

## Third Statement of Rory John Kelly

I, Rory John Kelly, Regional Manager of Development Assessment South, Brisbane City Council, of [REDACTED], [REDACTED], in the State of Queensland, state on oath as follows:

- A. Attachment RJK-45 is a copy of a notice from the Commissioner of the Queensland Floods Commission of Inquiry (**Commission**) dated 9 September 2011 requiring me to provide certain information to the Commission with respect to the existing residential building at 42 Ferry Road, West End (**Subject Land**) in the form of a statement (**Notice**). This Statement is provided in response to the Notice.
- B. For the purposes of responding to the Notice and preparing this Statement I have, in my position as Regional Manager of Development Assessment South Branch of the Brisbane City Council (**Council**), had access to:

- (a) the business records of Council; and
- (b) Council officers,

to obtain information to provide a response to the Notice. Unless otherwise stated, the matters set out in this Statement are based on my own knowledge and the information derived from the above sources.

- C. The documents from the above sources and attached to this Statement have been collated by Council officers under my instruction.
- D. I set out below my responses to each of the questions set out in the Notice.

### Qualifications and Background

1. My qualifications are set out in my First Statement dated 31 August 2011 (**First Statement**).
2. At the time of the development application for the Subject Land I was the Principal Planner, Development Assessment South Team. The role of Principal Planner is explained my First Statement.
3. A background of the Development Assessment South Team of the Council is also set out in my First Statement.

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Rory John Kelly

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**General observations**

4. Council files indicate that the Subject Land is described as 28 to 42 Ferry Road, West End and is referred to as 28 Ferry Road, West End.

**Response to the Notice**

**1. The defined flood level of the Subject Land prior to the January 2011 flood event;**

5. Council's records show the defined flood level for the Subject Land immediately prior to the January 2011 flood event as 5.4m AHD. The highest source of risk of flooding is Brisbane River flooding. Council's records also show that the site is affected by overland flow.

**2. Whether Council's records indicate that the Subject Land was subject to surface flooding impacts during the January 2011 flood event;**

6. Council's records indicate that the Subject Land was subject to surface flooding impacts during the January 2011 flood event.

**3. When approval was given to permit use of the Subject Land for the existing residential development;**

7. A Development Approval was given by Council by Decision Notice dated 30 October 2006 to Kozmic Developments Pty Ltd c/- Humphreys Reynolds Perkins (**Applicant**) under section 3.5.15 of the *Integrated Planning Act 1997* for a Development Application for Multi Unit Dwelling 93 units in 2 Stages (Stage A, 36 units & Stage B 57 units) (**Development Approval**). A copy of the Decision Notice, including the conditions, is Attachment RJK-46.

**4. When the development application the subject of the approval:**

- a. how potential flooding impacts were identified and whether consideration was given to potential flooding impacts from backflow of water through stormwater drains and/or overland flow;
- b. what assessment process was followed specific to flood impacts;
- c. what consideration, if any, was given to:
- i. flood risk or the potential impact of flooding on the Subject Land and measures to address such risk or impact; and

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- ii. the potential for inundation at basement level and the appropriateness of location of services, such as power, lift services and air-conditioner units, in the basement; and

5. In relation to each of the approvals, what conditions, if any, were included with respect to protection from flooding (regardless of its source).

8. In relation to potential flooding, I refer to the DTM Scoping Sheet and Minute of the daily team meeting for the Development Assessment Team South held on 25 October 2005. The letters "DTM" stand for "Daily Team Meeting". A copy of the DTM Scoping Sheet and Minute is Attachment RJK-47.
9. It is the standard practice of the Development Assessment South Team to generate a property/history search for a subject site when a development application is lodged. Such a search was carried out for this property, and a copy is Attachment RJK-48. The search indicates the Subject Land is affected by flooding.
10. The purpose of the DTM is to identify the key planning issues for review and to allocate those issues to the relevant Council officers. I note from the DTM Scoping Sheet and Minute that flooding was identified as an issue and Paul Hills, Engineering Officer, Development Assessment Team South was identified as the Engineering Officer for the Development Application.
11. Attachment RJK-49 is a memorandum titled "Development Application over land at 28 FERRY RD, WEST END QLD 4101" from Paul Hills to Deborah Mangu, Urban Planner of Development Assessment Team South and Assessment Manager for the Development Application, dated 16 November 2005. It comprises a list of issues to be resolved prior to approval of the Development Application, in particular:

*The West End Local Stormwater Management Plan has identified that the site is subject to partial inundation by floodwaters during flood events. The development will be conditioned to construct relief drainage as detailed in the Draft West End Riverside ICP, which includes drainage along the frontage of the site continuing along Ferry Rd to the Brisbane River. The costs of these works can be credited against ICP charges. The developer will be required to enter into an infrastructure agreement with Brisbane City Council."*

  
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12. I note that Council's FloodWise Property Report was generated for the Subject Land and it indicated a defined flood level (DFL) of 5.4m AHD. Attachment RJK-50 is a copy of the FloodWise Report for the Subject Land dated 17 November 2005.
13. The file indicates that an Information Request was sent by Council to the Applicant on 22 November 2005. Council's file copy of the Information Request is Attachment RJK-51.
14. The Information Request required further information in relation to the High Density Code, Engineering, Architecture, Landscape Architecture and Sustainability. With respect to Engineering, the request required information in relation to the issues identified by Paul Hills in his memorandum to Debra Mangu, including as outlined in paragraph 11 of this Statement.
15. The file indicates that the Applicant provided a Response to the Information Request by letter dated 6 February 2006 and received by Council on 8 February 2006. A copy of the Response is Attachment RJK-52. With respect to the Engineering issue specifically noted in paragraph 11 of this Statement which was included in the Information Request, the following was stated:

*"We noted that relief drainage may be required and will form part of any conditions of approval."*

16. Submissions were received in response to the public notification of the Development Application, but no submissions were received in relation to flooding.
17. The decision of the Establishment and Coordination Committee as Delegate of the Council was to endorse the recommendation that the Development Application be approved subject to the conditions in the Development Approval Package and subject to the condition that the Applicant sign an Infrastructure Agreement. A copy of the Decision is Attachment RJK-53.
18. The file indicates that an Infrastructure Agreement between Kozmic Developments No.3 Pty Ltd, Symbion Pathology Pty Ltd (formerly known as Mayne Health Pathology Pty Ltd) and Council was executed on 26 October 2006. A copy of the Infrastructure Agreement is Attachment RJK-54.
19. The conditions of the development approval included conditions to:

*"Carry out the approved development generally in accordance with the approved document(s) and/or drawing(s)."*

  
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*"Design and construct all buildings to have the appropriate freeboard in accordance with the Council's "Subdivision and Development Guidelines" so as not to be flooded during a 50 year (ARI) local flood event or a 100 year (ARI) creek or river flood event whichever is the higher flood level."*

20. In considering these conditions, I note that the Subdivision and Development Guidelines that applied at the time of the approval in Chapter 1, section 2.2, relevantly provided that:

*Basement car parks can be constructed to below the specified levels provided that suitably waterproofed perimeter walls, air vents, and entry/exit ramps at the carpark entrance are above the 100 year ARI flood levels for all flooding sources including the Brisbane River.*

Similar provisions are contained in the current version of the Subdivision and Development Guidelines.

21. Approved plan DD-A02 Issue D dated September 2005 shows the driveway at 5.4m AHD, which is equivalent to the DFL and consistent with the Subdivision and Development Guidelines as set out above. Approved plan DD-A02 Issue D also shows the minimum habitable floor levels at 5.9m AHD, which is the DFL plus 0.5m,
22. Council files do not evidence specific consideration of the appropriateness of the location of services, however I note that the Development Approval contains conditions in relation to the provision of underground electricity services and underground telecommunications in accordance with the Subdivision and Development Guidelines. The location of such services, in particular electricity, is generally a matter between the developer and the public utility provider.
23. Other conditions of the Development Approval which are relevant to protection from flooding include the following:
- (a) Material Change of Use (Development Permit) - Stage A Multi Unit Dwelling (37 Units) - Conditions 16, 43, 44, 45 and 46;
  - (b) Material Change of Use (Development Permit) - Stage B Multi Unit Dwelling (57 Units) - Conditions 75, 101, 102, 103 and 104.

  
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24. The file indicates that there are a range of associated development approvals for the Subject Land resulting from the conditions of the original development approval referred to above.

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

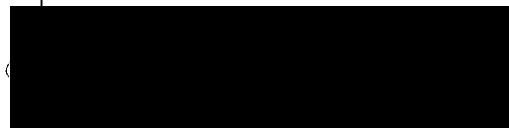
Dated 19 September 2011

Signed and declared by Rory John Kelly at  
Brisbane in the State of Queensland  
this 19<sup>th</sup> day of September 2011

Before me:



Signature of person before whom the declaration is  
made



Signature of declarant

KATHARIN IRVINE PAGE, SOLICITOR  
Full name and qualification of person before  
whom the declaration is made