

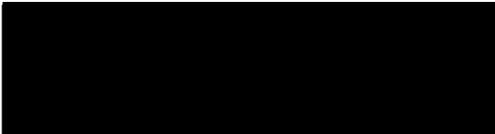
Second Statement of Rory John Kelly

I, **Rory John Kelly**, Town Planner, of Level 12, Brisbane Square, 266 George Street, Brisbane, in the State of Queensland, state on oath as follows:

Introduction

1. I refer to my first statement regarding the Tennyson development site and the Tennyson Reach development dated 31 August 2011 (**First Statement**).
2. In particular, I refer to paragraphs 119 and 120 of my First Statement in which I stated that during the course of my preparation for that statement and following a review of the relevant files it had come to my attention that:
 - (a) an application to amend a development approval and amend a condition of a development approval for the Tennyson Reach development was approved on 9 October 2009. That approved amendment included some storage and other non-habitable areas for the Tennis Centre which might have involved some consideration of flood impacts; and
 - (b) a current application for a Request for Permissible Change to a Development Approval (dated 21 June 2011) including for an expansion of change room facilities, new storage areas and other non-habitable areas forming part of the Tennis Centre, will likely include a consideration of flood impacts.
3. For the purposes of providing this Supplementary Statement I have, in my position at Council as Regional Manager - Development Assessment South, had access to:
 - (a) the business records of Council; and
 - (b) Council officers,to obtain the requisite information. Unless otherwise stated, the matters set out in this Supplementary Statement are based on my own knowledge and the information derived from the above sources.
4. Unless otherwise stated, the documents attached to this Supplementary Statement have been collated by me or by Council officers under my direction and instruction.


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5. I have now completed my investigations into the above and set out the relevant information in relation to the 9 October 2009 development approval and the current permissible change application before Council.

Tennyson Reach development

6. On 9 October 2006 Council gave a Negotiated Decision Notice a copy of which is Attachment **RJK-32** to my First Statement.
7. Subsequent requests to change the development approval have been given by Council to Mirvac for the Tennyson Reach development, however these approvals do not impact upon height of the habitable floor levels and do not relate to flooding impacts.

9 October 2009 Development Approval

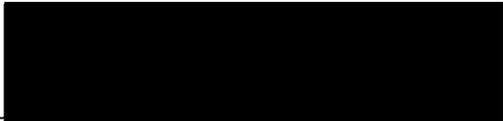
8. On 13 August 2009, Brannock & Associates on behalf of Mirvac lodged a request under sections 3.5.24 and 3.5.33 of the *Integrated Planning Act 1997* (now repealed) to change an existing development approval and change a condition of the Development Approval given by Council in the Negotiated Decision Notice dated 9 October 2006 for the Tennyson Reach development (**the Request**). A copy of the Request is Attachment **RJK-33**.
9. I was not involved in the assessment of the Request. Although my name appears on the decision notice, the approval was signed by David Paterson, Principal Planner Development Assessment South.
10. So far as I am aware at the Daily Team Meeting (DTM) held on 25 August 2009, David Paterson was the nominated DELEGATE of COUNCIL for this application as he was the immediate supervisor of Shirley Shannon, Senior Urban Planner, Development Assessment South.
11. I am also aware that David Paterson was on annual leave from 24 August to 18 September 2009. Furthermore the electronic record in DART indicates the 'Decision of Delegate' template used to draft recommendations for this application was created on 9 September 2009, although I note the document is dated 5 October 2009. It is likely that Shirley Shannon put me as the delegate as she may have anticipated finalising the application prior to David Paterson returning from annual leave. It is not unusual as Regional Manager to exercise delegated authority when officers are on annual leave. In this instance, it appears that David Paterson has not changed the name of the delegate in the 'Decision of the Delegate' template.


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12. Despite me not being involved in the assessment of the Request, from the Council files I can make the following observations.
13. The Request sought changes to the Development Approval given by Council in the Negotiated Decision Notice dated 9 October 2006. The changes sought included:
- (a) new undercroft multi purpose room (MPR) which included additional gross floor area (GFA) of 407m²;
 - (b) new undercroft storage rooms which included additional GFA of 244m² (two rooms at 118m² and 126m² respectively);
 - (c) new store room under stadium plats which included additional GFA of 31m²;
 - (d) new podium shade structures on Western concourse which included nil additional GFA;
 - (e) new café shade structure which included nil additional floor area;
 - (f) new spectator seating and shade to external courts;
 - (g) new BBQ area which included nil additional floor area; and
 - (h) new materials storage which included nil additional floor area.
14. In relation to the request to change a condition, the Request sought amendment only to Condition 31, namely changes to the plans referenced in relation to permanent shade structures, with the following new plans submitted for approval:
- (a) 11-DA1012 rev D (05.08.2009) - Queensland Tennis Centre - Floor Plan Level 2;
 - (b) 11-DA1011 rev D (05.08.2009) - Queensland Tennis Centre - General Arrangement Plan Level 1;
 - (c) 11-DA1950 rev A (06.08.2009) - Queensland Tennis Centre - Proposed Podium Shade Structure - View 1;
 - (d) 11-DA1951 rev A (06.08.2009) - Queensland Tennis Centre - Proposed Podium Shade Structure - View 2; and
 - (e) 11-DA1952 rev A (06.08.2009) - Queensland Tennis Centre - Proposed Podium Shade Structure - View 3.


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15. The Council file contains a memorandum from Shirley Shannon addressed to "Mario F" and "Paul Hills". "Mario F" refers to Mario Furlan, who at that time had the role of Architect/Urban Designer, Development Assessment South. Paul Hills at that time had the role of Principal Engineering Officer, Development Assessment South. Mario Furlan and Paul Hills were both identified in the DTM as relevant referral officers within the team for the assessment of this Request.

A copy of that memorandum is Attachment **RJK 34**.

16. The Council file contains an internal email from Hien Nguyen, Engineering Officer Development Assessment South, to Shirley Shannon dated 7 September 2009 that relevantly states that:

"The modification will not have any impact on engineering conditions that were previously set."

A copy of the email from Hien Nguyen is Attachment **RJK 35**.

17. I am familiar with Development Assessment South's practice and based on their respective roles within Development Assessment South, I assume that Paul Hills as supervising engineer of Hein Nguyen forwarded the memorandum contained in paragraph 15 above to Hien Nguyen for engineering assessment. Although I can find no evidence of that having occurred from the Council file it would be normal practice.

18. The Council file contains an internal email from Mario Furlan to Shirley Shannon, dated 14 September 2009, that relevantly states that:

"3. It is noted that the town planning report states that these rooms [undercroft rooms] will also be used as playing training and development. However, it appears that a flood barrier is to be incorporated along the door openings (eastern side). It is questionable as to how these protection barriers will operate in terms of flooding. The applicant should demonstrate how these barriers will work. It is also considered that this may require engineering input. This issue to be commented by the Hydraulic Engineers."

A copy of the internal email from Mario Furlan to Shirley Shannon is Attachment **RJK 36**.

19. In an email dated 17 September 2009, Brannock & Associates provided the following:

"Following our telephone discussion yesterday, please find below details of the usage of the proposed undercroft spaces as requested, for the purpose of calculating infrastructure charges"


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"Multi Purpose Rooms

1. National Academy player training and development
2. Additional Gymnasium equipment for cardiovascular training

Storage Areas

1. spare dining tables, seating
2. event / tournament signage
3. temporary seating
4. showcourt umpire chairs
5. storage of TQ equipment during Brisbane International bump-in."

A copy of the email from Brannock & Associates dated 17 September 2009 is Attachment **RJK 37**.

20. The Council file shows that on 17 September 2009, Shirley Shannon sent an email to Brannock & Associates requesting a response to those issues identified by Mario Furlan, including as outlined in paragraph 18 of this Supplementary Statement.

A copy of the email from Shirley Shannon dated 17 September 2009 is Attachment **RJK 38**.

21. The file indicates that by email dated 18 September 2009, Brannock & Associates provided a response, which included the following:

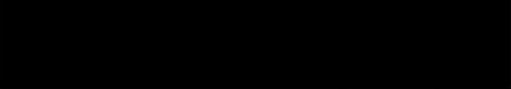
"In a 1:100 year flood, the clay and grass courts will be under water, along with the existing MPR. The rear walls of the existing MPR and the proposed MPR are fire rated and also acted as a flood wall to ensure water goes no further.

The proposed MPR rooms are not habitable and I do not believe that flood prevention is required. The flood gates are a proprietary item to facilitate the protection of these areas in the event of flood as an option rather than a requirement (refer link below). The flood gates do not impede the day to day function of the facility.

<http://www.floodgatesaustralia.com/commercial.html>"

A copy of the email from Brannock & Associates dated 18 September 2009 is Attachment **RJK 39**.


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22. The Council file indicates that the response from Brannock & Associates was forwarded by Shirley Shannon to Mario Furlan by email dated 29 September 2009.

A copy of the email from Shirley Shannon to Mario Furlan dated 29 September 2009 is Attachment **RJK 40**.

23. The Council file indicates that Mario Furlan responded to Shirley Shannon by email on the same day stating that:

"With regards to the information response to the above application, The applicant has addressed the issue previously raised.

1. *It is recommended that the applicant revise the drawings to include the PWD toilet.*
2. *The pathways to the MPR's are to be compliant with AS 1428 [Design for Access and Mobility]."*

A copy of the email from Mario Furlan to Shirley Shannon is Attachment **RJK 41**.

24. I note from the Council file that the advice from Mario Furlan outlined in the paragraph above was conveyed to Brannock & Associates by Shirley Shannon in an email dated 29 September 2009.

A copy of the email from Shirley Shannon to Brannock & Associates dated 29 September 2009 is Attachment **RJK 42**.

25. By email dated 29 September 2009, Brannock & Associates responded to Shirley Shannon, stating that, relevantly:

"Please find attached scale drawing of the amended toilet layout for Council's consideration. I confirm that the pathways are compliant with AS 1428 and the certification process from the building certifier will ensure this is the case".

Attached to that email is a copy of drawing 05B316 13-S2150 dated 25 September 2009 referred to in paragraph 29 below.

A copy of the email from Brannock & Associates dated 29 September 2009 is Attachment **RJK 43**.

26. On 9 October 2009, Council issued a Decision Notice for the Request, including a new approvals package.

A copy of the decision notice and approvals package is Attachment **RJK 44**.



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27. The body of the conditions of the existing development approval in relation to flooding were not changed, and consistent with the Negotiated Decision Notice, continued to provide as follows:

"59) FLOODING - Q50 & Q100

Run off from the site and run off concentrated on the site from local catchments for storms up to the 50 year (ARI) flood event and for a 100 year (ARI) flood event for creek and river flooding, is to be managed in accordance with approved drainage plans and Council's "Subdivision and Development Guidelines" so as not to have any adverse effect on neighbouring properties.

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;

59(a) FLOODING - Q50 & Q100

Submit engineering plans and calculations, prepared by a Registered Professional Engineer Qld (RPEQ) and in accordance with the Council's "Subdivision and Development Guidelines", demonstrating how the development will comply with this requirement. Such plans are to show adequate survey information on areas adjoining the site with particular attention to ponding of water and overland flow paths and building pads. Additionally, the submitted information is to determine the extent of any stormwater drainage works and the width of any overland flow easements. Obtain approval for the design from the Engineering Delegate, Development Assessment;

59(b) FLOODING - Q50 & Q100

Complete the works in accordance with the approved engineering plans; and

59(c) FLOODING - Q50 & Q100

Submit "As Constructed" plans including an asset register (if required), approved by a Registered Professional Engineer of Queensland (RPEQ) (to a standard specified in Council's "Subdivision and Development Guidelines") certifying that the works have been completed in accordance with the approved design and any approved modifications.

GUIDELINE

This condition is intended to ensure that the design of the subject development accounts for the stormwater run off and/or if stormwater drainage patterns in the vicinity of the site require improvements. For any enquiries about this condition, please contact the Engineering Delegate, Development Assessment."


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28. The Negotiated Decision Notice conditions package was generated using Council's Brisbane Integrated Development System (BIDS) Development Conditions Manager (DCM) system. Since the date of the Negotiated Decision Notice, Council has changed the DCM system used to generate the approval conditions package. The new system is Development Application regulatory Tracking DART. Due to an incompatibility between the former DCM system and the current DART system, the numbering and format of conditions generated has changed from that in the Negotiated Decision Notice, however the body of the conditions themselves remain unchanged.
29. The approval of the Request approves plan 11-DA1011 which refers to detailed drawing no. 05B316 13-S2150 Issue A Dated 25/09/09. I note that drawing no. 05B316 13-S2150 includes detail of surface floor levels (noted as "S.F.L" on the drawing) that range between 4.65m and 5.6m AHD. These levels appear to be inconsistent with condition 59 of the development approval as set out in paragraph 27 above in that these levels are below both the 50 year (ARI) (6.6m AHD) local flood event or 100 year (ARI) (6.9m AHD) creek or river flood event as referred to in the condition.
30. I note that condition 59(a) and (c) required engineering plans and as constructed drawings to be submitted approved by a RPEQ. I have been unable to locate these plans and drawings in Council's records.

Current request for a permissible change

31. An application for a Request for a Permissible Change to a Development Approval under section 369 of the *Sustainable Planning Act 2009* was lodged by Brannock & Associates on behalf of Mirvac on 22 June 2011. The proposed changes include:
- (a) A new Multi Purpose Room #3 (MPR) under the podium;
 - (b) Expansion of Players Change Room and Level 1 Amenities;
 - (c) Link Under Podium to provide improved player circulation routes under the Stadium;
 - (d) New Toilet Facilities for coaches and staff;
 - (e) Reception Area Modification to increase office space on Level 2; and
 - (f) Consolidation of Maintenance Shed and Site Offices.

32. I have been involved in the assessment of this application.


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33. This application is currently undergoing assessment by Council. However, during the course of this assessment, it has become clear to Council that the proposed changes and the existing facilities under the podium are not consistent with Condition 59 of the Development Approval as set out in paragraph 29 above.

34. As part of the assessment process, Jennifer Hausler Senior Urban, Planner Development Assessment South of Council emailed Brannock & Associates with the following:

“It has come to our attention that the existing floor levels in the Tennis Centre do not comply with the Q50 and Q100 levels required in Condition 9 (Flooding Q50 and Q100) of the approval. As such, as part of the modification, we will need to modify condition 59. In order to change condition 59, we require a Flood Risk Management Assessment to be submitted to the satisfaction of the Principal Engineer and to be in accordance (sic) with Council’s Subdivision and Development Guidelines and AS 4360.

This Flood Risk Assessment is to incorporate the following:

- *Identification of the stakeholders exposed to or affected by the risk of flooding.*
- *Identification of public and private property, social systems and environmental elements at risk of flooding.*
- *Estimation of flood risks ie the likelihood and consequences of flooding.*
- *Assessment of the acceptability of flood risk. This evaluation will involve the determination of the total flood damage (potential) for a range of annual exceedance probabilities (1%, 2%, 5%, 10%, 20%, 50%) and the average annual tangible and intangible damages.*
- *Warning times*
- *Evacuation procedures for both people and property in order to minimise impact of flooding and any audible warning devices*
- *Construction materials and techniques used in the development to minimise flood impact (ie use of flood tolerant materials)*
- *The proposed method of perpetuating the restricted use and conveying the risk management data to future owners and leaseholders.*
- *Updates to workplace health and safety procedures for occupants on the site.*


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- *The procedures to conduct emergency evacuation and rescue operations.*

The Flood Risk Management Assessment is a formal means of identifying and managing the existing, future and residual risks of flooding, both local and river. A suitably qualified professional consultant is to be engaged to undertake the risk management evaluation in accordance with the framework outlined in AS 4360 Risk Management.”

A copy of the email from Jennifer Hausler to Brannock & Associates dated 2 September 2011 is Attachment **RJK 44**.

35. This risk management approach is consistent with Council’s Subdivision and Development Guidelines, and in particular section 4.2 of the Guidelines, for development that does not meet the prescribed flood immunity standard for Brisbane River.
36. Council is continuing to assess the application, and has made no decision in relation to the proposed changes to the development approval at this time.

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

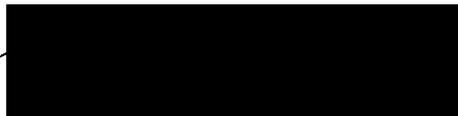
Dated 8 September 2011

Signed and declared by Rory John Kelly at *BRISBANE*
in the State of Queensland
this 8th day of September 2011

Before me:



Signature of person before whom the declaration is made



Signature of declarant

KATHARINE IRENE PACCA, SOLICITOR.

Full name and qualification of person before whom the declaration is made