

## QUEENSLAND FLOOD COMMISSION OF ENQUIRY

### STATEMENT OF PHILIP BRUMLEY

In accordance with Section 5 of the Commissions of Enquiry Act 1950 (Qld) I, Philip Arthur Brumley, Chief Executive Officer of the Nogoa River Flood Plain Board make the following statement under oath as required by the Commissioner of Enquiry:

#### **The current arrangements for levee bank regulation with the Central Highlands Regional Council;**

- 1) The Central Highlands Regional Council currently administers two local laws that regulate levee banks these are:-
  - a) Peak Downs Shire Council Local Law No. 2 Levee Banks; and
  - b) Emerald Shire Council Local Law (Levee Banks) No. 45 of 1997.
- 2) Each of these local laws applies to the "High Land" within the former Councils' local government area. This is defined to mean the area "not subject to flood inundation which includes all land not defined as being in the Nogoa River Flood Plain".

#### **The consultation process undertaken with the Central Highlands Regional Council and landowners for levee bank construction within the Nogoa River flood plain area;**

- 3) Pursuant to section 9 of the Nogoa River Flood Plain Board Local Law (Levee Banks) No. 1 1997 ("the Local Law"), the Board is required to publish an advertisement twice in a newspaper circulating generally in the areas of the former Broadsound, Emerald and Peak Downs Shire Councils advising that an application for a permit to construct a levee bank has been received and inviting the making of submissions.
- 4) In addition, pursuant to section 9 of the Local Law, I am required to send a copy of the notice published in the newspapers to the owners of all land contiguous to the land the subject of the application.

#### **Any considerations taken into account by the Nogoa River Flood Plain Board regarding the upstream or downstream effects of levee bank construction on waterways;**

- 5) Pursuant to section 5 of the Local Law, applications for a permit to construct a levee bank are required to be accompanied by a report on the impact of the levee bank on the hydraulic characteristics of the Nogoa River Flood Plain . The impact on neighbouring properties is assessed and considered as part of this report.

**QFCI**

Date:

29/09/11 JM

Exhibit Number:

681

**Any state government department or agency that assists with the provision of technical or other advice regarding levee banks or is involved with levee bank regulation within the Nogoa River flood plain area; and**

- 6) Sunwater provide hydraulic analysis to the Board and advice on the levee bank applications it receives. DERM is also involved in the regulation of levees.

**The opinion of the Nogoa River Flood Plain Board on the regulation of levee banks as to the following matters:**

**What is the most appropriate level of government or other body to regulate levee banks**

- 7) The State Government is the appropriate body to regulate levee banks, at least in relation to the Nogoa River flood plain for 2 reasons:
  - a) This catchment not only has valuable agricultural land but it has large scale coal mining. In addition, new coal mines (Teresa and Taraborah) seem likely to be developed above the flood plain that could have significant impact on the flood plain. Both the coal industry and valuable agricultural land, because of their economic, social and political importance, and the impact of coal mining on agricultural land, give rise to issues of State and National significance that need to be addressed at those levels.
  - b) The Nogoa River Flood Plain Board is a small organisation set up to assist farmers manage levees in a defined flood plain area. It does not have the technical or financial resources to be able to address the impacts and issues of coal mining developments in and around the existing flood plain area. This is why the Board at its 31st August 2011 meeting decided to dissolve, to seek support from the Central Highlands Regional Council and Isaac Regional Council for this decision and, if they approved, to seek the approval of the Minister. A true copy of excerpts of the agenda and minutes for this meeting are attached and marked "Attachment A".

**On what basis should levee banks be regulated (ie catchment, local government area, other)**

- 8) Levee banks should be regulated on the basis of catchment, as catchments could involve more than one local government area.

**Should it be mandatory for local governments to regulate levee banks**

- 9) I have no firm opinion as to whether it should be mandatory for local governments to regulate levee banks.

**How much consultation with affected members of the public is appropriate and practical for proposed levee banks;**

- 10) Consultation can really only occur after the application is received and made available. Before this, there are no firm details upon which consultation can occur. The Board considers any input from landholders before making its decisions.

**What sort of technical, scientific or other advice should be obtained before levee banks are approved, and from whom**

- 11) The catchment needs to have a design model established with a base case and known impacts of larger flood events.
- 12) The defined limits of impact on properties, such as water heights over the land and the velocity of water flow also needs to be known to assess applications for levee banks.
- 13) Hydraulic analysis needs to be carried out on proposed levees to determine the impact of new or changed levees.
- 14) Advice should be obtained from appropriately qualified persons or organisations (such as Sunwater) as to the impact of the proposal.

**What sort of studies or assessment should be done before levee banks are approved, and by whom should they be completed**

- 15) Catchments first need to have a base case modelled. Levee applications should be first assessed in terms of their hydraulic impact on the flood plain in isolation and then assessed in terms of their impact on neighbouring properties.
- 16) The studies should be completed by applicants and reviewed by a qualified person or organisation (such as Sunwater).

**Any improvements, in his opinion that could be made to the process of regulating levee banks in the Nogoa River Flood plain area if assistance could be provided from other relevant organisations.**

- 17) Nothing specific comes to mind in relation to the process except to ensure all applications are assessed by the Board.

Note that some of the above responses took into account verbal information and advice from current employees of the Central Highlands Regional Council and one former employee of the Emerald Shire Council who have provided support to the Nogoa River Flood Plain Board.

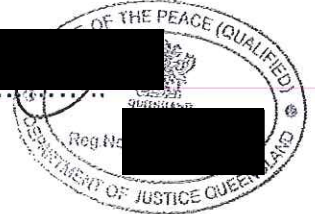
Sworn by Philip Brumley at *Emerald* this *22<sup>nd</sup>* day of *September* 2011  
in the presence of

[Redacted]

[Redacted]

Witness

Justice of the Peace



Nogoa River Flood Plain Board

**AGENDA**

For a meeting to be held at the CHRC - Emerald Council Office, 65 Egerton Street, Emerald on Wednesday 31<sup>st</sup> August, 2011 commencing at 9.00am

- **Present**
- **Apologies**
- **Confirmation of Minutes of the previous meeting held on 30 November 2009**
- **Business arising from the previous meeting**
- **Report: CEO**
  - **Chief Executive Officer**
  - **Financial Statements for P/E 30<sup>th</sup> June, 2010**
  - **Adoption of the Fees and Charges for 2011/12**
  - **Adoption of the Budget for 2011/12**
  - **Adoption of Statement of Affairs**
  - **Request to Expand the Board Area**
  - **Future of Board**
- **General Business**
- **Close**

EXCERPT FROM

Nogoa River Flood Plain Board

**MINUTES**

of a meeting held at the CHRC - Emerald Council Office, 65 Egerton Street,  
Emerald on Wednesday 31<sup>st</sup> August, 2011 commencing at 9.00am

**Request to Expand the Board Area**

Inward correspondence was discussed.

Cr Hayes moved and Cr Maguire seconded 'That in view of the Board preferred position to dissolve the Board, Mr Anderson be advised that it is the opinion of the Board that the state government has over riding powers over the Nogoa River Flood Plain Board's jurisdiction and therefore they should be the approving body for all Flood Plain issues in the future.'

Carried

**Future of Board**

Cr Maguire moved and Cr Hayes seconded

1. "That a report be prepared to the CHRC Council seeking support for the dissolution of the Board;
2. "That the Board write to the Isaac Regional Council seeking support for the dissolution of the Board; and
3. That the Board write to the Minister requesting that the Board be dissolved and its responsibilities transferred to an appropriate State Government body."

Carried

• **General Business**

Cr Maguire moved and Cr Hayes seconded 'That the Board express its appreciation to Phil Brumley for his contribution to the Board over the last 3 years.'

Carried

There being no further business the President declared the meeting closed at 10.10am.

*EXCERPT FROM*

**CEO'S REPORT 31<sup>st</sup> AUGUST, 2011 TO**

**NOGOA RIVER FLOOD PLAIN BOARD**

**5. Statement of Affairs (FOI)**

An updated Statement of Affairs is presented for adoption.

**Recommendation**

**That the Statement of Affairs as amended be adopted.**

**6. Request to Expand the Board area**

Attached are three letters from Mr Bob Anderson.

- The first dated 20<sup>th</sup> February 2011 requested the boundary of the Board's area be extended on the north-west side of the flood plain.
- In a separate, undated letter, he has requested the Board investigate works being carried out by the [REDACTED] family.
- In a third letter dated 14<sup>th</sup> March 2011, he advises that as a result of a meeting with other landholders [REDACTED] [REDACTED] (and subsequent to the meeting, [REDACTED] was also in agreement) they are requesting the Board's area be extended to a more practical position to the west to that it includes all the irrigated farms. They believe the present boundary is inadequate for the current parameters and to cover all potential and current developments. They also are requesting the Board investigate levee banks, some hydrology, the effect on neighbouring properties and the legality of all constructions on the flood plain.

We are familiar with the issues concerning Mr Anderson after visiting the locations and he would appear to have valid concerns. However, the former Board Engineer, [REDACTED] who is also well aware of the properties and much of the history, is firmly of the view that:

- The Board's area does not cover Anderson or [REDACTED] properties
- Any levees constructed by Elsdon (and the prior owner) would more than likely have been approved by DERM (previously DNR).

It would be a considerable additional responsibility to extend the Board's area of responsibility, even if this was allowable, and would require substantial resources to satisfy the above requests.

It is suggested that point 6 should to be considered first and if the proposed resolution is agreed to then the response to this request is clear.

## **7. Future of the Board**

There has been some informal discussion on whether this Board should continue and it is perhaps time a decision was made on this issue.

The reality of the present situation is that the Board simply does not have the resources, either in people, finances or, indeed, authority to properly and completely manage the flood plain. The flood plain model was set up to deal with 1 in 20 flood events for farms. The Board relies totally on Sunwater to model levee bank applications and advise if the impact outcome is within the Board's acceptable limits.

The establishment of the Ensham mine and the likelihood of further mines on and above the flood plain will create hydrological, land-use and economic complexities on farms and potentially Emerald town that are beyond the scope of the Board. Additional mines could also have far greater impact on the farmland than the existing Ensham mine.

The State has previously stepped in and approved levees from the Ensham mine, and it has, through the former Department of Natural Resources, approved levees on farms west of Emerald. The Government is also beginning to address the loss of prime agricultural land to mining and this is also very relevant to the flood plain. It therefore seems quite appropriate that the State should take over responsibility for the whole of the flood plain, commencing north and west of Emerald and extending downstream of Comet.

If dissolved the State Government would have responsibility for the flood plain with Council continuing to have local laws on levee banks (if appropriate) and the town planning schemes having some jurisdiction.

### **Recommendation**

#### **That the Board**

- 1) confirms its desire to be dissolved because it does not have the resources to manage the flood plain issues arising from large flood and further mining development in an around the flood plain;**
- 2) write to the Central Highlands Regional Council and Isaac Regional Council seeking their agreement and support for this decision; and**
- 3) write to Minister requesting that the Board be dissolved and its responsibilities transferred to an appropriate State Government body.**

## **8. Flood Commission**



The Board has supplied to the Flood Commission a range of documents, including the Boards purpose, a map of the Flood Plain Board area, and all levee approvals since 2000. These have been scrutinised by King & Co.

At this stage it appears that CEO Brumley will have to appear before the Commission. This is for information only.

30, 08. 2011  
Emerald

Philip Brumley  
CEO