

QUEENSLAND FLOODS COMMISSION OF INQUIRY

STATEMENT OF MARK WILLIAM WATT

I, Mark William Watt, Chief Executive Officer of Paroo Shire Council make the following statement under oath as required by the Commissioner of Inquiry in the requirement dated 1 September 2011 (Ref: Doc 1670733):

The current arrangements, if any, for levee bank regulation within the Paroo Shire

- 1. Council currently has two heads of power to regulate levee banks, the first being Local Law No.19 Levee Banks (adopted on 20 December 1986 – now attached as Attachment 1). Despite having a Levee Bank Local Law, I am not aware of any applications being received or processed for approval under this Local Law within the last three years. Further, I am not aware of any applications prior to this period and would take the view that Council has not used the Local Law to regulate levee banks given the outdated provisions and the fact that a superseding regulatory framework now exists (discussed below).
- 2. The second head of power for the regulation of levee banks is contained in Council's Planning Scheme 2006 (The Scheme). The Scheme requires that a development permit for operational work (as defined by the Sustainable Planning Act 2009) would be required as prescribed in the provisions below that have been extracted from The Scheme. Excavation or filling is the term that would be applied to the development application for a levee bank.

Type	Assessment Category
Excavation or filling	<p>Self-assessable where:</p> <p>(1) less than 1 metre above or below natural ground level and involving less than 100m<sup>3</sup> of material; or</p> <p>(2) 1 metre or more above natural ground level and involving less than 50m<sup>3</sup> or material;</p> <p>and where complying with the applicable acceptable solutions in the relevant 'zone' code.</p> <p>Code Assessment otherwise, or if any applicable solution is not met.</p>

Whilst the above provisions from The Scheme involve the placing and/or removal of earth material, such applications and approvals are not intended to cover flooding issues or contain any modelling to assess likely impacts. Council does not have flood studies or modelling with which to assess an application and base a decision. In fact, it is often the case that Council's engineering staff are limited in their ability to provide engineering expertise to the likely impacts of levee banks, given a lack of such information.

QFCI  
 Exhibit Number: 977  
 Date: 11/11/11  
 JM

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Deponent

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Solicitor / Justice of the Peace / Commissioner for Declarations



**The consultation process, if any, between Council and landowners in relation to levee bank construction within the Paroo Shire**

3. No formal consultation process exists between Council and landowners regarding levee bank construction, other than what is prescribed in Local Law No. 19 – Levee Banks.

**Considerations taken into account by the Paroo Shire (or relevant regulating body) regarding the upstream and downstream effects of levee bank construction on waterways**

4. In the Paroo Shire, levee bank construction on or adjacent to waterways is generally conducted to prevent water inundation of houses. Because there are a limited number of levee banks constructed on rural homesteads in remote locations, no significant issues or considerations have arisen.
5. Naturally, the construction of a levee bank will cause some impact on a waterway; however, because the area is so flat, no inconvenience is caused to other land.

**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 Paroo Shire**

6. Council has no ongoing involvement with State government departments or agencies regarding technical or other advice pertaining to levee banks.

**The opinion of Paroo Shire on the regulation of levee banks as to the following matters:**

- a) what is the most appropriate level of government or other body to regulate levee banks;
  - b) on what basis should levee banks be regulated (i.e. catchment, local government area, other);
  - c) should it be mandatory for local governments to regulate levee banks;
  - d) how much consultation with affected members of the public is appropriate and practical for proposed levee banks;
  - e) what sort of technical, scientific or other advice should be obtained before levee banks are approved, and from whom;
  - f) what sort of studies or assessment should be done before levee banks are approved, and by whom should they be completed;
  - g) any improvements, that could be made to the process of regulating levee banks in the Paroo Shire if assistance could be provided from other relevant organisations
7. The opinion of Paroo Shire is that the most appropriate level of government to regulate levee banks is the State government, through the Department of Environment and Resource Management (DERM). This opinion is expressed on the basis that Paroo Shire does not have the resources or technical ability to properly assess levee banks. Paroo Shire does not have expert and qualified staff to assess levee banks, nor does it possess flood studies or flood modelling information to properly assess and decide approvals, particularly relating to levee banks that may cause impacts on upstream or downstream land

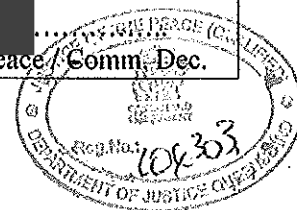


8. Levee banks should be regulated by catchment, perhaps in conjunction with the relevant Resource Operation Plan (ROP) under the *Water Act 2000* for the relevant catchment area. Under this scenario, the entire river system could be better managed in terms of flow impacts, off stream storage management and riverine protection issues.
9. Council's view is that it should **not** be mandatory for local government to regulate levee banks. As stated previously, Paroo Shire does not have the expertise or resources to be able to properly manage levee banks, particularly involving flood impacts.
10. It is the opinion of Paroo Shire that members of the public should be properly consulted, in a similar way as is achieved through public notification of development applications requiring impact assessment under the *Sustainable Planning Act 2009*, to ensure potential impacts are mitigated where possible.
11. Paroo Shire is not aware of any illegally constructed levee banks and generally may only become aware of such circumstances where a complaint is forthcoming, perhaps from a person who is impacted. Paroo Shire does not have the resources to undertake a regulatory enforcement process for levee banks and should one be established it would be difficult to estimate the actual number of levee banks constructed without approval (if any at all). Impacts from levee banks or other excavation and filling activities only generally arise because such activities are adjacent to a river system. Most of the shire is flat terrain and the construction of levee banks is not problematic.
12. Improvements to the existing system could come about with expert management and regulation with the involvement of the State government, through DERM, as Council does not have the resources or expertise to approve and regulate levee banks.

Sworn by Mark William Watt at Cunnamulla this 20th day of September 2011 in the presence of:

.....  
 Deponent

.....  
 -Solemn / Justice of the Peace / Comm. Dec.



**PAROO SHIRE COUNCIL  
LOCAL LAW NO. 19**

**LEVEE BANKS**

*Application for Permit*

1. A person intending to construct or cause to be constructed on his land, a levee bank as defined by subsection 24 of section 47 of the *Local Government Act* 1936-1985 shall before such construction is commenced, make application to the Council in the Form set out in Schedule 1 to this Chapter for a permit to construct such levee bank.

*Proof of Ownership of Land*

2. The applicant shall furnish satisfactory evidence to the Council of his ownership of the land upon which such levee bank is to be constructed.

*Application Fee and Expenses*

3. The applicant shall pay to the Council at the time of making the application, an application fee of such amount as the Council shall fix by resolution.

*Application to be Advertised*

4. (i) Upon receipt of an application for a permit under the provisions of this Chapter the Council shall, before considering such application, notify by advertisement published twice in a newspaper that such application has been received and that the Council will receive objection thereto.  
(ii) The Clerk shall 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.  
(iii) The application shall 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 of the receipt of objections there against.  
(iv) The form of advertisements shall be in accordance with Schedule 2 of this Chapter.

*Objections*

5. (i) A person or persons being the owners or occupiers of land likely to be affected by the work proposed to be constructed on the land described in the application and the advertisement may within a period of twenty-one days after the date of the last publication of such advertisement, object to the granting of the permit applied for.  
(ii) The objection shall be in writing setting out detailed reasons for the objection and

the manner in which the objector's property will be affected.

#### *Determination of Application*

6. The Council shall not determine an application until it is in receipt of all relevant information including a report from the Shire Engineer.

#### *Issue of Permit and Permit Plan-Requirements of Permit*

7. (i) Where the Council approves an application the permit to undertake the work shall have attached thereto a copy of the final plan on which the permit was issued and the permit may be subject to such conditions as the Council may impose.
- (ii) The work authorised under such permit shall be completed within six months after the date of issue of the permit otherwise such permit shall be deemed to have lapsed. The Council may if requested so to do by the permittee extend the period for completion of such work provided such request is made to the Council before the expiration of such permit.
- (iii) The permittee shall, 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.
- (iv) The permittee shall at all times throughout the currency of the permit repair and maintain the permit works to the satisfaction of the Shire Engineer.
- (v) If and when required by the Council the permittee shall, on expiration of the permit, carry out at his own cost in connection with the work, any work which the Council may consider necessary.
- (vi) The permit shall be deemed to be held by and shall operate for the benefit of the lawful owner for the time being of the land whereon the work is constructed or proposed to be constructed.

It shall be incumbent upon the permittee or his personal representative (and/or his successor in interest) to notify the Council immediately of any change or divestment of interest in the land whereon the work is constructed or proposed to be constructed.

#### *Application for New Permit on Expiry of Original Permit*

8. A permit, granted by Council pursuant to the provisions of this Chapter shall expire on the date shown thereon or on the date of divestment of interest in the subject land and if the permittee or his successor in interest of the subject land desires to apply for a fresh permit he shall make application in accordance with the requirements of this Chapter.

The Council upon receipt of such application, shall comply with the provisions of these by-laws and the Local Government Act in similar manner as for an original permit.

*Illegal Levee Bank*

9. (i) The Council may after the coming into force of this Chapter order the removal of all works carried out without a permit having been granted by the Council and the order of the Council shall be complied with within the time set out in such order.
- (ii) If the order is not complied with as directed by the Council, the Council, by its officers and employees may enter upon the subject land and remove the unauthorised work.
- (iii) The Council, its officers or employees shall not be liable in damages for trespass or damage to the subject land or crops growing thereon.

*Schedule 1*

(This application is required to be submitted in duplicate)

PAROO SHIRE COUNCIL

APPLICATION FOR PERMIT GRANTED UNDER THE PROVISIONS OF SUBSECTION  
(24) OF SECTION 47 OF THE LOCAL GOVERNMENT ACT 1936-1985

This application is required to be made by the registered owner of freehold land or the registered lessee of Crown leasehold land.

of \_\_\_\_\_, in the Shire of Paroo, being the owner/lessee of land situated as hereunder described and shown on the accompanying plan and upon which land is proposed to be constructed the work hereunder described, do hereby apply for a permit in respect of the said work.

- (1) Name of applicant:
- (2) Postal address:
- (3) Location of work (see also 10) – county \_\_\_\_\_, parish \_\_\_\_\_, Real Property Office description \_\_\_\_\_, area \_\_\_\_\_
- (4) Nature of Works:
- (5) Purpose of Work:
- (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 on 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 at top                    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) Plan of property, strictly to scale of 1:10,000 on space provided herein, showing position of streams (if any) direction of flow of all water, location of work, property boundaries and typical cross sections of work.
- (11) Plan (to scale) of proposed levee bank showing proposed construction details.

I hereby certify that to the best of my knowledge and belief the information contained herein is true and correct and I enclose herewith the sum of                    dollars                    cents being the required application fee.

Date:

Signature of Applicant

*Information for Applicants under Subsection (24) of Section 47 of  
the Local Government Act 1936 – 1985*

- (i) 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 Council and advise of the present position of the transaction.
- (ii) In terms of the Local Government Act 1936 – 1985, applications for permits are required to be advertised in accordance with the Council's by-laws and even if no objections are received or any objections are received and dismissed there is no guarantee that the permit applied for will be granted.
- (iii) The applicant is warned against taking any action to construct any work until a permit from the Council has been received.
- (iv) 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

*Schedule 2*

FORM OF ADVERTISEMENT OF APPLICATION FOR A PERMIT UNDER  
SUBSECTION (24) OF SECTION 47 OF THE LOCAL GOVERNMENT ACT 1936 – 1985.

PAROO SHIRE COUNCIL

Notice is hereby given that the undermentioned application for a permit under the provision of

subsection (24) of section 47 of the *Local Government Act* 1936 – 1985 has been made to the Paroo Shire Council.

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 being the owner of occupier of land likely to be affected by the proposed work may, in writing signed by him and addressed to the Shire Clerk, Paroo Shire Council, object to such application being granted and submit in writing to the Shire Clerk the grounds of such objection.

The application and plan are open to inspection at the Council's Office.

The            day of            19    , has been appointed as the last day for the receipt of objections.

Date:

Shire Clerk.