

**In the matter of the  
Commissions Of Inquiry Act 1950**

**Commission of Inquiry Order (No. 1) 2011**

**QUEENSLAND FLOODS COMMISSION OF INQUIRY**

**Ipswich City Council**

**6 December 2011**

**RESPONSE TO DRAFT FINDINGS/RECOMMENDATIONS**

- 1.** Land Planning A - Queensland Building Development Code
- 2.** Land Planning B - Statutory Indemnity
- 3.** Land Planning C - Grantham Development Scheme
- 4.** Land Planning C - Satellite Planning Systems
- 5.** Dams A - Splyard Creek Dam

(Ipswich City Council Response Number 1)

# QUEENSLAND FLOODS COMMISSION OF INQUIRY

## FINAL REPORT - DRAFT FINDINGS AND RECOMMENDATIONS

### Introduction

This response (Ipswich City Council Response No. 1) addresses the Commission's draft findings and recommendations about the following matters:

1. Land Planning A - Queensland Building Development Code
2. Land Planning B - Statutory Indemnity
3. Land Planning C - Grantham Development Scheme
4. Land Planning C - Satellite Planning Systems
5. Dams A - Splityard Creek Dam.

---

## **1. Land Planning A - Queensland Building Development Code**

### **1.1 Draft Recommendation**

*The proposed new part of the Queensland Development Code should be amended so that the performance requirements will only be triggered where the local government has:*

*A. designated part of its area as a natural hazard management area (flood) under section 13 of the Building Regulation 2006, AND*

*B. either:*

*a. declared a height to be the expected flood level under section 13 of the Building Regulation 2006, or*

*b. adopted a highest recorded flood level for the lot, AND*

*C. either:*

*a. declared a velocity to be the expected maximum flow velocity of flood water, or*

*b. designated part of its area as an inactive flow or backwater area.*

### **1.2 Ipswich City Council response**

Ipswich City Council supports the proposed amendment to the Queensland Development Code recommended by the Commission.

Ipswich City Council considers that from a policy perspective, the local government should be the assessment manager for development applications for building work on land designated as a natural hazard management area (flood) and which trigger the proposed amendments to the Queensland Development Code. This is particularly to allow local governments to consider the application where the Queensland Development Code could affect planning considerations such as amenity or heritage character.<sup>1</sup>

In preparing its response to the Commission's proposed recommendation, Ipswich City Council notes that a revised draft of MP3.5 of the Queensland Development Code has been published by the Department of Local Government and Planning.<sup>2</sup>

---

<sup>1</sup> See paragraph [40] of the second statement of John Adams, Ipswich City Council dated 25 October 2011; para [4] - [15] of *Building Controls for Flood Hazard Areas: Recommendations to the Queensland Floods Commission of Inquiry* dated 7 November 2011 prepared by Stephen Reynolds, Humphrey Reynolds Perkins.

<sup>2</sup> <http://www.dlgp.qld.gov.au/resources/laws/queensland-development-code/draft/draft-mp-3-5-flood-buildings.pdf>

The amendments contained in the revised draft MP3.5 include the deletion of paragraph 2(h) of the Application section and modification of the referral agency provisions. The exemption previously contained in paragraph 2(h) has been incorporated into the referral agency provision which now provides that:

"Under the *Sustainable Planning Regulation 2009*, schedule 7, table 1, item 29, if:

(a) an application involves *building* work that is the construction of a class 1 *building*, or an addition to an existing class 1 *building*; and

(b) the work does not comply with:

(i) performance requirement 1 of this Part; or

(ii) section 2.7(a) of the draft national standard;

the local government, as a referral (concurrence) agency for the application, may give a concurrence agency response about whether it is impractical or undesirable for the work to comply entirely or partly with *performance requirement 1* and 2 of this Part."

Ipswich City Council considers that:

- (a) The exemption provision should apply to all classes of buildings that are caught by the proposed new provisions and should not be limited to Class 1 Buildings.
- (b) Local government should (preferably) be an assessment manager or as a minimum be a concurrence agency, for all building applications related to development on land that is located within a natural hazard management area (flood).
- (c) Local government's assessment role should not be limited to circumstances where the development does not comply with the Code, as for example, there may be good planning reasons for the development not to be approved, such as amenity or if the development would otherwise be inconsistent with the planning scheme.
- (d) The introduction of the terms "impracticable or undesirable" is likely to introduce uncertainty because these terms have not been used before in a planning context. Ipswich City Council recommends that the exemption be rephrased to be more consistent with the *Sustainable Planning Act 2009 (SPA)* so that the local government may decide there are sufficient grounds to justify the decision to approve the development, despite the conflict with the Queensland Development Code.

- (e) Where local government retains a concurrence agency role, to ensure that the local government concurrence agency response can be implemented, the amendments to the Queensland Development Code should expressly state that *Part MP 3.5 does not apply where a local government provides a concurrence agency response that there are good reasons to depart from the performance requirement 1 and 2 of this Part.*

Ipswich City Council notes that the process for obtaining the relevant modelling and data required to implement MP3.5 will be costly and time consuming. Although some examples have been provided in evidence to the Commission of circumstances where this information would be easy to determine, this would not be the case for Ipswich City Council. Further, defining specific building flood height regulation levels will not be a straightforward issue, particularly where catchments are sloping and flood heights vary considerably between the upper and lower catchment.

Note that it is also not clear how paragraph 5(f) of Mr Brumby's statement of 16 November 2011 would apply.

---

## **2. Land Planning B - Statutory Indemnity**

### **2.1 Draft Recommendation**

*The Commission of Inquiry endorses the Queensland Government's proposal to investigate the viability of introducing a statutory indemnity.*

### **2.2 Ipswich City Council response**

Ipswich City Council supports the Commission's proposed recommendation.

Ipswich City Council submits that the issue of the introduction of a legislative exemption from liability for reasonably based local government decision making, including potential liability arising from acts done or omitted to be done in respect of land subject to flooding, climate change and other natural "disasters" is a relevant matter for consideration.

In addition Ipswich City Council has previously expressed the view that a statutory exposure to compensation claims for injurious affection acts as a deterrent to the inclusion of flood controls in a planning scheme.<sup>3</sup>

SPA limits compensation for planning controls imposed due to natural processes (including flooding) but this exclusion is limited as it does not apply if conditions on development could

---

<sup>3</sup> Paragraphs 1.4, 11.2 and 18.5 Second Submission of the Ipswich City Council dated 28 April 2011; Paragraph 41 of the Second Statement of John Adams dated 25 October 2011.

have significantly reduced the risk instead.<sup>4</sup> Ipswich City Council suggests that a recommendation be included to exempt all planning scheme controls for flooding (and other natural disasters) from claims for compensation for injurious affection.

---

### **3. Land Planning C - Grantham Development Scheme**

#### **3.1 Ipswich City Council response**

Ipswich City Council notes the Commission's draft recommendations and findings and does not wish to address any further comments for the consideration of the Commission.

---

### **4. Land Planning C - Satellite Planning Systems**

#### **4.1 Draft Recommendations**

1.1 The Queensland Government should consider amending the *Urban Land Development Authority Act 2007*, the *South Bank Corporation Act 1989* and the *State Development and Public Works Organisation Act 1971* insofar as it governs state development areas, and other legislation which establishes alternative planning systems that operate independently of the *Sustainable Planning Act 2009*, to require that:

- any planning scheme, interim or otherwise, appropriately reflect any State Planning Policy with respect to flood
- flood risk be considered in the assessment of any development application.

1.2 The Coordinator-General should amend the guideline for preparing an initial advice statement and the generic draft terms of reference for an environmental impact statement for significant projects under the *State Development and Public Works Organisation Act 1971* so that each specifically requires the development proponent to consider and provide information about flood risk.

#### **4.2 Ipswich City Council response**

Ipswich City Council notes the Commission's draft findings and supports the Commission's proposed recommendations.

---

<sup>4</sup> Paragraph [10] of *Building Controls for Flood Hazard Areas: Recommendations to the Queensland Floods Commission of Inquiry* dated 7 November 2011 prepared by Stephen Reynolds, Humphrey Reynolds Perkins.

---

**5. Dams A - Splityard Creek Dam****5.1 Ipswich City Council response**

Ipswich City Council notes the Commission's draft recommendations and findings and does not wish to address any further comments for the consideration of the Commission.