

QFCI

Date: 11/11/11 Jm
Exhibit Number: 1002

QUEENSLAND FLOODS COMMISSION OF INQUIRY
STATEMENT OF ROBERT BAIN

I, ROBERT BAIN, Chief Executive Officer, Somerset Regional Council make the following statement under oath as required by the Commissioner of Inquiry [Commission Ref 1746965 - 7/10/11] -

How the Somerset Regional Council ("Council") determines whether a development application complies with clause 6.64(2), overall outcome bullet point 3 and clause 6.65, specific outcome 3 of the Filling and Excavation Code of the Esk Shire Planning Scheme. In particular, how Council assesses whether the land the subject of the development application is within an overland flow path in the absence of an appropriate overlay.

1. In assessing development applications, Council requires applicants to establish a Q100 flow path and no development is allowed within the Q100 flow path.
2. Developers are required to ensure that post-development storm water flows are no worse than pre-development storm water flows. An applicant must establish this by way of a suitably qualified engineer during the application process. Council also imposes conditions of approval accordingly. With significant developments there will also be on site visits by planning officers and engineering staff.

How the Planning Scheme Policy No 12 (Flood Mitigation in the Lowood and Fernvale Locality) in the Esk Shire Planning Scheme is triggered and applied in the assessment of development applications.

3. In practice, Council firstly checks to see whether the land is within the study area, and secondly that it is land within the Q100 inundation area.
4. If it is clear of the Q100 inundation area, then it will likely be approved subject to all else being satisfactory. Where land is within the Q100 inundation area, Council requires developers to either dedicate such land to Council as a drainage reserve or create a drainage easement over the land.

Deponent [Redacted]

A Justice of the Peace, [Redacted]



The status of the Esk Shire Council Planning Scheme Policy 12 Development Manual and Planning Scheme Policy 13 Development Procedures dated July 2007 and how these documents are triggered and applied in the assessment of development applications.

5. Policy 12 and Policy 13 were used by Council's officers in assessments of development applications. These two policies have not been formally adopted by Council.
6. Notwithstanding that they have not been formally adopted by Council, development applications were considered in accordance with the Development Manual and Development Procedures.

The status of the Somerset Regional Council Development Manual and Development Procedures dated January 2010 and how these documents are, or will be, triggered and applied in the assessment of development applications.

7. The Somerset Regional Council Development Manual and Development Procedures 2010 were adopted by Council on 27 January 2010.
8. These documents replace the proposed Esk Shire Council Planning Scheme Policy 12 and Policy 13, referred to in Question 3.
9. The Development Manual and Development Procedures are now titled *Kilcoy Planning Scheme Policy Number 7* and *Esk Planning Scheme Policy Number 13*, which were proposed to be adopted by Council on 13 October 2010 and following this, the necessary policy-making steps commenced. The steps were completed by notifying the Chief Executive Officer of the Department of Local Government and Planning by letter dated 22 December 2010.
10. In practice, for all Code Assessable and Impact Assessable development applications, Council applies Planning Scheme Policies 7 and 13. Development Applications are conditioned by assessing each application against the Development Manual and Development Procedures. In relation to flooding, essentially this means development must be above the Q100.
11. In the areas not covered by a flood study, Council uses local knowledge of previous flooding, such as the 1974 inundation line to assess development applications. However significant developments (ie subdivisions) are required to undertake an independent drainage study to establish the Q100 line. For example, the Chase development at Esk.

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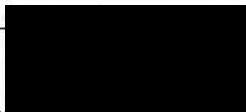




How flood risk was taken into account when designating zones for the Esk Shire Planning Scheme, using the township of Fernvale as an example.

12. When designating zones taking flood risk into account, reference was made to known flood levels, for example the 1974 inundation line and the previous prevailing distribution of zones under planning schemes.
13. As the current Planning Scheme was adopted in 2005, this preceded the Fernvale Flood Study. A flood study was commenced and completed subsequent to the adoption of the Planning Scheme and became Planning Scheme Policy 12 – Flood Mitigation in the Lowood and Fernvale Locality, as referred to above.

Whether Council's zoning designations have been reconsidered, or will be reconsidered, following the publication of:
(a) *The Flood Study of Fernvale and Lowood prepared for Somerset Regional Council dated 29 June 2009; or*
(b) *the Somerset Regional Council - Report for January 2011 Flood Event - Fernvale Flooding Investigation - May 2011.*

14. Council is in the process of developing a new Planning Scheme.
15. The Flood Study of Lowood and Fernvale will be taken into account in the new Scheme, in particular zoning designations. Council has begun this process by adopting Planning Scheme Policy 12 – Flood Mitigation in the Lowood and Fernvale Locality which adopts the Q100 inundation line as determined by the study. The new scheme will probably include an overlay Code which will reflect a DFE yet to be determined by Council.
16. Further, the report for the January 2011 event will influence the zoning designations in the proposed Planning Scheme as will any recommendation coming out of this Inquiry as to whether Q100 is an appropriate planning control line, bearing in mind that the report for the 2011 flood events indicated Fernvale flooding was a one in 2000 ARI rainfall event, and a one in 500 ARI riverine event. An acceptable level of risk has to be determined in formulation of the scheme.

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The implications likely to be encountered are the normal implications when a person's land is "down zoned". Compensation may be required to flow unless supporting legislation precludes this.

Whether, and if so how, Council has implemented the recommendations cited in section 12.0 of the Flood Study of Fernvale and Lowood prepared for Council dated 29 June 2009.

17. In response to the recommendations of the Flood Study of Fernvale and Lowood:

- (1) Council has applied for Federal funding to further install river height monitors in the Somerset Region, including Lockyer Creek.

- (2) Council applied for funding to undertake further flood studies. Funding was approved in 2010 with Brisbane City Works, contracted to commence the Study. Due to the January 2011 events, the scheduled commencement date of March 2011 has been postponed until Brisbane City Works has completed its analysis of the 2011 event.

The new study will identify a range of inundation lines up to a probable maximum flood and will satisfy Recommendation 12 dot point 2.

This is linked closely to the operation and discharge of Wivenhoe Dam and as they are reviewed, consideration will be given to the impact on the study.

Whether, and if so how, Council proposes to implement the recommendations cited in section 8.2 of the Somerset Regional Council - Report for January 2011 Flood Event - Fernvale Flooding Investigations - May 2011.

18. Council has allocated \$2.4 million in the 2011 / 2012 Budget to action the recommendations in this report.

19. Tenders have been called.

20. Work commenced in late September 2011 / early October 2011 on the Banks Creek Road tributary. This work is being performed by an external contractor.

Deponent

[Redacted Signature]

A Justice of the Peace

[Redacted Name]



21. The Lagoon tributary commenced the first week in October 2011 and is being undertaken with a combination of Council's day labour and employed contractors.
22. Titmarsh Gully will be undertaken as part of this project. Land acquisition upstream of Brisbane Valley Highway is subject to current negotiations. When completed, the acquisition of this land will allow completion of the drainage upgrade works.
23. Council has been in discussions with the Department of Main Roads and requested that it upgrade its infrastructure in accordance with this recommendation.

Whether, and if so to what extent, Council is making arrangements to ensure the Esk Shire Planning Scheme will appropriately reflect the State Planning Policy 1/03: Mitigating the Adverse Impacts of Flood, Bushfire and Landslide ('SPP 1/03').

24. Council has undertaken the Flood Study of Fernvale and Lowood in 2009 and a further report of January 2011, which is consistent with State Planning Policy 1/03. These reports apply to the Lowood / Fernvale area which accounts for 90% - 95% of development activity in the Region.
25. The *Temporary State Planning Policy 2/11 Planning for Stronger More Resilient Flood Plains* has suspended the effect of paragraphs A3.1 and A3.2 of Annex 3 of *State Planning Policy 1/03 Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, which identifies the process by which a Local Government may designate a Natural Hazard Management Area (Flood) (NHMA). This has been replaced by new flood maps and the *Interim Floodplain Assessment Overlay Model Code*.
26. Therefore, Council is currently working with the Department of Local Government and Planning / the Queensland Reconstruction Authority with a view to adopting a temporary local planning instrument or an appropriate *Interim Floodplain Assessment Overlay Model Code*.

Whether, and if so how, Council will be amending section 5.27 of the Esk Shire Planning Scheme to address flooding.

27. The proposed *Interim Floodplain Assessment Overlay Model Code* discussed above is intended to address flooding across the former Esk Shire Planning Scheme area and as such amendment of section 5.27 may not take place but the effect will be the same.

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Details of how Council assesses and appropriately conditions development applications that do not comply with the acceptable solution of probable solution in provision (c) of section 5.18 of the Natural Hazards Overlay Code in the Kilcoy Shire Planning Scheme, to ensure public safety and the environment are not adversely affected by hazardous material in flood waters.

- 28. All development applications that are likely to have hazardous material on site have a site inspection undertaken by planning officers and reference made to the Q100 inundation line. Conditions would apply to such developments such as appropriate bunding for spillages and run-off.
- 29. For a service station that is currently proposed in Kilcoy, where the land is partly below the Q100 inundation line, Council is likely to impose a condition of approval requiring all hazardous material to be stored above the Q100 inundation line.

Details of the likely timelines for, and adoption of, the Temporary Local Planning Instruments 01/11 Somerset Interim Flood Response, including a description of any impediments encountered by, or likely to be encountered by, Council throughout this process.

- 30. Council undertook to commence a temporary planning instrument in June 2011. Subsequent to that time the Department of Local Government and Planning / Queensland Reconstruction Authority (QRA) has prepared the *Interim Floodplain Assessment Overlay Model Code* flood mapping for our Region. This code sets out appropriate standards for development which will achieve the performance outcomes contained in the Code. Council officers have met and continue to meet with State Government Officers to further develop this Code.
- 31. It is likely that this Code will be adopted rather than a temporary local planning instrument.
The timeframe is to be as soon as possible and my expectation is that this should be able to be completed by 1 January 2012.
- 32. A likely impediment could be legal challenge from developers who have current approvals above the Q100 line, but may be included in the flood event inundation line.

Deponent [redacted] A Justice of the Peace. [redacted]



Whether Council has commenced preparations for planning scheme pursuant to the Sustainable Planning Act 2001 (Qld) and, if so, how the scheme will regulate development in flood prone land.

33. Council has commenced preparation for the entire Somerset Region Planning Scheme to replace the planning schemes for the former Esk and Kilcoy Shires. The scheme will regulate development in flood prone land and will be by reference to the flood study in the Fernvale and Lowood area 2009 and all other flood studies, and reference to any Code as discussed in question 12 developed, which identifies a defined flood event inundation line.

34. In developing the new Planning Scheme Council will implement any recommendations emanating from the Queensland Floods Commission of Inquiry as to what would be the new appropriate standard ie Q100, Q150, highest known flood level.

Sworn by ROBERT BAIN at Esk in the State of Queensland this 21st day of October 2011 in the presence of:

[Redacted signature]

Deponent

[Redacted signature]

A Justice of the Peace

