

QUEENSLAND FLOODS COMMISSION OF INQUIRY

STATEMENT OF BRYAN ALFIO OTTONE

In accordance with Section 5 of the Commissions of Enquiry Act 1950 (Qld) I, Bryan Alfio Ottone, Chief Executive Officer, Central Highlands Regional Council make the following statement under oath as required by the Commissioner of Inquiry;

The current arrangements, if any, for levee bank regulation within the Central Highlands Regional Council, outside of the area managed by the Nogoa River Flood Plain Board

1. The Central Highland Regional Council currently administers two local laws that regulate levee banks. These are:-
 - Peak Downs Shire Council Local Law No. 2 Levee Banks; and
 - 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 areas. 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 ~~process undertaken~~ with Council and landowners, if any, in place for levee bank construction within the Central Highlands Regional Council, outside of the area managed by the Nogoa River Flood Plain Board

3. The relevant local laws include provision for public notification, direct notice to contiguous land owners and the Department of Environment and Resource Management (DERM).

Any considerations taken into account by the Central Highlands Regional Council (Or relevant regulating body) regarding the upstream or downstream effects of levee bank construction on waterways

4. All proposals for levee banks require hydraulic analysis dealing with the impacts of the proposed levee on surrounding lands.

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 Central Highlands Regional Council

5. All applications for levee banks are required to be referred to DERM who would be able to provide advice about the proposal prior to a decision being made.

The opinion of the Central Highlands Regional Council on the regulation of levee banks as to the following matters:

[Redacted Signature]

Deponent

[Redacted Signature]

Solicitor / Justice of the Peace / Commissioner for Declarations

59498

237330

QFCI

Date:

29/09/11

JM

Exhibit Number:

684

- levee bank design based on a full catchment analysis;
- impacts of various events should be modelled and allowed for in the final design, including a detailed risk analysis;
- a detailed hydraulic analysis should be undertaken to consider varying heights of the proposed levee bank and the degree of immunity that is expected to be provided.

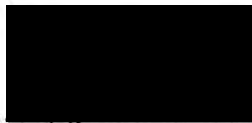
f. What sort of studies or assessments should be done?

11. In order to properly assess a proposed levee bank proposal, it is necessary to establish a detailed understanding of the hydraulic characteristics of the affected catchment. This becomes the "as is" or "pre-development" scenario which is the baseline for modelling the impacts of a levee bank proposal. Such modelling needs to be conducted by suitably qualified experts.


Any improvements, in his opinion that could be made to the process of regulating levee banks in the Central Highlands Regional Council if assistance could be provided from other relevant organisations

12. Effective regulation of levee banks requires a consistent application of standards and guidelines developed for the whole of the relevant river catchment to avoid the potential for adverse cumulative effects of inconsistent decision-making.
13. Copies of the relevant local laws administered by the Central Highlands Regional Council are attached. It should be noted that the comments contained in this statement have been formulated through consultation with various Council officers, past and present, who have been involved in flood plain management either through the Nogoia River Flood Plain Board or the former Councils of Emerald Shire and Peak Downs Shire.

Sworn by Bryan Alfio Ottone at *Emerald* this *27th* day of September 2011 in the presence of:

..... 

Deponent / *10*

..... 

Solicitor / Justice of the Peace / Comm. Dec. *59498*

PEAK DOWNS SHIRE COUNCIL

LOCAL LAW NO. 2 LEVEE BANKS

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PEAK DOWNS SHIRE COUNCIL

LOCAL LAW NO. 2 LEVEE BANKS

PART 1 - PRELIMINARY

1. Citation

1.1 This Local Law may be cited as Local Law No. 2 Levee Banks.

2. Objects

2.1 The objects of this Local Law are to ensure that Levee Banks:

- (1) do not alter overland water flow in a way which injuriously affects other land; and
- (2) are constructed in accordance with a Permit granted under this Local Law.

3. Definitions

3.1 In this Local Law the following definitions apply:

- (1) "Act" means the Local Government Act 1993;
- (2) "Council" means the Peak Downs Shire Council;
- (3) "Contiguous" with reference to land, includes land which is separated only by a gazetted road, stock route, watercourse, drainage easement or similar reserve or easement, and which is situated in the State of Queensland;
- (4) "Department" means the Department of Natural Resources or the Government Department in which the Water Resources Act 1989 or its replacement shall be administered from time to time;
- (5) "Director of Engineering Services" means the Director of Engineering Services for the Council;
- (6) "Peak Downs Shire High Land" means that part of the Shire not subject to flood inundation which includes all land not defined as being in the Nogoia River Flood Plain;
- (7) "Final Plan" means the Plan or Plans to which the granting of a Permit is subject;
- (8) "Levee Bank" has the meaning given to that term in the Act;
- (9) "Nogoia River Flood Plain" means any part of the Shire of Peak Downs subject to flood inundation from the Nogoia River or Theresa Creek or their tributaries and as designated as part of the Nogoia River Flood Plain in the map held by the Nogoia River Flood Plain Council showing the boundaries of the flood plain;
- (10) "Permit" means a permit for the construction of a new Levee Bank or to keep an existing Levee Bank granted pursuant to this Local Law; and
- (11) "Permittee" means the person or persons to whom a permit is granted under this Local Law or in whom a permit is vested from time to time.

4. Non-Application of Local Law

- 4.1 This Local Law does not apply to an area included in an approved plan within the meaning of the *Soil Conservation Act 1986*¹

PART 2 - APPLICATION FOR PERMIT

5. Application for Permit

- (1) A person must not construct or cause to be constructed a Levee Bank on any Peak Downs Shire High Land other than pursuant to a Permit².

Maximum penalty - 50 penalty units;

- (2) A person must not have or allow to remain on any Peak Downs Shire High Land a Levee Bank for which there is not a current Permit issued under this Local Law.

Maximum penalty - 5 penalty units;

- (3) If, when this Local Law commences, there is on land to which this Local Law applies a Levee Bank that, in the Council's opinion, affects or is likely to affect natural drainage to an extent that it causes or may cause damage to land or a public work, service or undertaking, the Council may, by written notice require the owner of the land to apply to it within a specified reasonable period for permission to keep the Levee Bank or part of the Levee Bank.

- (4) Application for a Permit must be made to the Local Government in the form set out in Schedule 1 to this Local Law.

- (5) The Application should be accompanied by:

- (a) Plans and specifications of the levee bank;
- (b) A Report on the impact of the levee bank on the hydraulic characteristics of Peak Downs High Land prepared by the Department, an Engineer currently registered pursuant to Section 12 of the *Professional Engineers Act 1988* or a registered Engineer under the *Local Government Act 1993*; and
- (c) The Application fee fixed by the Local Government in accordance with Section 7 of this Local Law.

- (6) A person may apply for exemption from obtaining the permit in the same manner as a person may apply for a permit.

- (7) This Local Law applies with respect to the construction, maintenance or keeping of a Levee Bank under, subject to and in compliance with an order, licence, permit or other authority made or granted under any other law and the applicant must obtain a permit under this Local Law in addition to any order, licence, permit or other authority required under any other law.

¹ Section 533 of the *Local Government Act 1993* states, "The jurisdiction of a local government under this Part to prohibit or regulate the construction and maintenance of levee banks does not extend to a part of its area included in an approved plan within the meaning of the *Soil Conservation Act 1986*".

² Permits or approvals may be required under other laws applicable in Queensland eg. S.112 of the *Fisheries Act 1994 (Qld)* provided that "A person must not build waterway barrier works without the Chief Executive's approval.

6. Proof of Ownership of Land

- 6.1 The applicant must give to the Council with the application evidence that the applicant owns the land on which the Levee Bank is situated or is to be constructed, or that the owner of the land consents to the application.

7. Application Fee and Expenses

- 7.1 The Local Government may from time to time fix by a resolution an application fee which may include the estimated cost of placing any advertisement required by this Local Law.

8. Exemptions

- 8.1 Upon consideration of an application for exemption under this Local Law, the Local Government may exempt an Applicant from obtaining a permit, where the Local Government considers that the levee bank will not have any affect on the hydraulic characteristics of the Peak Downs High Land.

9. Application to be Advertised

- (1) Upon receipt of an application for a Permit under the provisions of this Local Law, the Council must, before considering such application, notify by advertisement published twice in a newspaper circulating generally in the areas of the Peak Downs Shire Council, that such application has been received and that the Council will receive submissions in relation to the application.
- (2) The Chief Executive Officer must appoint the twenty-first day after the date of the last publication of such advertisement as the last day of the receipt of objections to the application.
- (3) The application must be open to inspection at the Council's office from the date of the first publication of such advertisement until the day nominated as the last day for the receipt of submissions.
- (4) The advertisement must be in the form set out in Schedule 2 of this Local Law.
- (5) The Chief Executive Officer of the Council must forward a copy of the notice required under sub-section 9(1) to the owners of contiguous land and the Department at the same time as it is lodged for publication.

10. Submissions

- (1) A person may make a submission to the Council with respect to the granting of a Permit.
- (2) A submission must be in writing and must contain:
 - (a) the submitter's full name and address;
 - (b) the description of any property owned or occupied by the submitter affected or likely to be affected by the Levee Bank; and
 - (c) the grounds for the submissions.
- (3) A submission must be given to the Council on or before the last day for receipt of submissions stated in the advertisement of the application.
- (4) A submission may contain details of suggested alterations to a proposed Levee Bank and a plan in respect of those alterations.

11. Determination of Application

- (1) The Council may in its absolute discretion require the applicant for a Permit to undertake any studies (including environmental impact studies) and provide any information (including a proposed environmental management plan) it deems necessary in order for it to properly assess and determine the application.
- (2) Copies of all other approvals, permits or authorities required for the Levee Bank under any other law must be provided to the Council with the application.
- (3) Where submissions have been lodged pursuant to section 10, the Council may invite the submitters to be present before a Council Meeting to give a verbal explanation of their submission and any alternatives they may have suggested.
- (4) The Council must not determine an application until it is in receipt of all relevant information including a report from the Director Engineering Services.
- (5) After the last day for receipt of submissions, the Council must promptly consider:
 - (a) the application and all material accompanying it;
 - (b) all submissions and material accompanying them;
 - (c) a report from the Director Engineering Services;
 - (d) any information or report provided by the applicant pursuant to subsection 11(1);
 - (e) If the Council invites oral submissions, any oral submissions made to it by the applicant or any submitter;
 - (f) the requirements of any other relevant laws and any consent or approval obtained by the applicant under those laws; and
 - (g) any other information that the Council considers relevant;and must either grant or refuse to grant the application.
- (6) The Council may impose conditions that it considers necessary on the granting of the permit.
- (7) The Council must promptly notify in writing:
 - (a) the applicant; and
 - (b) each submitter; and
 - (c) the Departmentof its decision in respect of the application.

PART 3 - ISSUE OF PERMITS

12. Issue of Permit and Permit Plan - Requirement of Permit

- (1) The Council must not issue a permit before the end of 30 days after giving notice of its decision in accordance with subsection 11(7) of this Local Law.

- (2) If an appeal against the Council's decision is started in accordance with section 942 of the Act, a Permit must not be issued unless the appeal is withdrawn, struck out or disposed of other than by a decision of an appeal tribunal to which section 943(3) of the Act applies.
- (3) A decision of an appeal tribunal which:
 - (a) confirms a decision of the Council; or
 - (b) substitutes a decision permitting construction of a Levee Bank either wholly or in part; or
 - (c) substitutes a decision permitting an existing Levee Bank to be kept either wholly or in part;

is taken to be a Permit issued by the Council under this Local Law.

- (4) A Permit must:
 - (a) specify the conditions to which the grant of the Permit is subject; and
 - (b) have attached to it a copy of the final Plan on which the Permit was issued.
- (5) The factors that the Council may have regard to when considering an application for a Permit include but are not limited to:
 - (a) the level of risk of failure of a Levee Bank and the hazard such failure represents;
 - (b) whether a Levee Bank generally conforms to the natural drainage pattern of the Nogoia River Flood Plain in the Peak Downs Shire High Land;
 - (c) the environmental health, cultural and social impacts of a Levee Bank;
 - (d) whether a Levee Bank complies with any requirements under any other law;
 - (e) the impact of a Levee Bank on flow rates, flow distribution, flood timing and depth of flow in the Nogoia River Flood Plain or Peak Downs Shire High Land;
 - (f) whether a Levee Bank is designed and is or is to be constructed to appropriate standards having regard to the risk of failure of the Levee Bank and the consequences of failure;
 - (g) design reports, including plans and specifications, addressing the impacts of overtopping or failure of the works including hazards such a failure represents, and appropriate management guidelines;
 - (h) whether a Levee Bank is or will be constructed and maintained in accordance with an approved design report (including approved plans and specifications) to the satisfaction of the Council;
 - (i) the full height of a Levee Bank;
 - (j) whether the discharge pattern from the land on which a Levee Bank is situated is or will be similar to the discharge pattern of that land prior to the development of the Levee Bank;
 - (k) whether a Levee Bank blocks any general flow paths within the land on which it is situated;
 - (l) the total increase in peak water elevation at or outside the boundary of the land on which the Levee Bank is situated or to be constructed arising from all development

(including existing Levee Banks and proposed Levee Banks) on that land;

- (m) the anticipated water level rise on the flood plain at any property boundary on the Nogoia River Flood Plain having regard to the total cumulative effect of all works likely to be constructed on the flood plain;
 - (n) whether significant change in flood timing or flood flow distribution has occurred or will occur;
 - (o) whether significant change is likely in the duration of inundation of lands outside the boundaries of the land on which the Levee Bank is situated or to be constructed such that the normal use or potential use of that land is adversely impacted;
 - (p) whether any change in flood velocity arising from the proposed Levee Bank or existing Levee Bank will result or has resulted in increased erosion of the flood plain and water courses (including localised scour effects); and
 - (q) whether sufficient pondage has been retained in the flood plain system so that the characteristics of the flood hydrographs, in particular their general shape, timing and peak height are not unduly altered.
- (6) Unless the applicant expressly requests otherwise at the time of lodging the application, and the request is agreed to by the Council, the work authorised under a Permit must be completed within 6 months after the date of issue of the Permit otherwise the Permit will lapse upon the expiry of that period.
- (7) The Council may, if requested so to do by a Permittee, extend the period for completion of such work provided a request is made to the Council before the expiration of the Permit.
- (8) The Permittee must, prior to commencement of construction of the work specified in the Permit, notify the Council in writing of the day and date of intended commencement.
- (9) The Permittee must at all times throughout the currency of a Permit, construct, repair and maintain the Levee Bank in accordance with:
- (a) the conditions to which the Permit is subject;
 - (b) the final plan; and
 - (c) any directions received from the Director Engineering Services.

Maximum penalty - 50 penalty units.

- (10) If required by the Council the Permittee must on expiration of the Permit carry out, at the Permittee's own cost, any work on or in relation to the Levee Bank which the Council may consider necessary.
- (11) The Permit will be deemed to be held by and operate for the benefit of the lawful owner for the time being of the land whereon the Levee Bank is constructed or proposed to be constructed.
- (12) It will be incumbent upon the Permittee or the Permittee's personal representative or successor in interest to notify the Council immediately of any change or divestment of interest in the land upon which the Levee Bank is constructed or proposed to be constructed.
- (13) A Permit shall not be issued for a period exceeding 10 years.

13. Permit Transferred on Transfer of Land

- (1) A Permit granted by the Council pursuant to the provision of this Local Law will be deemed transferred to any successor in title or interest of the subject land and will expire on the earlier of the date shown on it or 10 years from the date on which it is issued.
- (2) The obligations contained in the Permit and in this Local Law will apply to any successor in title or interest of the subject land, as if that successor were the Permittee.

PART 4 - APPLICATION FOR NEW PERMIT ON EXPIRY OF ORIGINAL PERMIT

14. Application for New Permit on Expiry of Original Permit

- (1) A Permittee must apply to the Council for the renewal of a Permit issued under this Local law no later than:
 - (a) 30 September of the preceding year if the Permit is due to expire in the 6 months ending 30 June in any year; or
 - (b) 30 March of the same year if the Permit is due to expire in the 6 months ending 31 December in any year.
- (2) The provisions of this Local Law and the Act apply to an application for renewal of a Permit in the same way that they applied to the application for the original Permit.

15. Revocation of Permit

- (1) Subject to the following subsections, the Council may revoke any Permit issued by the Council under the provisions of this Local Law or where more than 1 Levee Bank is authorised by such Permit revoke or partly revoke the Permit as regards any one or more Levee Bank thereby authorised.
- (2) Such revocation or part revocation must not be made until the Council has given the Permittee not less than 2 months notice of its intention so to do.
- (3) If the Permittee upon whom such notice has been served, within the period of the notice, shows good cause to the Council why the Permit should not be revoked or partly revoked as the case may be, the Council must not proceed with such revocation or partial revocation.
- (4) Before proceeding with such revocation or partial revocation, the Council must notify the Permittee in writing of its decision and the reasons for the decision.
- (5) If, within the period of the notice referred to in section 15(2), the Permittee has not shown to the Council good cause why the Council should not proceed with the revocation or partial revocation as the case may be, then after the expiration of the period of notice the following shall apply:
 - (a) if the Council resolved to proceed with the revocation, the Council must revoke or partly revoke the Permit as the case may be, by resolution to that effect;
 - (b) the Council must cause notice of the revocation or partial revocation to be served on the Permittee; and
 - (c) the notice must be in writing under the Seal of the Council and must specify the date on which the revocation or partial revocation is to take effect, being not sooner than 1 month after the date of the service of the notice.
- (6) In determining whether to revoke a Permit under this section, the Council must consider the

following factors:

- (a) the extent to which the Permittee has complied with the conditions upon which the Permit is granted;
 - (b) the impact on the Permittee and the impact on the Permittee's land, of not being entitled to construct a Levee Bank; and
 - (c) the impact of the Levee Bank or its removal on the other land within the Nogoia River Flood Plain or Peak Downs Shire High Land.
- (7) If a Permit is revoked or partly revoked, as the case may be, the owner of the land on which the Levee Bank is constructed must within 1 month after the date of service of the notice referred to in subsection 15(5) of the Local Law demolish such Levee Bank to the satisfaction of the Council.

PART 6 - DEMOLITION OF LEVEE BANKS

16. Applications to Demolish Levee Bank

- (1) If a Permittee wishes to demolish a Levee Bank, the Permittee must make application to the Council in the form set out in Schedule 1 to this Local Law for a Permit to demolish the Levee Bank and the applicant must pay such application fee as is fixed from time to time by the Council.
- (2) The application must be accompanied by:
 - (a) a Report prepared by an Engineer currently registered pursuant to Section 12 of the *Professional Engineer's Act 1988* or a Registered Engineer under the *Local Government Act 1993* setting out the effect on the hydraulic characteristics of the Nogoia River Flood Plain or Peak Downs Shire High Land of the demolition of the Levee Bank; and
 - (b) a plan of the final demolition.
- (3) The application to demolish the Levee Bank must be advertised in the same manner that an application to construct a Levee Bank is required to be advertised under section 9 of this Local Law.
- (4) A person may make a submission to the Council with respect to the demolition of a Levee Bank.
- (5) A submission must be in writing and contain:
 - (a) the submitter's full name and address;
 - (b) the description of any property owned or occupied by the submitter affected or likely to be affected by the demolition of the Levee Bank; and
 - (c) the grounds for the submission.
- (6) A submission must be given to the Council on or before the last day for receipt of submissions stated on the advertisement of the application.
- (7) A submission may contain details of suggested alterations to the proposed demolition of a Levee Bank and a plan in respect of those alterations.

- (8) A submission may be in support of or in opposition to the granting of an application.
 - (9) Where submissions have been lodged under this section, the Council may invite the submitters to be present before a Council Meeting to give a verbal explanation of their submission and any alternatives they may have suggested.
 - (10) The Council must not determine an application to demolish a Levee Bank until it is in receipt of all relevant information including the information that must be submitted under subsection 16(2).
 - (11) After the last day for receipt of submissions, the Council must promptly consider:
 - (a) the application and all material accompanying it;
 - (b) all submissions and material accompanying them;
 - (c) information that must be submitted under subsection 16(2);
 - (d) if the Council invites oral submissions, any oral submissions made to it by the applicant or any submitter;
 - (e) the requirements of any other relevant laws and any consent or approval obtained by the applicant under those laws; and
 - (f) any other information that the Council considers relevant;
 and must either grant or refuse to grant the application.
 - (12) The Council must promptly notify in writing:
 - (a) the applicant; and
 - (b) each submitter; and
 - (c) the Department
 of its decision in respect of the application.
 - (13) The Council may impose conditions that it considers necessary on the granting of the permit.
 - (14) If the application to demolish a Levee Bank is granted, the owner of land on which the Levee Bank is constructed must within 1 month after the date of which such Permit is granted completely demolish such Levee Bank to the satisfaction of the Council and in accordance with the final plans.
17. Order to Demolish Levee Bank
- (1) (a) The Council may request demolition or partial demolition of any Levee Bank if:
 - (i) a Permit for a Levee Bank has been revoked;
 - (ii) a Permit for a Levee Bank has expired;
 - (iii) a Levee Bank was constructed without a Permit before the commencement of this Local Law and the Council has complied with section 941(1) of the Act;
 - (iv) a Levee Bank was constructed after the commencement of this Local law without a permit; or

- (v) a Levee Bank was constructed contrary to the terms of a Permit.
- (b) A request for demolition or partial demolition of a Levee Bank must:
 - (i) be in writing and addressed to the owner of the Land on which the Levee Bank is situated;
 - (ii) specify period of not less than 1 month after service of the request within which the land owner is to demolish the Levee Bank; and
 - (iii) specify the works that need to be completed in order to satisfy the Council's request.
- (2) The owner of such land must completely demolish each such Levee Bank not later than the expiration of any period (being not less than 1 month) specified in the notice served under subclause 17(1)(b).

Maximum penalty - 50 penalty units.

- (3) Should any land owner liable to do so fail to demolish any Levee Bank to the satisfaction of the Council, then in addition to any other right or remedy available to the Council, the Council by its duly authorised officers and with such machinery, plant and equipment as they may deem necessary may enter upon any land upon which or part of which the Levee Bank is situated and demolish the Levee Bank.
- (4) The cost and expense incurred by the Council in demolishing each such levee Bank must be paid to the Council by the owner of the land on which the Levee Bank was situated upon demand by the Council, and if not paid upon demand may be recovered from the owner of the land by the Council as a present debt.
- (5) The Council, its officers or employees, shall not be liable in damages for trespass or damage to the subject land or crops growing thereon in demolishing each such Levee Bank.
- (6) Subsection 17(5) does not protect:
 - (a) a person who commits fraud or wilful default; or
 - (b) a Local Government that does not comply with a provision of this Local Law;
 from liability for loss caused by fraud, default or non-compliance.

PART 7 - APPEALS

18. Appeals

- (1) A person aggrieved by a decision of the Local Government may appeal against the decision;
- (2) The appeal must be lodged with the Chief Executive Officer of the Department;
- (3) The appeal must be commenced within 30 days after the person aggrieved has been given written notice of the decision;
- (4) The appeal is started by the person aggrieved filing a Notice of Appeal with the Chief Executive of the Department and giving a copy of the Notice to the Local Government;
- (5) The provisions of the *Local Government Act 1993* or its replacement which provides the

power for a Local Government to regulate levee banks, shall apply regarding the conduct, hearing and determination of any such appeal;

(6) In this section "decision" means:

- (a) a decision to grant a Permit for the construction of a levee bank;
- (b) a decision to refuse to grant a Permit for the construction of a levee bank;
- (c) a decision to revoke a Permit issued under this Local Law;
- (d) a decision to grant a Permit to demolish a levee bank;
- (e) a decision not to grant a Permit to demolish a levee bank; and
- (1) a decision to require a person to demolish a levee bank.

Schedule 1

Peak Downs Shire Council

*Application for Permit for *Levee Bank/*to Demolish Levee Bank*

- (1) Name of applicant;
- (2) Post address;
- (3) Location of work (see also 10):
 - county:
 - parish:
 - Real Property office description:
 - area:
- (4) Nature of works
- (5) Purpose of works;
- (6) Particulars of work (if levee bank) -
 - (a) Total length of levee bank: metres
 - (b) Maximum height: metres
 - (c) Width of top: metres
 - (d) Width of base: metres
 - (e) Materials of which bank will be constructed:
 - (f) If levee bank is one side of stream, is levee bank crest higher or lower than lowest point on opposite bank and by how much?
 - (g) Height of top of bank above highest known flood level:
- (7) Particulars of work (if drain or other excavation) -
 - (a) Total length: metres
 - (b) Maximum depth: metres
 - (c) Width of top: metres
 - (d) Width of base: meters
 - (e) State nature of soil at site:
- (8) Provision for preventing injury to other land arising from proposed work:
- (9) Period for which permit is required:

- (10) Locality plan: Scale 1:100,000, showing all property within 10 km radius of the centre of the subject land.
- (11) Plan of property, strictly to scale not greater than 1:20,000, showing position of streams (if any), direction of flow of all water, location of work, property boundaries and typical cross-sections or work. Such plan or plans to be on paper no larger than A3 (400 mm x 300 mm) paper.
- (12) Plan (to scale) of proposed levee bank showing proposed construction details.
- (13) Full particulars of any permit issued on the subject land.
 - (a) under the Water Act
 - (b) under the Soil Conservation Act
 - (c) under any other Act
 - (d) under Local Government Local Law.
- (14) Attach aerial photographs of the area (if applicable).
- (15) If the proposed work is not able to be completed within six months of formal approval by Local Government for the request to the Local Government for their consideration.

The applicant applies for a Permit for the works described above and certified that to the best of the applicant's knowledge and belief the information contained herein is true and correct.

An application fee of \$ _____ must be submitted with this application.

Date: _____ Signature of applicant: _____

* Delete which ever is applicable

Information for applicants

- (1) If the applicant is purchasing the subject land, but the transfer documents have not yet been lodged for registration, he should ask the Solicitor handling the sale to contact the Local Government and advise of the present position of the transaction.
- (2) The applicant is warned against taking any action to construct any work until a permit from the Local Government has been received.
- (3) All questions in relation to this application must be answered fully as failure to do so will lead to correspondence with consequent delay in dealing with the application.

Date: _____ Signature of Applicant _____

EMERALD SHIRE COUNCIL
LOCAL LAW (LEVEE BANKS)
NO. 45 OF 1997

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PART 1 - PRELIMINARY

1. Citation

1.1 This Local Law may be cited as Local Law (Levee Bank No. 2) 1997.

2. Objects

2.1 The objects of this Local Law are to ensure that Levee Banks:

- (1) do not alter overland water flow in a way which injuriously affects other land; and
- (2) are constructed in accordance with a Permit granted under this Local Law.

3. Definitions

3.1 In this Local Law the following definitions apply:

- (1) "Act" means the Local Government Act 1993;
- (2) "Council" means the Emerald Shire Council;
- (3) "Contiguous" with reference to land, includes land which is separated only by a gazetted road, stock route, watercourse, drainage easement or similar reserve or easement, and which is situated in the State of Queensland;
- (4) "Department" means the Department of Natural Resources or the Government Department in which the Water Resources Act 1989 or its replacement shall be administered from time to time;
- (5) "Director of Engineering Services" means the Director of Engineering Services for the Council;
- (6) "Emerald Shire High Land" means that part of the Shire not subject to flood inundation which includes all land not defined as being in the Nogoa River Flood Plain;
- (7) "Final Plan" means the Plan or Plans to which the granting of a Permit is subject;
- (8) "Levee Bank" has the meaning given to that term in the Act;
- (9) "Nogoa River Flood Plain" means any part of the Shire of Emerald subject to flood inundation from the Nogoa River or Theresa Creek or their tributaries and as designated as part of

the Nogoia River Flood Plain in the map held by the Nogoia River Flood Plain Board showing the boundaries of the flood plain;

- (10) "Permit" means a permit for the construction of a new Levee Bank or to keep an existing Levee Bank granted pursuant to his Local Law; and
- (11) "Permittee" means the person or persons to whom a permit is granted under this Local Law or in whom a permit is vested from time to time.

4. Non-Application of Local Law

- 4.1 This Local Law does not apply to an area included in an approved plan within the meaning of the Soil Conservation Act 1986¹

PART 2 - APPLICATION FOR PERMIT

5. Application for Permit

- (1) A person must not construct or cause to be constructed a Levee Bank on any Emerald Shire High Land other than pursuant to a Permit.²

Maximum penalty - 50 penalty units;

- (2) A person must not have or allow to remain on any Emerald Shire High Land a Levee Bank for which there is not a current Permit issued under this Local Law.

Maximum penalty - 5- penalty units;

- (3) If, when this Local Law commences, there is on land to which this Local Law applies a Levee Bank that, in the Council's opinion, affects or is likely to affect natural drainage to an extent that it causes or may cause damage to land or a public work, service or undertaking, the Council may, by written notice require the owner of the land to apply to it within a specified reasonable period for permission to keep the Levee Bank or part of the Levee Bank.

- (4) Application for a Permit must be made to the Local Government in the form set out in Schedule 1 to this Local Law.

¹ Section 533 of the Local Government Act 1993 states, "The jurisdiction of a local government under this Part to prohibit or regulate the construction and maintenance of levee banks does not extend to a part of its area included in an approved plan within the meaning of the Soil Conservation Act 1986

² Permits or approvals may be required under other laws applicable in Queensland e.g. s.112 of the Fisheries Act 1994 (Qld) provide that "A person must not build waterway barrier works without the Chief Executive's approval.

- (5) The Application should be accompanied by:
 - (a) Plans and specifications of the levee bank;
 - (b) A Report on the impact of the levee bank on the hydraulic characteristics of Emerald High Land prepared by the Department, An Engineer currently registered pursuant to Section 12 of the Professional Engineers Act 1988 or a registered Engineer under the Local Government Act 1993; and
 - (c) The Application fee fixed by the Local Government in accordance with Section 7 of this Local Law;
- (6) A person may apply for exemption from obtaining the permit in the same manner as a person may apply for a permit.
- (7) This Local Law applies with respect to the construction, maintenance or keeping of a Levee Bank under, subject to and in compliance with an order, licence, permit or other authority made or granted under any other law and the applicant must obtain a permit under this Local Law in addition to any order, licence, permit or other authority required under any other law.

6. Proof of Ownership of Land

- 6.1 The applicant must give to the Council with the application evidence that the applicant owns the land on which the Levee Bank is situated or is to be constructed, or that the owner of the land consents to the application.

7. Application Fee and Expenses

- 7.1 The Local Government may from time to time fix by a resolution an application fee which may include the estimated cost of placing any advertisement required by this Local Law.

8. Exemptions

- 8.1 Upon consideration of an application for exemption under this Local Law, the Local Government may exempt an Applicant from obtaining a permit, where the Local Government considers that the levee bank will not have any affect on the hydraulic characteristics of the Emerald High Land.

9. Application to be Advertised

- (1) Upon receipt of an application for a Permit under the provisions of this Local Law, the Council must, before considering such application, notify by advertisement published twice in a newspaper circulating generally in the areas of the Emerald Shire Council, that such

application has been received and that the Council will receive submissions in relation to the application.

- (2) The Chief Executive Officer must appoint the twenty-first day after the date of the last publication of such advertisement as the last day for the receipt of objections to the application.
- (3) The application must be open to inspection at the Council's office from the date of the first publication of such advertisement until the day nominated as the last day for the receipt of submissions.
- (4) The advertisement must be in the form set out in Schedule 2 to this Local Law.
- (5) The Chief Executive Officer of the Council must forward a copy of the notice required under sub-section 9(1) to the owners of contiguous land and the Department at the same time as it is lodged for publication.

10. Submissions

- (1) A person may make a submission to the Council with respect to the granting of a Permit.
- (2) A submission must be in writing and must contain:
 - (a) the submitter's full name and address;
 - (b) the description of any property owned or occupied by the submitter affected or likely to be affected by the Levee Bank; and
 - (c) the grounds for the submissions.
- (3) A submission must be given to the Council on or before the last day for receipt of submissions stated in the advertisement of the application.
- (4) A submission may contain details of suggested alterations to a proposed Levee Bank and a plan in respect of those alterations.

11. Determination of Application

- (1) The Council may in its absolute discretion require the applicant for a Permit to undertake any studies (including environmental impact studies) and provide any information (including a proposed environmental management plan) it deems necessary in order for it to properly assess and determine the application.
- (2) Copies of all other approvals, permits or authorities required for the Levee Bank under any other law must be provided to the Council with the application.

- (3) Where submissions have been lodged pursuant to section 10, the Council may invite the submitters to be present before a Council Meeting to give a verbal explanation of their submission and any alternatives they may have suggested.
- (4) The Council must not determine an application until it is in receipt of all relevant information including a report from the Director of Engineering Services.
- (5) After the last day for receipt of submissions, the Council must promptly consider:
 - (a) the application and all material accompanying it;
 - (b) all submissions and material accompanying them;
 - (c) a report from the Director of Engineering Services;
 - (d) any information or report provided by the applicant pursuant to subsection 11(1);
 - (e) if the Council invites oral submissions, any oral submissions made to it by the applicant or any submitter;
 - (f) the requirements of any other relevant laws and any consent or approval obtained by the applicant under those laws; and
 - (g) any other information that the Council considers relevant;and must either grant or refuse to grant the application.
- (6) The Council may impose conditions that it considers necessary on the granting of the permit.
- (7) The Council must promptly notify in writing:
 - (a) the applicant; and
 - (b) each submitter; and
 - (c) the Department;of its decision in respect of the application.

PART 3 -ISSUE OF PERMITS

12. Issue of Permit and Permit Plan - Requirement of Permit

- (1) The Council must not issue a permit before the end of 30 days after giving notice of its decision in accordance with subsection 11(7) of this Local Law.

(2) If an appeal against the Council's decision is started in accordance with section 942 of the Act, a Permit must not be issued unless the appeal is withdrawn, struck out or disposed of other than by a decision of an appeal tribunal to which section 943(3) of the Act applies.

(3) A decision of an appeal tribunal which:

- (a) confirms a decision of the Council; or
- (b) substitutes a decision permitting construction of a Levee Bank either wholly or in part; or
- (c) substitutes a decision permitting an existing Levee Bank to be kept either wholly or in part;

is taken to be a Permit issued by the Council under this Local Law.

(4) A Permit must:

- (a) specify the conditions to which the grant of the Permit is subject; and
- (b) have attached to it a copy of the final Plan on which the Permit was issued.

(5) The factors that the Council may have regard to when considering an application for a Permit include but are not limited to:

- (a) the level of risk of failure of a Levee Bank and the hazard such failure represents;
- (b) whether a Levee Bank generally conforms to the natural drainage pattern of the Nogoia River Flood Plain in the Emerald Shire High Land;
- (c) the environmental health, cultural and social impacts of a Levee Bank;
- (d) whether a Levee Bank complies with any requirements under any other law;
- (e) the impact of a Levee Bank on flow rates, flow distribution, flood timing and depth of flow in the Nogoia River Flood Plain or Emerald Shire High Land;
- (f) whether a Levee Bank is designed and is or is to be constructed to appropriate standards having regard to the risk of failure of the Levee Bank and the consequences of failure;
- (g) design reports, including plans and specifications, addressing the impacts of overtopping or failure of the works, including

hazards such a failure represents, and appropriate management guidelines;

- (h) whether a Levee Bank is or will be constructed and maintained in accordance with an approved design report (including approved plans and specifications) to the satisfaction of the Council;
 - (i) the full height of a Levee Bank;
 - (j) whether the discharge pattern from the land on which a Levee Bank is situated is or will be similar to the discharge pattern of that land prior to the development of the Levee Bank;
 - (k) whether a Levee Bank blocks any general flow paths within the land on which it is situated;
 - (l) the total increase in peak water elevation at or outside the boundary of the land on which the Levee Bank is situated or to be constructed arising from all development (including existing Levee Banks and proposed Levee Banks) on that land;
 - (m) the anticipated water level rise on the flood plain at any property boundary on the Nogoia River Flood Plain having regard to the total cumulative effect of all works likely to be constructed on the flood plain;
 - (n) whether significant change in flood timing or flood flow distribution has occurred or will occur;
 - (o) whether significant change is likely in the duration of inundation of lands outside the boundaries of the land on which the Levee Bank is situated or to be constructed such that the normal use or potential use of that land is adversely impacted;
 - (p) whether any change in flood velocity arising from the proposed Levee Bank or existing Levee Bank will result or has resulted in increased erosion on the flood plain and water courses (including localised scour effects); and
 - (q) whether sufficient pondage has been retained in the flood plain system so that the characteristics of the flood hydrographs, in particular their general shape, timing and peak height are not unduly altered.
- (6) Unless the applicant expressly requests otherwise at the time of lodging application, and the request is agreed to by the Council, the work authorised under a Permit must be completed within 6 months after the date of issue of the Permit otherwise the Permit will lapse upon the expiry of that period.

- (7) The Council may if requested so to do by a Permittee extend the period for completion of such work provided a request is made to the Council before the expiration of the Permit.
- (8) The Permittee must, prior to commencement of construction of the work specified in the Permit, notify the Council in writing of the day and date of intended commencement.
- (9) The Permittee must at all times throughout the currency of a Permit, construct repair and maintain the Levee Bank in accordance with:
 - (a) the conditions to which the Permit is subject;
 - (b) the final plan; and
 - (c) any directions received from the Director of Engineering Services.

Maximum penalty - 50 penalty units.

- (10) If required by the Council the Permittee must on expiration of the Permit carry out, at the Permittee's own cost, any work on or in relation to the Levee Bank which the Council may consider necessary.
- (11) The Permit will be deemed to be held by and operate for the benefit of the lawful owner for the time being of the land whereon the Levee Bank is constructed or proposed to be constructed.
- (12) It will be incumbent upon the Permittee or the Permittee's personal representative or successor in interest to notify the Council immediately of any change or divestment of interest in the land upon which the Levee Bank is constructed or proposed to be constructed.
- (13) A Permit shall not be issued for a period exceeding 10 years.

13. Permit Transferred on Transfer of Land

- (1) A Permit granted by the Council pursuant to the provisions of this Local Law will be deemed transferred to any successor in title or interest of the subject land and will expire on the earlier of the date shown on it or 10 years from the date on which it is issued.
- (2) The obligations contained in the Permit and in this Local Law will apply to any successor in title or interest of the subject land, as if that successor were the Permittee.

PART 4 - APPLICATION FOR NEW PERMIT ON EXPIRY OF ORIGINAL PERMIT

14. Application for New Permit on Expiry of Original Permit

- (1) A Permittee must apply to the Council for the renewal of a Permit issued under this local Law no later than:
 - (a) 30 September of the preceding year if the Permit is due to expire in the 6 months ending 30 June in any year; or
 - (b) 30 March of the same year if the Permit is due to expire in the 6 months ending 31 December in any year.
- (2) The provisions of this Local Law and the Act apply to an application for renewal of a Permit in the same way that they applied to the application for the original Permit.

15. Revocation of Permit

- (1) Subject to the following subsections, the Council may revoke any Permit issued by the Council under the provisions of this Local Law or where more than 1 Levee Bank is authorised by such Permit revoke or partly revoke the Permit as regards any one or more Levee Bank thereby authorised.
- (2) Such revocation or part revocation must not be made until the Council has given the Permittee not less than 2 months notice of its intention so to do:
- (3) If the Permittee upon whom such notice has been served, within the period of the notice, shows good cause to the Council why the Permit should not be revoked or partly revoked as the case may be, the Council must not proceed with such revocation or partial revocation.
- (4) Before proceeding with such revocation or partial revocation, the Council must notify the Permittee in writing of its decision and the reasons for the decision.
- (5) If, within the period of the notice referred to in section 15(2), the Permittee has not shown to the Council good cause why the Council should not proceed with the revocation or partial revocation as the case may be, then after the expiration of the period of notice the following shall apply:
 - (a) if the Council resolves to proceed with the revocation, the Council must revoke or partly revoke the Permit as the case may be, by resolution to that effect.
 - (b) the Council must cause notice of the revocation nor partial revocation to be served on the Permittee; and

- (c) the notice must be in writing under the Seal of the Council and must specify the date on which the revocation or partial revocation is to take effect, being not sooner than 1 month after the date of the service of the notice.
- (6) In determining whether to revoke a Permit under this section, the Council must consider the following factors:
- (a) the extent to which the Permittee has complied with the conditions upon which the Permit was granted;
 - (b) the impact on the Permittee and the impact on the Permittee's land, of not being entitled to construct a Levee Bank; and
 - (c) the impact of the Levee Bank or its removal on the other land within the Nogoia River Flood Plain or Emerald Shire High Land.
- (7) If a Permit is revoked or partly revoked, as the case may be, the owner of the land on which the Levee Bank is constructed must within 1 month after the date of service of the notice referred to in subsection 1 S(5) of this Local Law demolish such Levee Bank to the satisfaction of the Council.

PART 6 - DEMOLITION OF LEVEE BANKS

16. Applications to Demolish Levee Bank

- (1) If a Permittee wishes to demolish a Levee Bank, the Permittee must make application to the Council in the form set out in Schedule 1 to this Local Law for a Permit to demolish the Levee Bank and the applicant must pay such application fee as is fixed from time to time by the Council.
- (2) The application must be accompanied by:
 - (a) a Report prepared by an Engineer currently registered pursuant to Section 12 of the Professional Engineer's Act 1988 or a Registered Engineer under the Local Government Act 1993 setting out the effect on the hydraulic characteristics of the Nogoia River Flood Plain or Emerald Shire High Land of the demolition of the Levee Bank; and
 - (b) a plan of the final demolition.
- (3) The application to demolish the Levee Bank must be advertised in the same manner that an application to construct a Levee Bank is required to be advertised under section 9 of this Local Law.

- (4) A person may make a submission to the Council with respect to the demolition of a Levee Bank.
- (5) A submission must be in writing and contain:
 - (a) the submitter's full name and address;
 - (b) the description of any property owned or occupied by the submitter affected or likely to be affected by the demolition of the Levee Bank; and
 - (c) the grounds for the submission.
- (6) A submission must be given to the Council on or before the last day for receipt of submissions stated on the advertisement of the application.
- (7) A submission may contain details of suggested alterations to the proposed demolition of a Levee Bank and a plan in respect of those alterations.
- (8) A submission may be in support of or in opposition to the granting of an application.
- (9) Where submissions have been lodged under this section, the Council may invite the submitters to be present before Council Meeting to give a verbal explanation of their submission and any alternatives they may have suggested.
- (10) The Council must not determine an application to demolish a Levee Bank until it is in receipt of all relevant information including the information that must be submitted under subsection 16(2).
- (11) After the last day for receipt of submissions, the Council must promptly consider:
 - (a) the application and all material accompanying it;
 - (b) all submissions and material accompanying them;
 - (c) information that must be submitted under subsection 16(2);
 - (d) if the Council invites oral submissions, any oral submissions made to it by the applicant or any submitter;
 - (e) the requirements of any other relevant laws and any consent or approval obtained by the applicant under those laws; and
 - (f) any other information that the Council considers relevant;and must either grant or refuse to grant the application.

(12) The Council must promptly notify in writing:

- (a) the applicant; and
- (b) each submitter; and
- (c) the Department;

of its decision in respect of the application.

(13) The Council may impose conditions that it considers necessary on the granting of the permit.

(14) If the application to demolish a Levee Bank is granted, the owner of land on which the Levee Bank is constructed must within 1 month after the date of which such Permit is granted completely demolish such Levee bank to the satisfaction of the Council and in accordance with the final plans.

17. Order to Demolish Levee Bank

(1) (a) The Council may request demolition or partial demolition of any Levee Bank if:

- (i) a Permit for a Levee Bank has been revoked;
- (ii) a Permit for a Levee Bank has expired;
- (iii) a Levee Bank was constructed without a Permit before the commencement of this Local Law and the Council has complied with section 941(1) of the Act;
- (iv) a Levee Bank was constructed after the commencement of this Local Law without a permit; or
- (v) a Levee Bank was constructed contrary to the terms of a Permit.

(b) A request for demolition or partial demolition of a Levee Bank must:

- (i) be in writing and addressed to the owner of the Land on which the Levee Bank is situated;
- (ii) specify period of not less than 1 month after service of the request within which the land owner is to demolish the Levee Bank; and

- (iii) specify the works that need to be completed in order to satisfy the Council's request.
- (2) The owner of such land must completely demolish each such Levee Bank not later than the expiration of any period (being not less than 1 month) specified in the notice served under subclause 17(1)(b).
- Maximum penalty - 50 penalty units.
- (3) Should any land owner liable to do so fail to demolish any Levee Bank to the satisfaction of the Council, the in addition to any other right or remedy available to the Council, the Council by its duly authorised officers and with such machinery, plant and equipment as they may deem necessary may enter upon any land upon which or part of which the Levee Bank is situated and demolish the Levee Bank.
- (4) The cost and expense incurred by the Council in demolishing each such Levee Bank must be paid to the Council by the owner of the land on which the Levee Bank was situated upon demand by the Council, and if not paid upon demand may be recovered from the owner of the land by the Council as a present debt.
- (5) The Council, its officers or employees, shall not be liable in damages for trespass or damage to the subject land or crops growing thereon in demolishing each such Levee Bank.
- (6) Subsection 17(5) does not protect:
- (a) a person who commits fraud or wilful default; or
 - (b) a Local Government that does not comply with a provision or this Local Law;
- from liability for loss caused by fraud, default or non-compliance.

PART 7 - APPEALS

18. Appeals

- (1) A person aggrieved by a decision of the Local Government may appeal against the decision;
- (2) The appeal must be lodged with the Chief Executive Officer of the Department;
- (3) The appeal must be commenced within 30 days after the person aggrieved has been given written notice of the decision;

- (4) The appeal is started by the person aggrieved filing a Notice of Appeal with the Chief Executive of the Department and giving a copy of the Notice to the Local Government;
 - (5) The provisions of the Local Government Act 1993 or its replacement which provides the power for a Local government to regulate levee banks, shall apply regarding the conduct, hearing and determination of any such appeal;
-
- (6) In this section "decision" means:
 - (a) a decision to grant a Permit for the construction of a levee bank;
 - (b) a decision to refuse to grant a Permit for the construction of a levee bank;
 - (c) a decision to revoke a Permit issued under this Local Law;
 - (d) a decision to grant a Permit to demolish a levee bank;
 - (e) a decision not to grant a Permit to demolish a levee bank; anda decision to require a Person to demolish a levee bank.

Schedule 1

Emerald Shire Council

*Application for Permit for *Levee Bank /*to Demolish Levee Bank*

- (1) Name of applicant;
- (2) Post address;
- (3) Location of work (see also 10):
county:
parish:
Real Property office description:
area:
- (4) Nature of works;
- (5) Purpose of works;
- (6) Particulars of work (if levee bank) -
 - (a) Total length of levee bank: metres
 - (b) Maximum height: metres
 - (c) Width of top: metres
 - (d) Width of base: metres
 - (e) Materials of which bank will be constructed:
 - (f) If levee bank is one side of stream, is levee bank crest higher or lower than lowest point on opposite bank and by how much?
 - (g) Height of top of bank above highest know flood level:
- (7) Particulars of work (if drain or other excavation) -
 - (a) Total length metres
 - (b) Maximum depth: metres
 - (c) Width of top: metres
 - (d) Width of base: metres
 - (e) State nature of soil at site:
- (8) Provision for preventing injury to other land arising from proposed work:
- (9) Period for which permit is required:
- (10) Locality plan: Scale 1:100,000 showing all property within 10 km radius of the centre of the subject land.

Schedule 2

**Form of Advertisement of Application for *Permit For Levee Bank/*to Demolish
Levee Bank**

EMERALD SHIRE COUNCIL

NOTICE is hereby given that the undermentioned application for a permit has been made to the Emerald Shire Council under the Emerald Shire Council Local Law (Levee Banks) No. 2 of 1997.

Applicant: *(Insert here full initials and name of applicant)*

The owner of: *(insert here correct property description containing subdivision and portion numbers, parish and county of land on which the work is proposed).*

Proposed work;

A person may on or before the last day for receipt of submissions referred to below make a written submission, signed by the person, addressed to the Chief Executive Officer, Emerald Shire Council in respect of the granting of the application.

The application and plan are open to inspection at the Local Governments Office.

The day of , 199 has been appointed as the last day for receipt of submissions.

Date: Chief Executive Officer