

## Fourth Statement of Rory John Kelly

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

- A. Attachment **RJK-55** 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 "Dulux Powder Coating Factory" at 1477 Ipswich Road, Rocklea (**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 dated 31 August 2011 (**First Statement**).
2. I was not involved in the assessment of the original development application authorising the use of the Subject Land. However, as Regional Manager of Development Assessment South Branch, I currently have responsibility for the area including the Subject Land and have reviewed the relevant Council files.

[REDACTED]  
Rory John Kelly

[REDACTED]  
Witness

Response to the Notice

1. **The defined flood level of the Subject Land prior to the January 2011 flood event;**

3. Based on Council's records I am aware that prior to the January 2011 flood event, the defined flood level (DFL) of the Subject Land was RL 8.0m AHD.

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

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

3. **The date on which the development approval which authorised use of the Subject Land for the Dulux Powder Coating factory (including any development approval for a material change of use for an environmentally relevant activity) was issued;**

4. **In assessing the development application:**

a. **what assessment process was followed specific to flood impacts;**

b. **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 Oxley Creek;**

iii. **flood risk or the potential impact of flooding on the Subject Land and measures to address such risk or impact, particularly with respect to the adequacy of the proposed means of storage of chemicals or other hazardous materials on the Subject Land having regard to its potential to adversely impact on waterways and/or sensitive receiving environments (as that term is defined in Brisbane City Plan 2000) if such chemicals or other hazardous materials are discharged during a flood event;**

5. **With respect to the development approval (if any), what conditions were included with respect to protection from impacts of flooding (regardless of its source).**

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

  
Rory John Kelly

  
Witness

6. I have been unable to find on Council's file an approval to authorise use of the Subject Land for the "Dulux Powder Coating factory".
7. It appears that the Subject Land was approved for paint and varnish manufacturing on 14 June 1956. A copy of the memorandum signed by J Hanisch, Acting Team Leader, Development Assessment South, indicating the existence of this approval is Attachment **RJK-56**. Attachment **RJK-57** is an extract from Council's Building Survey and Record Cards indicating that an approval for paint and varnish manufacturing was granted in 1956.
8. The oldest Council file I have been able to locate for the Subject Land is dated 10 September 1964 (**1964 Approval**). Under the 1964 Approval, Council permitted Balm Paints Limited (makers of Dulux) to erect buildings on the Subject Land for the purpose of "Manufacturing Paints and the Storage of raw materials, and for Administration Offices and Staff Amenities". A copy of the 1964 Approval is Attachment **RJK-58**.
9. The 1964 approval relevantly provided the following conditions in relation to flooding:
  - (c) *If any fill is to be placed on this land, such fill is to be in accordance with the requirements of the Chief Engineer and Manager, Department of Works, as depicted in red on the print of drawing No. GV-24257/19.*
  - (d) *The floor level of proposed buildings to be of the minimum of R.L.21.5."*
10. Drawing No. GV-24257/19 (included with Attachment **RJK-58**) contains handwritten notations indicating the heel of filling is to be above the "interim limit of reclamation line" which is later described on approved plans as a "flood regulation line". The area available for development is less than the total site area shown on the plan. This appears to indicate that no development is to occur within Stable Swamp Creek corridor.
11. The reference to R.L. 21.5 is based on Council datum and empirical units and not the current Australian Height Datum (AHD) based on the metric system. I am informed by Council officers that R.L.21.5 is equivalent to 5.4 metres AHD.
12. Council's file indicates that other subsequent approvals were issued in relation to extensions of this use on the Subject Land, but none of these approvals appear to relate to a powder coating factory.
13. Council records indicate (derived from flood studies carried out) that the Subject Land is affected by flooding from three sources: the Brisbane River, Oxley Creek and Stable Swamp Creek. The proximity to the Subject Land from each flood source is only partially relevant in determining the highest source of flooding.

  
Rory John Kelly

  
Witness

All sources of flooding are relevant at the time the development application is lodged, to ensure no adverse impacts upstream or down stream of the site occur.

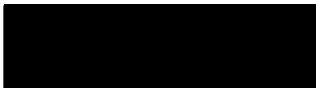
14. In general, in assessing a development application for industrial development on the Subject Land, the location of the building footprint and height of floor levels would be guided by the height of flooding from Oxley and Stable Swamp Creeks, and the findings of a risk assessment that takes into account the height of flooding from the Brisbane River.
15. On 23 May 1997, an environmental authority was issued under the *Environmental Protection Act 1994* by the Delegate of Administering Authority, the Environmental Protection Agency in relation to part of the Subject Land (Lot 1 on RP223672). This environmental authority was for ERA 10 - "Paint Manufacture - manufacturing paint in works having a design capacity of more than 10 000 litres per year". A copy of the environmental authority is Attachment **RJK-59**.
16. Conditions of that approval are a matter for the then Environmental Protection Agency..

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

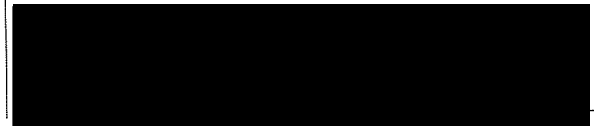
**Dated 19 September 2011**

**Signed and declared** by Rory John Kelly at  
Brisbane in the State of Queensland  
this 19 day of September 2011

Before me:



Signature of person before whom the declaration is made



Signature of declarant

Christine Jones (Legal Practitioner)  
Full name and qualification of person before whom  
the declaration is made