

Seventh Statement of Rory John Kelly

I, Rory John Kelly, Regional Manager of Development Assessment South, Brisbane City Council, of [REDACTED] in the State of Queensland, state on oath as follows:

- A. Attachment **RJK-105** is a copy of a notice from the Commissioner of the Queensland Floods Commission of Inquiry (**Commission**) dated 8 September 2011 requiring me to provide certain information to the Commission with respect to the development of aged care accommodation at 5 and 15 Cansdale Street, Yeronga (**Subject Land**) in the form of a statement (**Notice**). This Statement is provided in response to the Notice.
- B. For the purposes of responding to the Notice and preparing this Statement I have, in my position as Regional Manager of Development Assessment South Branch of the Brisbane City Council (**Council**), had access to:
- (a) the business records of Council; and
 - (b) Council officers,
- to obtain information to provide a response to the Notice. Unless otherwise stated, the matters set out in this Statement are based on my own knowledge and the information derived from the above sources.
- C. The documents from the above sources and attached to this Statement have been collated by Council officers under my instruction.
- D. I set out below my responses to each of the questions set out in the Notice.

Qualifications and Background

1. My qualifications are set out in my first statement regarding the Tennyson development site and the Tennyson Reach development dated 31 August 2011 (**First Statement**).

Response to the Notice

- | |
|---|
| 1. The defined flood level of the Subject Land prior to the January 2011 flood event; |
|---|
2. Based upon Council's records I am aware that prior to the January 2011 flood event, the defined flood level (**DFL**) of the Subject Land was 6.7 metres AHD.

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2. Whether Council's records indicate that the Subject Land was subject to surface flooding impacts during the January 2011 flood event;

3. Based upon Council's records I am aware that the Subject Land was subject to surface flooding impacts during the January 2011 flood event.

3. What approvals (including any section 3.1.6 preliminary approval under the *Integrated Planning Act 1997* but excluding any development approvals for building work and/or operational work) were given to permit the development of land at 5 and 15 Cansdale Street, Yeronga for the existing aged care accommodation;

4. With respect to each of those approvals:

- a. how potential flooding impacts were identified;
- b. what assessment process was followed specific to flood impacts;
- c. what consideration, if any, was given to:
 - i. the proximity of the Subject Land to the Brisbane River;
 - ii. the proximity of the Subject Land to the waterway which traverses the adjoining land which is currently within the Sport and Recreation Area in Brisbane City Plan 2000;
 - iii. flood risk or the potential impact of flooding on the Subject Land and measures to address such risk or impact;
 - iv. the potential for flooding of access roads to the Subject Land;
 - v. the attributes of the intended occupants and their ability to evacuate in the event of flooding;

5. In relation to the each of the approvals, what conditions, if any, were included with respect to:

- a. protection from flooding (regardless of its source);
- b. availability of access (or evacuation) routes in the event of flooding of the surrounding area.

4. It is convenient to answer requirements 3 to 5 together.


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5. The first development application (and the primary development approval) for aged care accommodation was lodged by PMM Group Pty Ltd (**PMM**) on behalf of the applicant on 11 April 2005.
6. The development application was for:
- (a) a Development Permit for Preliminary Approval Overriding the Planning Scheme - Material Change of Use (Multi-Unit Dwelling (Retirement Village) and Shop, not greater than 250 m²); and
 - (b) the Reconfiguration of a Lot (one into four).
7. A copy of the development application is Attachment **RJK-106**, including a Town Planning Report prepared by PMM. Appendix H to the Town Planning Report is a report prepared by Cardno entitled "Review of Hydraulic Issues" dated 17 March 2005.
8. The Reconfiguration of a Lot component of the development application was withdrawn by letter from PMM dated 22 September 2005. A copy of the letter Attachment **RJK-107**.
9. Based on Council's files, the potential for flooding issues to arise with respect to the development application was first identified during the pre-lodgement process.
10. Council records show that three pre-lodgement meetings were held with PMM and issues relevant to flooding were identified at those pre-lodgement meetings as evidenced by the following:
- (a) A letter from PMM dated 18 October 2004, a copy of which is Attachment **RJK-108**, relevantly states that:

"Flood - the site is currently identified as being in a waterway corridor in the City Plan. A drain runs from the River along the eastern boundary of the site. Investigations are necessary into the upgrades of the drain and water levels around the site may also be an issue."
 - (b) By letter dated 9 February 2005, PMM advised that consultants had been engaged to conduct investigations into the potential hydraulic and flood issues associated with the Subject Land. A copy of the letter dated 9 February 2005 is Attachment **RJK-109**.
 - (c) Council's pre-lodgement record for a third pre-lodgement meeting held on 1 March 2005, a copy of which is Attachment **RJK-110**, states, relevantly:


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" ...

Flooding

- *Q100 flood levels 6.7m AHD, Q50 5.5m AHD, Q20 3.7m AHD*
- *Applicant indicated that they have the flood modelling data and can demonstrate that there will be no worsening*
- *Competing issue being "Flood improvement works vs Waterway Corridor works*

Waterway

- *No agreed direction given on how development should interface waterway corridor to the east*
- *Need to address waterway, wetland and biodiversity codes*

..."

11. Council's files also indicate that upstream flooding issues, specifically for Hyde Road, were raised during the pre-lodgement process. I refer to a handwritten record of conversation between John Delaney, who I believe to be an ecologist for the applicant and Lee Slater, Ecologist, Development Assessment South dated 15 March 2005, a copy of which is Attachment **RJK-111**.

Assessment of the development application relevant to flood impacts and Council's consideration of flooding

12. I note from the file that Roger Greenway, Urban Planner, Development Assessment South, was Council's "assessment manager" who had initial carriage of the assessment of the development application until the assessment of the application was transferred to Deborah Mangu, Senior Town Planner, Development Assessment South.
13. An email from Bruce McArthur, Senior Engineering Officer, Development Assessment South to Roger Greenway dated 10 May 2005, a copy of which is Attachment **RJK-112**, identified the following flooding and stormwater issues with the development application:


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There is an overland flow path through the south-eastern corner of the site, which has been identified in the Yeronga Local Stormwater Management Plan. The applicant is proposing to fill the affected area and divert it into the road reserve. I have discussed the situation with Bob Adamson [Principal Engineering Officer, Technical Specialist Team] in major projects and this is not to occur as they are redirecting stormwater and worsening the situation. Hence the proposal (figure 6, proposed drainage strategy) does not comply with the Stormwater Management Code, 4.2 Flooding:

P1 (The proposed stormwater management system or site works must not adversely impact on flooding or drainage of properties that are upstream, downstream or adjacent to the subject site.

P4 Any channel works that are part of the development, major drainage works or flood mitigation works must maintain and/or enhance the environmental values of the waterway or drainage corridor. (A4 states that the design and construction of channel works incorporate water sensitive design features which will comply with Council's Subdivision and Development Guidelines and where applicable any SMP, LSMP or WMP prepared by Council).

I would also say that P2 & P3 have not been met but the above are the greatest concern. (I do not have a problem with the proposed Habitable and Non Habitable floor levels - River Flooding).

14. A memorandum from Geoff Ahmet, Program Officer, City Planning Branch, to Roger Greenway dated 12 May 2005, a copy of which is Attachment **RJK-113**, states in relation to flooding:

"The proposal has not adequately addressed river and local flooding as the site is subject to Q100 river flooding and a section is subject to Q100 local overland flow. Relocation of the storm water channel to the adjacent parkland will result in a loss of public parkland and is not supported. Council intends to retain the open channel and are not supportive of piping the flow as stated in the report."

15. Based on my understanding of Council's assessment process, Geoff Ahmet's role at the time was to coordinate strategic advice from other branches of Council, in particular Water


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Resources, Urban Management Division, who would have provided the statement referred to above.

16. As the development application was for a preliminary approval under section 3.1.6 of the *Integrated Planning Act 1997*, the information request for the development application was coordinated by the then Queensland Government Department of Local Government, Planning, Sport and Recreation. A copy of the information request dated 21 June 2005 is Attachment **RJK-114**.

17. The information request required the following, amongst other things:

"2. Demonstrate that the proposal:

(i) demonstrate that the proposed stormwater management system or site works do not adversely impact on flooding or drainage of properties that are upstream, downstream or adjacent to the subject site.

(ii) complies with section 4.2 P1 of the Stormwater Management Code. Specifically, complies with section 4.2 P2 of the Stormwater Management Code. Specifically, demonstrate that the drainage network provides adequate capacity to safely convey stormwater run-off resulting from relevant design storm events taking into account increased run-off from roof drainage.

(iii) complies with section 4.2 P3 of the Stormwater Management Code. The development design must reduce property damage and, where applicable, ensure public safety by ensuring that the development levels are set above the relevant design flood level or storm surge level.

(iv) complies with section 4.2 P4 of the Stormwater Management Code. Demonstrate that the channel works, major drainage works and flood mitigation works maintain and/or enhance the environmental values of the waterway corridor or drainage corridor.

In addition, there is an overland flow path through the south-eastern corner of the site, which has been identified in the Yeronga Local Stormwater Management Plan."

18. On 3 August 2005, I gave a presentation to Council's Development Assessment Committee, a copy of which is Attachment **RJK-115**. Page 7 of the presentation handout identifies "8 KEY

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ISSUES" including "Hydraulic (overland flow, flooding, lawful point of discharge)". A recommendation was made that the Development Assessment Committee endorse a recommendation to give in-principle support for the application, subject to the applicant providing sufficient information to consider all impacts of the development. The Development Assessment Committee supported this recommendation.

19. A response to the information request was provided by PMM by letter dated 27 September 2005, a copy of which is Attachment **RJK-116**. In Appendix C of PMM's response is a Cardno Hydraulic Analysis dated 26 September 2005 which presents the results of flood modelling investigations as requested by Council.
20. The Cardno Hydraulic Analysis dated 26 September 2005 was referred to Council's Technical Specialist Team (which includes specialist engineers) for assessment of the hydraulic issues. I note that Bob [Robert] Adamson, Principal Engineering Officer, Technical Specialist Team identified specific issues in relation to flooding as outlined in a memorandum dated 17 October 2005, a copy of which is Attachment **RJK-117**.
21. Council's files also contains a memorandum from Graham Phegan, Principal Program Officer, Natural Environment and Sustainability Branch dated 17 October 2005 which outlines an assessment of the design for the open waterway corridor and drainage improvement works proposed along the eastern boundary of the site as described in the response to the information request. A copy of the memorandum is Attachment **RJK-118**.
22. A memorandum on Council's files from Neville Gibson, Product Manager, Stormwater Planning and Investigation, Water and Environment, City Design, dated 21 December 2005, a copy of which is Attachment **RJK-119**, identifies a number of flooding issues based on the assessment of the information provided to support the development application, including that:
 - (a) the results of the applicant's XPStorm model differ from the Council's LSMP;
 - (b) the proposed entertainment area is set to be at RL 4.1m AHD which does not meet the flood immunity standard of 100 year ARI Brisbane River Flood (RL 6.7 m AHD);
 - (c) the proposal relocates the proposed drainage system into the adjacent Council owned parkland.
23. The memorandum recommends that the development application be rejected, pending the provision of a revised hydraulic report, layout, details and drawings.


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24. By letter to the applicant dated 2 February 2006, Council requested information on further issues relevant to flooding, which incorporated the recommendations from Bob Adamson, Graham Phegan and Neville Gibson as outlined above, a copy of which is Attachment **RJK-120**.
25. A number of revisions of the Cardno Hydraulic Analysis were subsequently received by Council, being the following:
- (a) by letter dated 28 March 2006, PMM provided to Council a draft "Cardno Hydraulic Report" dated 22 March 2006. See Attachment **RJK-121**.
 - (b) by letter dated 3 April 2006, PMM provided to Council "Hydraulic Analysis" by Cardno dated 31 March 2006. See Attachment **RJK-122**.
 - (c) by letter dated 25 May 2006, PMM submitted to Council "Hydraulic Analysis" by Cardno dated 23 May 2006. See Attachment **RJK-123**.
26. The Cardno Hydraulic Analysis report dated 31 March 2006 was referred to the Technical Specialist Team for review. Attachment **RJK-124** is a memorandum from Andrew Blake, Hydraulic Engineer in the Technical Specialist Team, dated 8 August 2006, which states in relation to the report:

"2.0 COMMENTS:

2.1 The proposed development and associated filling of the site does not extend into the Q100 inundation extents of the waterway passing through the eastern part of the property. Therefore the proposed development will not increase flood levels.

2.2 Rehabilitation of the waterway is proposed...however the waterway will remain approximately the same so as not to affect the existing flood levels."

2.3 Stormwater drainage works required.

Stormwater drainage upgrades are required as stated in Section 6.3 of the Cardno report and as shown on Figure 7 (Stormwater Pipe Locations).

2.4 Overland flow easement required.

An overland flow easement is required incorporating Q100 inundation extents.

2.5 Underground drainage easements required


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Underground drainage easements are required for the proposed stormwater pipes in the North-West and South-East corners of the site.

3.0 RECOMMENDATIONS

3.1 The Hydraulic Analysis Report is acceptable to form conditional approval.

3.2 Development conditions are required to address comments 2.3 to 2.5."

27. Based on the Council files, I note that Mr Blake appears to have commented on the penultimate hydraulic analysis and not the final report dated 23 May 2006. I am not sure what the explanation is for that, but Mr Blake has considered the hydraulic analysis dated 23 May 2006 and advised me that from the perspective of the hydraulic issues that he raises in his memorandum dated 8 August 2006, the hydraulic analysis has not changed. Mr Blake has advised me that in practice he would have considered the 23 May 2006 report and discussed that report with relevant officers. The main difference between the hydraulic analysis reports is the inclusion of landscaping works which Mr Blake has told me would have no effect on the views he expressed in his memorandum. I note that the development approval references the hydraulic analysis dated 23 May 2006. See Attachment **RJK-132**.

Public submissions

28. Council's files indicate that 23 submissions were received in relation to the development application, with flooding being among the issues raised by the submitters.
29. A letter from the applicant PMM dated 18 January 2006 summarises the grounds of submissions and provides a response in relation to the issues raised in those submission, a copy of which is Attachment **RJK-125**.
30. It is normal practice for Council to prepare its own summary of submissions and in a note to file prepared by Deborah Mangu, Senior Town Planner in Development Assessment South, dated 27 September 2006, the submissions are summarised. A copy of the note to file is Attachment **RJK-126**.

Development approval

31. On 25 September 2006 a presentation was made to Council's Establishment and Coordination (Planning Guidance) Committee (**PGC**), a copy of which is Attachment **RJK-127**. Although I do not specifically recall doing so, I would have helped Deborah Mangu prepare and present

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this power point presentation at the PGC meeting. Page 8 of that presentation states "8 KEY ISSUES Resolved", one of which is "Hydraulic (overland flow, flooding, lawful point of discharge)". It also states "Removal of buildings from the waterway corridor". The presentation makes a recommendation that the PGC endorse the approval, subject to conditions including "a height of 5 storeys above a minimum habitable flood level (podium level)."

32. A report by Deborah Mangu, dated 28 September 2006 notes the following about hydraulic issues associated with the proposed development:

"The site is affected by flooding from an overland flow path and from Brisbane River flooding. Advice from Councils hydraulic engineers is that their assessment uses a risk management approach to the development of flood prone land. Flood prone land is that land is inundated in a Probable Maximum Flood (PMF). Flood ways are land that has a one-percent chance of being inundated every year Council adopts the 1 in 100 year "Annual Recurrence Interval" as the development standard, and anticipates there is a 1 in 100 chance of it being exceeded every year. This is standard practice for floodplain management in Australia. In addition Council asks for a freeboard of 500mm above the 1 in 100 year "Annual Recurrence Interval" flood level for habitable floor levels. This requirement results in an anticipated flood immunity that is higher than the 1 in 100 year Annual Recurrence Interval.

Consequently the approval has been conditioned to:

- *manage flood impacts by setting minimum habitable floor levels in accordance with the 1 in 100 year recurrence; and*
- *upgrades to the current stormwater drainage system along the eastern and southern boundaries; and*
- *upgrades to the current stormwater drainage system along the western and northern boundaries; and*
- *provide easements for Council maintenance."*

A copy of the report is Attachment **RJK-128**.

33. After submission to the PGC, the development application is considered by the Urban Planning & Economic Development Committee (**UPED Committee**) whose role it is to

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recommend the approval or refusal of a development application. In the ordinary course, a report and recommendation on the development application is prepared by Council officers for the UPED Committee and ultimately for Council. I refer to a document titled "Recommendation to Urban Planning & Economic Planning Committee" prepared Deborah Mangu and Peter Button and dated 3 October 2006, a copy of which is Attachment **RJK-129**. As is my practice, I would have reviewed and critiqued the recommendation. While I do not specifically recall doing so, I must have been satisfied with the contents of the document before it was finalised and sent to Peter Button. A copy of the presentation made to the UPED Committee on 3 October 2006 is Attachment **RJK-130**.

34. Council approved the development application on 3 October 2006. The decision is Attachment **RJK-131**.
35. The decision notice was issued to the applicant on 10 October 2006, a copy of which is Attachment **RJK-132**.
36. The conditions on the development approval relevant to this Notice include following:
 - (a) conditions 1 and 2 which condition the location of the buildings and access and changes the level of assessment where the applicant seeks to vary the location of the same;
 - (b) condition 3 which requires setback from the overland flow (parkland) along the eastern boundary;
 - (c) condition 9 which requires the transfer of some land within the waterway corridor to the Crown with Council as the Trustee;
 - (d) condition 11 which sets the minimum habitable floor levels; and
 - (e) condition 12 which relates to external stormwater, rehabilitation and easements.
37. Council records indicate (derived from flood studies (Yeronga Local Stormwater Management Plan 2003)) that the Subject Land is affected by flooding from two sources: the Brisbane River and an overland flowpath. The proximity to the Subject Land from each flood source is only partially relevant in determining the highest source of flooding.


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38. All sources of flooding are relevant at the time the development application is lodged, to ensure that there are no adverse impacts upstream or down stream of the site or on any neighbouring properties.
39. In general, in assessing development on the Subject Land, the habitable floor level is based on the highest level of flooding, which in this instance was the Brisbane River. The other source of flooding identified on this site would have determined the extent of filling, location of the development and external drainage works required, to ensure that there are no adverse impacts upstream or down stream of the site or on any neighbouring properties.
40. In relation to the consideration that was given to the waterway which traverses the adjoining land, I refer again to Attachments RJK-108, RJK-110, RJK-112, RJK-117, RJK-118, RJK-120, RJK-124, RJK-127, RJK-128.
41. It appears that no conditions were imposed in relation to access or evacuation routes in the event of flooding.

Subsequent approvals

42. Subsequent to the preliminary approval, a number of development approvals have since been issued and subsequent changes to approvals given for the Subject Land.
43. Based on my review of the files, the relevant approvals for the aged care accommodation (excluding those for building work or operational work), the date of those approvals and considerations and conditions relevant to this Notice are set out below.


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	Date	Approval	Relevant considerations	Relevant conditions
1.	28/06/2007	Reconfiguration of a Lot (1 Lot into 2 and Park) (A001637428)	None on file	See Attachment RJK-133 (conditions 14, 18, 20, 25).
2.	25/07/2007	Material Change of Use - Retirement Village with Ancillary Shop and Office (Stage 1) (A001637427)	None on file	See Attachment RJK-134 (negotiated conditions, 15, 35, 51, 52, 63, 64).
3.	09/09/2008	Material Change of Use - Retirement Village (Stage 2) (A001946377)	See Attachments RJK-135 to RJK-139	See Attachment RJK-140 (conditions 6, 16, 39, 41, 42, 47, 48).
4.	17/04/2009	Material Change of Use - Multi-Unit Dwelling, Aged Care Accommodation (Stage 3) (A002049510)	See Attachments RJK-141 to RJK-144	See Attachment RJK-145 (negotiated conditions 40, 44).
5.	13/11/2008	Modification of a Development Approval (A002153605) This approval modified approval A001946377 by allowing Stage 2 to	None on file	See Attachment RJK-146 (Stage 1 conditions 6, 17, 40, 42, 43, 48, 49 and Stage 2 - conditions 77, 79, 102, 104, 105, 110, 111)

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	Date	Approval	Relevant considerations	Relevant conditions
		be sub-staged.		
6.	26/03/2009	Modification of a Development Approval (A002288285) This approval modified approval A001946377 in relation to landscaping works.	None on file	See Attachment RJK-147 (Stage 1 conditions 6, 17, 40, 42, 43, 48, 49 and Stage 2 conditions 77, 79, 102, 104, 105, 110, 111)
7.	09/06/2011	Material Change of Use Preliminary Approval, Retirement Village (A003045011) This approval raises the height of Buildings 3, 4, 5, and 6 in accordance with the Interim Residential Flood Level in the Temporary Local Planning Instrument - Brisbane Interim Flood Response.	See Attachment RJK-148	See Attachments RJK-149 (conditions 1, 2, 3, 11, 12)
8.	16/06/2011	Modification of a Development	None on file	See Attachments RJK-150 (conditions 40, 44)

 RORY JAMES KEENE

 Witness

Date	Approval	Relevant considerations	Relevant conditions
	Approval (A002471974) This approval modified approval A002049510 condition 16 in relation to infrastructure charges.		
9. 06/09/2011	Material Change of Use - Retirement Village (Multi-Unit Dwelling) (A003115631) This approval raised the height of the floor levels for Sub-Stage 1 of Stage 2 (Building 3) in accordance with the Interim Residential Flood Level in the Temporary Local Planning Instrument - Brisbane Interim Flood Response.	See Attachment RJK-151	See Attachment RJK-152 (Sub-Stage 1 of Stage 2 conditions 6, 17, 40, 42, 43, 48, 49 and Sub-Stage 2 of Stage 2 conditions 77, 79, 102, 104, 105, 110, 111).

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44. Approved plan 0648TP-05a dated 1 June 2008 (Attachment **RJK-145**) shows that the entrance to the basement car park at the aged care accommodation is at 7.2 metres AHD (Q100 flood immunity) and approved plan DA-200-02 rev O dated 24 April 2008 (Attachment **RJK-134**) shows the surface level at 7.2 metres AHD which is equivalent to the defined floor level and consistent with the Subdivision and Development Guidelines that applied at the time of the approval in Chapter 1, section 2.2:

"Basement carparks can be constructed to below the specified levels provided that suitably waterproofed perimeter walls, air vents, and entry/exit ramps at the carpark entrance are above the 100 year ARI flood levels for all flooding sources including the Brisbane River."

Similar provisions are contained in the current version of the Subdivision and Development Guidelines.

45. There are two access roads to the Subject Land: Cansdale Street and Venner Road. The road pavement level at the Cansdale St entrance is approximately 5.5 metres (Q50 flood immunity, river flooding), whilst the road pavement level at the Venner Road entrance is approximately 4.25m (Q20 flood immunity).

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

Dated 21 September 2011

Signed and declared by Rory John Kelly at

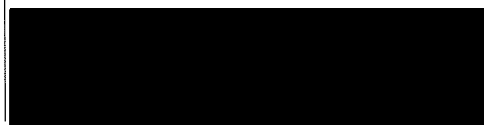
in the State of Queensland

this 21 day of September 2011

Before me:



Signature of person before whom the declaration is made



Signature of declarant

Matthew Glen Edwards - Lawyers

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