in line with current standards and best practice guidance including fire safety, emergency vehicle access and flood immunity" with a footnoted advice to "Refer to State Planning Policy 1/03, section A4.2 and the State Planning Policy 1/03 Guideline, Appendix 5, Table A. The Defined Flood Event (DFE) is the 1% Annual Exceedance Probability (AEP) Flood."

In relation to paragraph 9 of the Requirement - The following general points pertaining to your position as Government Planner:

(a) A description or definition of a development entitlement

284. Development commitment for the purposes of SPP 1/03 is defined in Part 9 of the SPP as is follows:
- development with a valid preliminary approval;
- a material change of use that is code assessable or otherwise consistent with the requirements of the relevant planning scheme;
- a reconfiguration of a lot and/or work that is consistent with the requirements (including any applicable codes) of the relevant planning scheme; or
- development consistent with a designation for community infrastructure.

[Note that a designation in a forward planning document such as a strategic plan or development control plan under a transitional planning scheme is not a development commitment for the purposes of this SPP. Also the SPP does not apply to development assessable only against the Standard Building Regulation].

(b) Your opinion on whether a mandatory provision in the QPP's affecting a new planning scheme resulting in a change in land use designation or zoning, would result in landowners being able to make claims for compensation pursuant to Part 3 of the SPA.

285. I do not consider I have the proper expertise to make a comment or provide an opinion on this matter.

(c) A detailed explanation of whose responsibility it is to oversee the planning system in Queensland, with particular focus on how flood risk is assessed and dealt with

286. In response I refer to paragraphs 16-22 above with respect to risk, and my previous response at 2(a) and (b) concerning the process applied in planning scheme preparation. The State's interest in flooding and natural hazard management is expressed in SPP1/03 and through it this department, and the department of Community Services influences the form of planning schemes and their attention to flood risk exposure. This department is also responsible for the preparation of Regional Plans.

287. In that context, this department is responsible for overseeing the process.

288. I draw the commission's attention to my comments in my previous response at 2(a) and (b) where I advise that local government has the carriage of investigation and research. The need and practice for both levels of government to work together on such matters, and on a regional basis is acknowledged, in my experience, by all parties.

(d) Any referral triggers for the assessment of flood risk in the Integrated Development Assessment System (IDAS)

289. Historically, there was a requirement in section 8.2 of the repealed P&E Act for an applicant to, in accordance with the regulations, request the chief executive of DLGP to tell the applicant if an environmental impact statement was necessary and, if it was necessary, its terms of reference. Under the regulations, section 8.2 of the P&E Act applied to a development proposal including land below the flood line adopted by the local government, if development involved filling an area of more than 5 000 m2 (item 1 of schedule 2 of the repealed Local Government (Planning and Environment) Regulation 1991 (QLD)).

290. With the introduction of the IPA, this requirement was continued as a trigger for referral coordination under the transitional provisions of the IPA (section 6.1.35C). By Act number 64 of 2003, the trigger for referral coordination was incorporated into section 3.3.5 of chapter 3 (IDAS) of the IPA.

291. Referral coordination required that certain development applications were to be forwarded to DLGP by the applicant, which then coordinated the making of a single information request. Once the information request was provided to the applicant, the referral coordination process was complete and DLGP had no further involvement in the assessment or conditioning of the development application (unless it was triggered as a referral agency under a referral trigger in the Integrated Planning Regulation 1998).

292. By Act number 11 of 2006, the requirement for referral coordination was removed from the IPA. In its place, those development applications which had required referral coordination and which were required to be publically notified were made subject to an extended period of public notification (section 6.7.1A of the IPA).

293. The extended period of public notification for this class of development application was carried over into the SPA, section 298(1)(a)(ii). The specific requirement relating to the extended notification for a development application is located at item 'a', Schedule 17 of the SPR.

294. No State agency is directly involved in the assessment of any development application merely because it is subject to an extended period of public notification.

295. Since the introduction of the Integrated Planning Act 1997 (QLD) (IPA) and the IDAS, State agencies have increased their involvement in the assessment of development applications through the referrals process. As more legislation has been rolled into the IDAS process and with the emergence of new State interests, the number of referral triggers has progressively increased. There are currently 104 referral triggers.

296. Under the IDAS, referral triggers are the mechanism by which those development applications which must be forwarded to entities other than the assessment manager for assessment are identified. All referral triggers are contained in Schedule 7 of the Sustainable Planning Regulation 2009 (SPR).

297. A referral agency may only assess and condition a development application within the limits of their jurisdiction, as identified in Schedule 7 of the SPR. Section 282 of the SPA provides the matters that a referral agency must assess a development application against and the matters that it must have regard to.

298. Any conditions imposed by a referral agency must be reasonable and relevant, as required by section 345 of the SPA. Furthermore, common law rules

requiring conditions to be final and certain apply to conditions imposed by referral agencies.

299. A referral trigger is not the most efficient mechanism available to manage the flood risk associated with proposed development. The risks associated with flooding are linked to the land on which the development is proposed to be located. At the development assessment stage of the planning process, there are limited options, beyond directing a refusal of the proposed development, available to a referral agency that would be effective to mitigate against the flood risk where the development site is susceptible to flooding and the proposal is incompatible with this constraint. Those requirements that a referral agency could impose on a development application to reduce the risk of harm or damage as a result of flooding are equally available to a local government administering a planning scheme.

300. There is currently no referral trigger in schedule 7 of the SPR requiring the referral of development applications for assessment of flood risk because the subject site includes flood prone land.

301. The current approach of articulating the State interest in relation to flooding, through SPP 1/03, front loads the issues associated with flood risk into local government's planning schemes by identifying those areas below a defined flood event level and the application of planning controls within those areas. This approach provides potential applicants with clear guidance about the criteria applicable to development on flood prone land, which would not necessarily be so readily available through a referral trigger. The reflection of SPP 1/03 in the planning scheme, provides applicant's with the opportunity to fully appreciate and address requirements relevant to managing flood risk (such as habitable floor levels, location of access routes and positioning of plant) during the formulation of development proposals. In some circumstances, it may even result in the reconsideration of inappropriate forms of development.

302. Where SPP 1/03 has not been appropriately reflected in the planning scheme, the local government is required to assess the development application against the SPP.

303. The growth in the number of referral triggers, with the increasing administrative burden, perceived delays and associated costs has resulted in local government, industry and the community expressing concern about the referral regime. In response, and as part of both the ongoing reform of planning processes and the Queensland Government's response to the Growth Summit, the Queensland Government has committed to reducing the number of referral triggers. Implicit to this commitment is a reduction in the number of development applications required to be referred to referral agencies as part of the IDAS process.

304. The DLGP's Referral Trigger Review (RTR) project has been established to address the identified need for reform of current referral processes by reviewing existing referral triggers with a view to reducing both the number of referral

triggers and the number of development applications required to be referred. In order to achieve these outcomes, it is likely that instances where matters of State interest may be more appropriately expressed via a mechanism other than a referral trigger, such as a State Planning Instrument (SPI) will be identified.

305. A common criticism of past use of referral triggers stems from the fact that a referral trigger relates to State interests which proponents may not have fully appreciated and addressed when formulating their development proposal. Retro-fitting an interest into a development proposal during the development approval stage has the potential to incur additional costs and result in delays. The replacement of referral triggers with SPIs (such as State Planning Policies) 'front-loads' State interests into the planning framework and has the capacity to address aspects of this criticism by making information available about State agencies' requirements earlier in the development process and allowing applicants to design their proposals in this context rather than trying to change the proposal at the last moment of assessment.

306. Certain development applications located in coastal management districts are required to be referred to the Department of Environment and Resource Management (DERM) for coastal management issues under the Coastal Protection and Management Act 1995 (QLD) (CPMA). Coastal management issues include a consideration of the flood risk posed to the development as a result of erosion and storm tide inundation.

307. Currently within Schedule 7 of the SPR there are four referral triggers for development within coastal management districts. Where a development application is captured by one of these referral triggers, the relevant State agency is DERM, with a referral jurisdiction for coastal management under the CPMA, excluding amenity or aesthetic significance or value. This referral jurisdiction extends to a consideration of the flood risk posed to the development as a result of erosion and storm tide inundation.

1 Section 313(2)(d) of the SPA – for code assessment; section 314(2)(d) of the SPA - for impact assessment.
2 Key Initiative 11 (K11) of Shaping Tomorrow's Queensland: A response to the Queensland Growth Management Summit is 'Streamline State planning arrangements to increase certainty and improve housing affordability and increase land supply'

(e) The use and appropriateness of a Temporary Local Planning Instrument (TLPI) to permit buildings on flood risk land

308. Section 105 of the SPA gives local governments the power to make a temporary local planning instrument (TLPI) for all or part of a planning scheme area, in certain circumstances. Before a TLPI can be made under section 105 of SPA, the Planning Minister must be satisfied that:

- there is a significant risk of serious environmental harm or serious adverse cultural, economic or social conditions happening in the planning scheme area
- the risk would increase if the process in the statutory guideline for amending a planning scheme was used to amend the planning scheme due to the delay involved
- State interests would not be adversely affected by the proposed TLPI
- the proposed TLPI appropriately reflects the standard planning scheme provisions (SPSP).

309. As a result of the January 2011 flood events which effected many parts of Queensland, DLGP have been working closely with local governments and the Queensland Reconstruction Authority to implement efficient and effective planning instruments to help resolve development and rebuilding issues.

310. DLGP has worked collaboratively with the Brisbane City Council (BCC) to consider flood issues for new and existing development, post the January floods. BCC adopted the first of the flooding TLPI's, in order to implement an interim standard for flood affected areas, along with changes to the current planning provisions to facilitate rebuilding and recovery efforts in response to flood affected land.

311. The BCC TLPI met the TLPI test as:
- the flooding events in Brisbane in January 2011 affected 12,000 homes and 2,500 commercial properties and that therefore relieving of affecting a number of the existing planning provisions will assist in immediate rebuilding and redevelopment;
- in the event that flood affected properties are unable to rebuild for an extended period due to heavy planning restrictions, there will be serious adverse cultural, social and economic impacts on the community who will be unable to return to their homes; and
- the interim response flood level (IRFL), implemented through the TLPI will serve to provide an interim response by mitigating future flooding and environmental impacts caused by future natural disasters, for the duration of the TLPI.

312. The BCC IRFL:
- BCC has an interim response flood level (IRFL), implemented through the TLPI will serve to provide an interim response by mitigating future flooding and environmental impacts caused by future natural disasters, for the duration of the TLPI.
- the interim residential flood level (IRFL) is the surface of floodwater in one or both of the following flood events, whichever is the highest at any point:
  - Brisbane River – January 2011 event
  - The Defined Flood Level (DFL) based on a Brisbane River Flood Event using a flood height profile of 3.7m AHD at the City Gauge

- creek/waterway flooding is all land affected by a 100 year (Average Recurrence Interval) flood event.
- BCC still requires residential dwellings (specifically BCA class 1, 2, 3 and 4) to be constructed with a freeboard of 500m above the DFL in accordance with BCC's Subdivision and Development Guidelines and/or House Code.

In my view the IRFL adopted under BCC's TLPI more than adequately reflects the intent of SPP1/03.

313. Ipswich City Council (ICC) also implemented a TLPI in response to flood events and affected land within their local government area. ICC's TLPI focuses on regulating new development and encouraging the transition of severely flood affected mixed use residential areas to low impact non residential uses, through the implementation of reduced levels of assessment for certain uses.
    - the ICC TLPI meet the TLPI test as:
    - there is a significant risk in serious environmental harm and serious adverse cultural, economic and social conditions occurring in the Ipswich local government area if the additional provisions in the TLPI are not implemented to assist in rebuilding in flood affected areas.
    - the adopted flood regulation line, implemented through the TLPI, will serve to provide an interim response by mitigating future flooding and environmental impacts caused by future natural disasters, for the duration of the TLPI.
    - if the Minister were to require a planning scheme amendment instead of a TLPI, the changes proposed by the TLPI would not be implemented for at least 3-6 months. This would increase the risk of adverse cultural, economic and social conditions occurring in the planning scheme areas as it would delay necessary rebuilding and development.
314. The Ipswich Interim Flood Level:
    - Replace the Flooding and Urban Stormwater Flow Path Areas Overlay Map (OV5) to incorporate a revised flood regulation line based on the highest known flood level from the 1 in 100 flood line, 2011 flood and 1974 flood.
    - The respective trigger is an Overlay in Council's Planning Scheme, "TLPI1 - Flooding and Urban Stormwater Flow Path Areas" which replaces Overlay Map OV5. The TLPI Overlay calls up Council's Development Constraints Overlay Code which contains provisions relating to minimum heights for residential buildings.
    - In areas affected by the Adopted Flood Regulation Line, the Code requires floor levels of any habitable rooms of a proposed residential building to be a minimum 500 mm above the adopted flood regulation line. Council can give discretion to this where adverse visual amenity and streetscape impacts are likely.

- In Urban Stormwater Flow Path Areas, the Code requires "Adequate stormwater drainage infrastructure and suitable overland flow paths are provided to carry the 1 in 100 Average Recurrence Interval (ARI) stormwater flow through the property while providing a freeboard of 500mm on the floors of all habitable areas and minimising damage owing to scouring from excessive flow velocities."
- "Adopted Flood Regulation Line" means the flood line as depicted on the Flooding and Urban Stormwater Flow Path Areas Overlay Map (OV5) dated March 2011. The Adopted Flood Regulation Line is the greater of the Q100, 1974 level and the 2011 level.

In my view the Ipswich Interim Flood Level adopted under ICC's TLPI more than adequately reflects the intent of SPP1/03.

315. It was resolved that preparing a TLPI for both of the above flood affected local government areas was the most effective and efficient way of providing an interim response and appropriate provisions to assist communities in dire need.

316. All proposed TLPI's are assessed individually against the requirements of section 105 of SPA, and must have strong reasoning as to how it meets these requirements.

317. TLPI's are supported and adopted sparingly as they can create additional layers to a planning scheme and make it harder for the general public to use and understand.

Building matters and TLPIs

318. In April 2011, BCQ provided feedback on the TLPIs that are now in effect in the Brisbane City Council (BCC) and Ipswich City Council (ICC) areas. As well as establishing an Interim Residential Flood Level (IRFL), both TLPIs include requirements for building work within the area designated by the TLPI, such as the use of flood resistant building materials below the

319. Prior to the implementation of the BCC and ICC TLPIs the draft national Standard for buildings in a flood hazard area was still in early development by the ABCB. BCQ was a member of the ABCB working group for the draft Standard. The proposed introduction date of the draft Standard is May 2013 and the early adoption of the draft Standard in Queensland as a mandatory part to the QDC is proposed for late 2011.

320. BCQ worked with both the BCC and ICC to ensure the timely implementation of the TLPIs and to help address their concerns regarding rebuilding in flood affected areas prior to the introduction of the draft Standard.

321. The building industry has raised ongoing concerns about building matters being referenced in TLPIs and other local planning instruments where they are in

conflict with the building assessment provisions (BAPs) under the BA. BCQ is proposing to clarify the interaction of the SPA and the BA to make it clear that the BAPs will prevail in the event of any inconsistency with local planning instruments.

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

Signed [redacted] . . .

~~Gary~~ Stuart ~~White~~

Taken and declared before me, at Brisbane this 02 day of September 2011.

[redacted]

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