

Fifth Statement of Rory John Kelly

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

- A. Attachment **RJK-60** 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 existing service station at 61 Ashover 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 and experience are set out in my First Statement dated 31 August 2011 (**First Statement**).

General observations

2. I joined the Development Assessment South Team in February 1988, and was not involved in the assessment of the original development for the Subject Land, but was involved in the June 2004 development approval for Extensions to Industry (Storage of Flammable and Combustible Liquids) referred to in paragraph 13 below.

[REDACTED]
Rory John Kelly

[REDACTED]
Witness

3. 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.

Response to the Notice

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

4. Based on Council's records, 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;

5. Council's records indicate that the Subject Land was not 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 a service station (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).

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

Rory John Kelly

Witness

7. I have been unable to find on Council's file a development approval to authorise use of the Subject Land for a "service station" or a like use.
8. Based on my review of Council files, it appears that the first approval for the Subject Land to erect and use buildings for the purpose of truck depot, storehouses and a hazardous industry was given on 12 June 1986. I understand that at this time the site included additional land having frontage to Ipswich Road which has been subsequently subdivided.
9. I have found on Council's file a decision of the Council Registration Board to grant consent to an application to erect and use buildings for the purpose of truck depot, storehouses and a hazardous industry dated 12 June 1986. The Council Registration Board's decision states as follows:

"That the proposal be deemed to be not for a prohibited purpose but for a permissible purpose."

10. The Council Registration Board decision provides that the consent is subject to the conditions listed in the decision and the Planning Ordinances of the Town Plan for the City of Brisbane. A copy of the Council Registration Board decision is Attachment **RJK-61**.
11. The file indicates that a letter dated 13 June 1986 was sent by Council to Prangley Crofts and Partners, the applicant for the application referred to in paragraph 9 of this Statement (**Applicant**) confirming the decision of the Council Registration Board to grant consent. A copy of the letter to Prangley Crofts and Partners is Attachment **RJK-62**.
12. In relation to the assessment of the application, a note from the Manager of Department of Works to The Manager of the Department of Development and Planning titled "Re: Drainage and Filling Requirements" dated 2 April 1986 relevantly provides the following:

"SITE CHARACTERISTICS

...

Information on creek flooding is contained on the attached sheet.

The site is not affected by any Interim Regulation Line.

...

RECOMMENDATION CONDITIONS AND REQUIREMENTS

The applicant to be advised as follows:-

- *relevant flooding information per the attached sheet.*


Rory John Kelly


Witness

...

- Any stormwater plans required for approval of the Manager, Department of Works should be submitted directly to the Engineer for Design, Works on the 11th Floor of the Brisbane Administration Centre, quoting the Council file reference.

...

(1) Prior to building work commencing, the applicant/s to lodge adequate drainage plans, (generally in accordance with Standard Plan W6322/1B), showing the manner in which it is intended to deal with the roof and surface drainage and point of discharge of the site and obtain approval for such plans from The Manager, Department of Works.

(2) The applicant/s to preserve adjacent properties from ponding of stormwater or nuisance from discharge of stormwater off the site.

(3) The above stormwater drainage works are to be carried out to the satisfaction of The Manager, Department of Works prior to the commencement of use and thereafter maintained at all times to that officers satisfaction.."

A copy of the note is Attachment **RJK-63**.

13. Based on my review of Council's files, I have identified a number of subsequent approvals which relate to extensions to the use originally approved and building works the most recent of which was approved on 4 June 2004.
14. I cannot find on Council's file a development approval for a material change of use for an environmentally relevant activity (ERA).
15. I understand, however cannot formally confirm, that the Department of Environment and Resource Management (**DERM**) has issued an approval for an ERA for the Subject Land.
16. Council's file contains a Flammable and Combustible Liquids Licence, which was issued to Caltex Petroleum Services Pty Ltd on 2 September 2011. A copy of the Licence is Attachment **RJK-64**.


Rory John Kelly


Witness

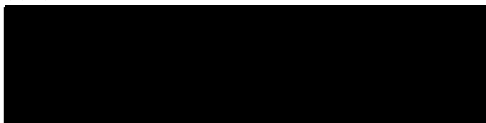
17. The proximity of a site to a waterway corridor is partially relevant as it informs the highest potential source of flooding. I do not know whether the original approval considered the source of flooding, however I note that the flood report at RJK-63 that was considered as part of the 1986 assessment showed that the Subject Land was above the Q100 River flood.

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

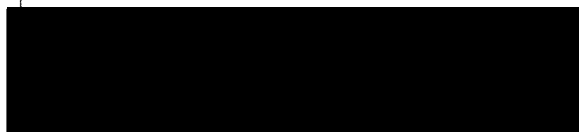
Dated 19 September 2011

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

KATHLEEN IRENE PACEY

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