Statement of Witness

Queensland Floods Commission of Inquiry

Name of Witness	Larry Stephen BORG
Date of Birth	[redacted]
Address and contact details	[redacted] Murdochs Road, Moore Park, Bundaberg. [redacted]
Occupation	Self Employed Farmer
Officer taking statement	Det Insp Mark Ainsworth
Date taken	19/8/11

Larry Stephen BORG states;

1. I am a married man, [redacted] years of age and I reside with my wife and family at [redacted] Murdochs Road, Moore Park, Bundaberg. I am a cane farmer by occupation and sub-contract to Bundaberg Sugar providing them with quantities of sugar cane for processing. My wife has resided at this address for the past 37 years. During this 37 years she has never seen as much water sit for so long on our property, this includes periods when we have been affected by cyclones. I have lived on this property since 1992. I am a member of the Moore Park Drainage Scheme Committee. I have been attending these meetings since 1999 and on the 13th August 2008 I was elected an executive committee member. My role as a committee member requires me to attend meetings as required and to attend to any drainage problems in the area representing farmers on the eastern side of the Moore Park drain. At these meetings we try to resolve any drainage issues that are bought up in our designated area. These meetings also have council representation which is Mr Peter Jensen (Group Manager Roads & Drainage), who is also the minute taker. The issue of the drainage problems in Moore Park has been raised at these committee meetings, but to no avail.

QFCI
Date: 11/10/11
Exhibit Number: 760
JM

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2. My wife and I own 1 property ([redacted] which is 38.05 hectares of land) and we operate my wife's father's farm [redacted] ([redacted] on [redacted] which is 46.46 hectares of land) both utilised for Sugar Cane farming. Both lots are part of the North Kolan Parish and fall under the governance of the Bundaberg Regional Council.

3. Prior to Council Amalgamation in 2008 our local council was the Burnett Shire Council. Both farming properties were well established before the 1950's by the Young Family who owned Fairymead Sugar Company dating back to the 1880's. Both properties are zoned as Rural. We also have the Moore Park State Primary School situated next door to the first property. My father in law [redacted] owns [redacted] on [redacted] and Lot 6 [redacted] - 31.93 hectares on the Eastern side of Murdochs Road which is jointly owned with his brother [redacted]. Lot [redacted] was originally purchased by my father in law and his brother for cane growing. Since early 2009 my father in laws land (Lot [redacted]) has become an inland lake, because the water cannot get away and now the State Government has classified it as Wetlands under the new state policy. My father in laws land is now basically wetlands with an extensive non flowing lake now occupying at least 80% of his land.

I now produce a series of photos of my father in laws property which is now basically a wetlands. (Annexure 1a)

Witness Signature..[redacted]..... Signature of o[redacted]

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4. Many years ago the cane farmers in the area managed their own drainage systems around their properties with the consent of council, to ensure flooding to their crops was minimised. These drainage systems also provided water for irrigation of crops by the farmers and were maintained by individual farmers to ensure the systems worked well. However in 1992/93 Council took over the management of these drains, resulting in poor management practices and clogging of these drains. Council also saw fit to charge cane growers fees on our rates notices to cover maintenance of these drains. These fees are listed in the rates notice as M/Park Drainage Charge and cost my wife and I $12.50 per half year.

I now produce a copy of a recent rates notice indicating the drainage charges. (Annexure A)

5. In 2006/7 we approached Burnett Shire Council regarding a main drain on the Western Side of Moore Park with similar issues like this current drainage problem. The Engineer was Peter Jensen and Councillor Trevor Strong both would not listen to the farmers. In 2008 we engaged Canegrowers Bundaberg. Once we involved Canegrowers Bundaberg and our new Council Representative, Councillor Bush, Peter Jensen's decision was overturned and the drain was cleaned and upgraded and it's now in my opinion one of the best drainage systems in Bundaberg.

6. Moore Park is a small beach town community with over 3000 residents. The area is a mixture of farms, residential developments some new and some old and some still being developed, a school, parklands, recreational and

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sporting facilities. There are also several commercial properties in the vicinity and a new shopping centre which is still in construction stage.

7. In the past 15 years the area has grown significantly however necessary infrastructure to accommodate such growth has been non existent. This is particularly so with regards to drainage. Most of Moore Park is built on sand and Council are of the belief that due to the base being sand, the water will disperse very quickly.

8. My family and the Moore Park Community have been pleading with Council for over 2 years to have the main and only drainage system of the Moore Park township cleaned and have the flood gates which were put there in the early 1960's upgraded, however Council have not upgraded the pipes or flood gates. This main drainage system has not been maintained by council and they have allowed people to subdivide allotments which have interfered with the drainage system, council has easements with each resident that resides along this drainage system. Two of the developers were council employees. On 17th August, 2010 [redacted] from the Bundaberg Canegrowers Association, my wife and myself met with Councillors Bush, Honor and Peter Jensen a Senior Engineer from the Council. As part of this meeting we walked all persons through all the blocked areas of the drain highlighting the issues. At the meeting both Councillors agreed that the drains were all blocked and needed clearing. I forwarded an email to Peter Jensen on 18th August, 2010 confirming the action items from the meeting.

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I now produce a copy of an email dated 18th August, 2010 forwarded to Peter Jensen recording outcomes of meeting on 17th August, 2010. (AnnexureB.)

9. As a result of inaction after this meeting, my wife and I then wrote to the Mayor and Councillors of the Bundaberg Regional Council on 15th September, 2010 requesting action to be taken. This letter highlighted previous Council action with regards to the cleaning of other drains in the area.

I now produce a 2 page letter to the Bundaberg Regional Council dated 15thSeptember, 2010 (Annexure C)

10. On 17th September, 2010 my wife forwarded an email to Mr. Rob Messenger the Local member for Burnett regarding our issues with Council and cleaning of drains. On the same date Messenger responded to my email offering advice.

I now produce a copy of a 3 page email containing conversations between my wife and Rob Messenger (AnnexureD)

11. On 13th August, 2008 I attended the Committee Meeting of the Moore Park Drainage Scheme Committee meeting at a farmer's property at 150 Lindemans Road, Moore Park. At this meeting I was elected as a member of the Executive Committee for the Moore Park Drainage Scheme Committee. At the same meeting the issues of drainage clearing was recorded in the minutes outlining outcomes and further needs relating to drainage.

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I now produce a copy of the minutes of the Moore Park Drainage Scheme dated 13th August, 2008. (Annexure E).

12.On the 22nd September, 2010 a meeting was organised by the MP Rob Messenger at Bundaberg Regional Council Chambers to discuss our drainage issues. In attendance there was Wayne Cunningham, [redacted] myself.

13.On 12th October, 2010 another meeting was organised by the CEO of the Bundaberg Regional Council involving myself and two of Councils Works Supervisors Mr Allan Griffiths and Mr Allan Samuels. [redacted] and [redacted] also attended this meeting. This meeting took place at 3pm and commenced at Palm View Drive near the property of Council employee Lindsay Robinson. At this location these people were shown the overgrowth and impediment of land belonging to Robinson impacting on the drainage system making it non-flowing. Both Griffiths and Samuels advised that the owner of the property that needed to be cleaned, would cause trouble and resistance,(at that time I did not know who this person was, I also didn't know that this person was a council employee). During this meeting Robinson (the owner of the property in question) arrived in his Council uniform and told Council employees they were not allowed access onto his property to clean the drain (which is a breach of his Easement Requirements).

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14. The Robinson property runs along the Council easement/drain on Palm View Drive, Moore Park and the owner, Lindsay Robinson filled and interfered with the drainage system so he could subdivide the land for housing. This occurred around 2007/08 after he dumped loads of sand and fill on the rear of his property impeding on the Council easement/drain. My father in law had witnessed contractors filling the property with fill and he also saw plastic on the property which he assumes was to be used to hold back the fill from the drain. This fill was used to raise the property and expand on the use of his land. This person is partners with another long term council employee, [redacted] who was head of the works department of the Burnett Shire Council. I have pictures of the area I am referring to and also have conducted a title search of their property. Council have attempted to clear some of the drain behind this residence however they have not been permitted to enter Robinsons land in order to clear the remainder of the drainage system.

I now produce a title search of Robinson's property I am referring to. (Annexure F)

I now produce photographs of the Council easement impacted by fill at the rear of Robinson's property. (Annexure G)

15. On 20th October, 2010, I wrote another letter to Mayor Pyefinch of the Bundaberg Regional Council regarding the drainage problems and issues with Mr. Robinson and his apparent conflict of interest.

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As a result of this letter and a meeting of the Moore Park residents Association on 24th October, 2010 I received an email from [redacted] the Director for Infrastructure of the Bundaberg Regional Council, dated 29th October, 2010. This letter provided some information as to Councils plans with regards to the Palm View Drive issue.

I now produce a two page email from Wayne Cunningham relating to issues of drainage at Palm View Drive. (Annexure H)

16.On 9th November, 2010 I received an email from Cunningham advising that notices have been issued to property owners advising them that Council are proposing to enter their properties to carry out a survey. The purpose of that survey is to determine what work could be done to rectify the drainage problem. On 19th November, 2010, [redacted] of the Canegrowers Association received an email from Council Engineer [redacted] advising of the outcome of the survey at Palm View Drive, Moore Park.

I now produce a copy of the email from Dwayne Honor in relation to the outcome of the survey of Palm View Drive. (Annexure I)

17.To date the drain behind Robinson's property has not been cleared.

I now produce photos of this drain behind Robinson's residence. (Annexure J)

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18.On 20th December, 2010 [redacted] forwarded an email to [redacted] with a copy to my wife. This email is extensive and provides a summary of Council actions to date.

I now produce a copy of the email from Dwayne Honor to Messenger re the drainage issues. (Annexure K)

19.As our frustrations grew with these issues and little to no evidence of clearing of drains, on 4th January, 2011 my wife and I sent a detailed email to [redacted] providing a summary of the whole drainage problems and recommendations of what needs to be done to rectify the issues.

I now attach a copy of a 3 page email outlining the summary of events in relation to the drainage issues.(Annexure L)

20.The 2010/2011 floods caused flooding to our properties. I firmly believe this flooding was caused by poor drainage as discussed in the previous paragraph. More recent pleas with Council going back to 2009 to clean and maintain the main drainage system in the Moore Park Township area has been ignored. In my opinion if this drainage system had been cleaned we would not have experienced the flooding or loss of crops that we did during this recent flood event. Also effective draining would allow for the movement of stagnate water covering [redacted] & [redacted] property and surrounding areas. This is of a real concern largely due to the close proximity of the Moore Park School and sporting fields.

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21. Flooding like the 2010/2011 flooding has never occurred on our properties. The flooding of our properties was caused by water not being able to get away from the land that runs directly opposite our properties. This water has previously run out into the Council Drainage Easement, however with the current blockages all the way along the Council Drainage Easement and Bundaberg's Sugar Land this did not occur on this occasion. These blockages have occurred as a result of over grown vegetation clogging them up, the growth of mangroves on waterways, ineffective drainage systems and the unlawful blocking of drains/easements by property owners with the knowledge of council. As a result, the water level across the road from our properties was higher which in turn raised our watertable and water could not escape, resulting in flooding to at least 60% of our properties. Cane growing relies upon water for growth, however too much water will kill off the growth. We operate on the premise that the water table needs to be 50 centremetres below the ground level.

22. The flood level on our properties was over a metre high and caused us to lose approximately 50 acres of cane and soybean crops equating to in excess of $150 000 loss of income for the year. In the time my family have been operating these farms we have never experienced such issues and loss before. At the 30th May 2011 meeting located at the Bundaberg Regional Council Chambers, Councillors and staff showed no remorse towards our loses and actually laughed about our losses and said is that all. The drainage system was built after Moore Park was developed into farming land and housing, for the purpose of draining this area during wet seasons and cyclones.

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If the area receives heavy downpours of rainfall, we are in constant risk of flooding to our crops and with the pending wet season and no change to the drainage system I am extremely fearful of the consequences to my property and livelihood. I am not the only person in the area with these concerns.

23. We have been in continuous discussions with Council and our Local Member, Rob Messenger regarding this problem, to no avail. We have had independent quotations done (1/3/2011 & 27/4/2011) to solve this problem and to upgrade this drainage system to accommodate growth for the next 20 years. These quotes amounted to $70 000.

24. When the drainage system was first installed around the 1960's there were approximately 300 residents in Moore Park, now there are approximately 3000 residents and this number continues to grow. The same drainage system is used by all residents of the Moore Park Township and has never been upgraded to meet increased demand. The actual drainage system that affects our properties is about 7.5kms in length and crosses through not only [redacted] property but other properties including a parcel of land owned by Bundaberg Sugar. This land is also affected by stagnate water unable to flow through a blocked drainage system. The drain runs into Moore Park Creek which is tidal, however the drain/creek is so severely blocked the tidal water height does not alter in most places of the drain.

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25. So far Council has advised the community they have spent about $200 000 in conducting studies and still nothing has been done to prevent flooding from happening. I am concerned that the next wet/cyclone season is approaching quickly and nothing has been done to rectify the problem.

26. Over a period of time we have also had discussions with the Department of Resource Management (DERM) ([redacted]) and the Department of Fisheries ([redacted]. We have personally taken them for a walk through the affected properties and problem areas. According to the DERM representative he stated that Council needs to submit an application for works. He said the drain was classed as an abandoned system because council has not maintained or serviced this system for 20 years according to DERM records. Council to date is still ignoring the problem; however they are cleaning drains outside this area but not this main drainage system.

27. There have been numerous discussions held with the Bundaberg Regional Council, Rob Messenger, DERM Bundaberg, DERM Gympie and DERM Brisbane the Moore Park Community Association and the Moore Park Drainage Scheme Committee. The Bundaberg Cane Growers Association has also supported cane growers like us with this issue, however nothing positive has arisen from these discussions.

28. Council has allowed a number of residents who have properties adjoining the easement run small pipes from their properties into the easement to allow water runoff from their property to the easement.

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Other residents have built road crossings over the easement again using smaller pipes which interferes with the water flow of the easement. Another resident, Ian Pickering, has built a large pond incorporating this drainage easement on his land. This pond is about the size of a dam. I have conducted a title search on this property. It is my belief that Peter Jensen, the engineer at the Burnett Shire Council has approved the above mentioned crossings.

I now produce a title search on the property owned by Ian Pickering. (Annexure M)

29. Peter Jensen is the engineer in charge of the drainage system and has been the same engineer through the two previous councils. He is well aware of the issues with the current drainage system and has been involved in discussions regarding the drainage in this area for the past ten and a half years.

30. When my father-in-law purchased lot 8 in April, 1973 it was about two months after the area had received 567.4mm of rainfall, there was no problems with flooding at that time. There was a number of working drainage systems in the area at that time. In December, 1973 and January, 1974 the area received a further 1108.90mm of rainfall and again no flooding to the farms occurred due to the working drainage system. Between December, 1991 and March, 1992 the area received 1135.6mm of rain with no flooding to the farms again.

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Between December, 2010 and January, 2011 we received 752.2mm of rainfall which caused considerable flooding to the area including both farms and [redacted] property, which is situated on the opposite side of Murdochs Road, from our farms.

31. Over the past 10 – 15 years council has approved developments from north to northwest of our properties blocking off some of these drainage systems and now directing rain water into the land opposite ours owned by [redacted]. The majority of these developments have occurred whilst we were in drought. When the drought broke, my father in law noticed issues with the drainage system and this is when we initially contacted council.

32. We have contacted the previous two owners of our property Lot 6 on RP805358 who advised us that they never experienced any flooding on that property when they owned the same. ~~Have obtained a statutory declaration from them regarding these comments.~~ [redacted]

I now produce written statutory declaration [redacted] the previous owners of Lot 6 (Annexure W).

33. During the 2010/11 floods, a number of the streets of Moore Park were under water, residents backyards were under water and there were children swimming in this water whilst this water was higher than the septics. In this community there is no sewerage, only septic tanks.

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34. If the drainage system is cleaned up and restored to a proper operational level, I believe the community will not have to worry about long term flooding as experienced this year. As we know from history of this area of cyclones and wet seasons, if we receive another major wet season, as predicted a lot of families will have more severe flooding to tolerate leading to loss of property and livelihoods.

35. There is not in my opinion an engineer in the Council that has the background knowledge of drainage in the Moore Park area like the farmers do. The Councils attitude towards Moore Park is that this community should never have been developed.

36. On a number of occasions Council Engineer Dwayne Honor told us and the Moore Park Community there is only a 3mm fall in the Moore Park area and water will not flow, we were then told by council surveyors that there is actually over a metre fall in the Moore Park area. We also have a letter from Council engineer Peter Jensen advising that there is a metre fall in the area.

I now produce a copy of this letter under the hand of Peter Jensen. (Annexure O)

37. Since the floods of 2010/2011 we have had continuous discussions with the Bundaberg Regional Council and local member Rob Messenger regarding the problem of drainage in the Moore Park area.

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We have also raised the issue with DERM Bundaberg, DERM Gympie and DERM Brisbane, the Moore Park Community Association and the Moore Park Drainage Scheme Committee.

We have also involved our local Canegrowers Association because as individuals, even though we have been farming these properties since 1973 and we have statements from farmers who have been farming this area since the 1950's, Council has said in their words at public meetings; 'You don't believe what any of the old farmers say around here.'

RECOMMENDATIONS:

38.I have a number of recommendations I believe need consideration to assist in coping with flooding in the Moore Park area. These are;

- Clean the drainage system to its original status and upgrade the flood gates so it can handle all of the new development in this community. If this does not happen soon, prior to the next wet season there will be a lot of houses and properties that will be inundated with water, severe crop damage and roads blocked off.
- The blockage in the drainage system extends a distance of approximately only 900 metres which would allow the flow of the water in the drainage system. This combined with the upgrading of flood gates and upgrading of residents driveways/crossings that have been built through drainage/easements would assist in the flow of water and prevent future flooding in the area.
- Council should also unblock and add a set of flood gates at the northern end of Moore Park which is another issue they are ignoring.

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They advise that this issue is one for the State Government as the area is in the National Park. Approximately 700 metres of this drain is blocked from Oyster Creek. Before Council approved any development to the area this drainage system was open and tidal, never a problem and now they have dammed off Moore Park from both ends.

- To date, the last time Moore Park experienced a cyclone was in 1992 before all the recent growth in the area. If we receive another wet season or cyclone a lot of families will have more than water over their septics and in their yards to worry about.
- There isn't an Engineer in Council that has the background knowledge of the Moore Park Drainage system like the farmers do. I believe Council needs to sit down with the farmers and to actually listen to them and the Moore Park Residents Association and resolve these drainage issues prior to the next wet season which is approaching rapidly.
- Whilst this drainage issue is ignored in the area and the large volumes of water remain stagnate, Council will face health issues in the Moore Park Community with regards to mosquito infestation, stench and a road system that will require regular repair due to the new high water table.
- Towards the end of the last term (2010) of school, the Moore Park State School Principal cancelled outdoor functions due to the infestation of mosquitoes brought about by stagnate water on properties and drains in the area. Children could not go outdoors without being bitten alive by mosquitoes.

39. I have forwarded a submission to the Queensland Floods Commission of Inquiry in relation to my concerns.

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I now produce a copy of my submission to the Qld Floods Commission of Inquiry.(Annexure P)

[redacted]

L.S.BORG

Justices Act 1886

I acknowledge by virtue of section 110A(5)(c)(ii) of the Justices Act 1886 that:

(1) This written statement by me dated 19/8/11..... and contained in the pages numbered 1 to .18.... is true to the best of my knowledge and belief; and

(2) I make this statement knowing that, if it were admitted as evidence, I may be liable to prosecution for stating in it anything that I know is false.

.....[redacted].....Signature

Signed at Burpengary.....this...29th.....day of.....September.....2011

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Recruit You Employment Service

From: [redacted]
Date: Thursday, 18 November 2010 3:56 PM
To: [redacted]
Attach: Lagoon.JPG
Subject: Moore Park Beach drainage easement

We spoke on the phone earlier today. Since then I have had a look at some observation bore records I obtained from the Department of Natural Resources in December 2000. Observation bore number 13500105 is the closest to the cane block immediately north of Palm View Drive. The lowest measured level in that observation bore was on 24/09/91 measured at 0.24m AHD, the highest level was on 24/03/92 measured at 1.90m AHD. You told me a figure earlier today of 1.3m AHD. I suspect this is the level of the water in the cane field, not the level of the water in the more elevated surrounding sand that is feeding water to the cane field. When you check with the Department of Natural Resources you will find that the most recent measurement of the level of the water in observation bore 13500105 was on the 28/9/2010 and was 1.67m AHD. Not much will have changed since that time.

As you are aware the block of land immediately to the north of Palm View Drive has been sand mined and I expect the original levels before that sand mining took place were above 4.0m AHD. Presumably you could check on some old maps. In sand mining to a level below the level of a high water table (and in fact below the high tide) the person who did that was making a commercial decision and must have known that sometimes the area would be below the level of the water table and sometimes it wouldn't. Nobody is able to change the rate at which the water in the water table percolates horizontally (and a touch vertically) through the sand. No one can change the rate at which the water table lowers. Small changes in the level of the easement drain will have no effect. What is needed here if for everyone to sit back calmly, enjoy a quiet ale and let time and nature do the work.

On a matter of much more importance is the health issue associated with the mosquito breeding problem we have at Moore Park on the land adjacent to the drainage easement. If you look up the Health Department maps for Ross River Fever (which is a reportable disease) you will note that Moore Park is coloured in red as a recognised hot spot. I walk around regularly and the areas you see the mosquito wrigglers is the land which is sometimes marginally below the water table and sometimes above. The areas where the wrigglers are not, are those areas where there is permanent water and the little creek gupples thrive. Those gupples can breathe from the surface and do a fantastic job at controlling the mosquitoes. I fact they are sometimes called mosquito fish. There are a lot of stakeholders in this issue, not just one farmer who mined more sand from his block than was prudent. There are also the other farmers who are getting recharge right now to their aquifer and having the risk of salt water intrusion into their bores mitigated.

The solution to everyone's problem is to do some relatively inexpensive cut and fill earthworks and change the levels of the land so that there is a series of aquifer recharge salt exclusion lagoons of guppy infested permanent water (recharged by stormwater runoff from the Moore Park township – which already happens) and shape the immediately adjacent land so that it drains to those lagoons; retaining the existing barrage that keeps the area from being tidal. When doing earthworks, be aware that there is an acid sulphate soil issue at Moore Park. It is a matter that is easily and cheaply solved by spreading neutralising agricultural lime.

The other thing that needs to happen to help with the health issue caused by the mosquitoes, is for council to cut the grass around the existing lagoons where the mosquitoes harbour and feed.

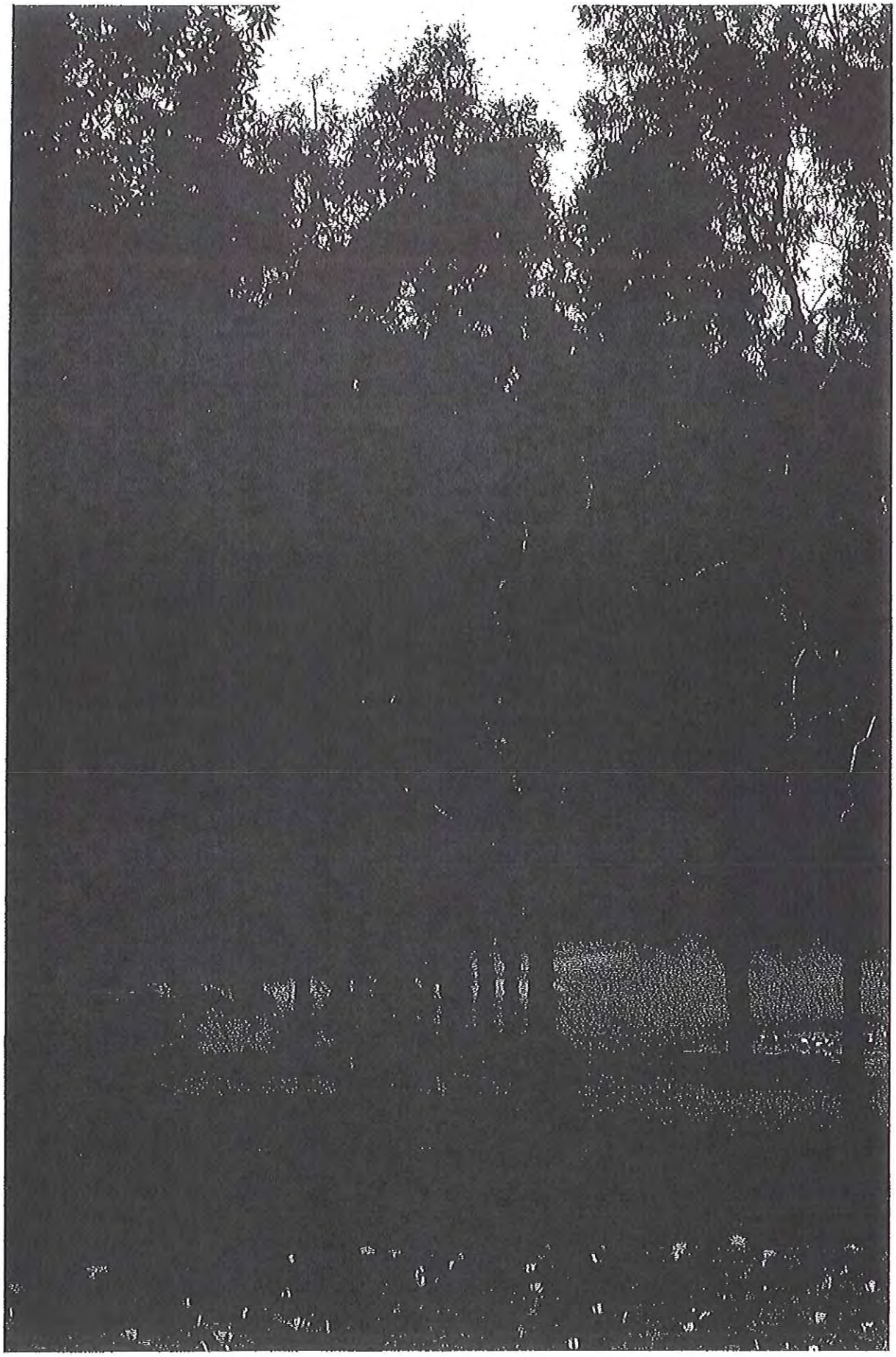
I would be appreciative if you would pass on me comments to whoever the appropriate people are. I have attached a photograph showing how a mosquito infested fresh water swamp can be transformed into a very pleasant mosquito free water bird, frog and native animal habitat.

You have my kind regards,

[redacted]

PROBS w. Attachments

- F = end - email - not sure where it's meant to go.
- J = ?
- ~~K~~ I ?
- O = ?
- P = submission ?



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REGIONAL COUNCIL

999 - 30431

Form.

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ABN 72 427 835 198

Rate Notice

L Borg & M Borg
[redacted] Murdochs Road
MOORE PARK BEACH QLD 4670

Rate Notice for Half Year Ending	31/12/2011
Assessment Number	[redacted]
Valuation	$157500
Area	38.0500 Ha
Issue Date	15/08/2011
Due Date	16/09/2011

Property Location and Description: Murdochs Road MOORE PARK BEACH QLD 4670 Lot [redacted]

Summary of Charges

Description			Amount
General Rate - Category 9	1.2089 cents/$ on $157500		$952.01
M/Park Drainage Chge	25.00	1.00	$12.50
R/Fire - Moore Park	30.00	1.00	$15.00
		Total Levy	$979.51
		TOTAL PAYABLE	$979.51
		Discount if payment made by the Due Date	$95.20
		TOTAL PAYMENT IF DISCOUNT APPLIES	$884.31

Please Note: Payments received after 3 August 2011 may not show on this notice.

Notice is hereby given that the rates and charges levied by Bundaberg Regional Council, by virtue of the Local Government Act 2009, on land described above for the period stated on the Rate Notice are DUE AND PAYABLE ON OR BEFORE THE DUE DATE OF THIS RATE NOTICE. Furthermore, rates and charges not paid by the due date are deemed to be overdue. PETER BYRNE, CHIEF EXECUTIVE OFFICER.

BUN004A

Payment Slip

POST billpay

Amount Due if paid by Due Date
*467 622823 $884.31

Amount Due if paid after Due Date
*467 622823 $979.51

L Borg & M Borg
[redacted] Murdochs Road
MOORE PARK BEACH QLD 4670

BPAY
Biller Code: 5744
Ref: 622823
Contact your participating Bank, Credit Union or Building Society to make payments from your cheque, savings or credit account. More info: www.bpay.com.au

POST billpay
Billpay Code: 0467
Ref: 6228 23
Pay in person at any Post Office by phone 13 18 16 or go to postbillpay.com.au

BPOINT
Biller Code: [redacted]
Ref: [redacted]
INTERNET Visit http://bundaberg.qld.gov.au
PHONE Call 1300 BPOINT (1300 276468)

Assessment number	[redacted]
Due Date	16/09/2011
Amount due if paid by Due Date	$884.31
Amount due if paid after Due Date	$979.51

Please see over for other payment options

Recruit You Employment Service

From: [redacted]
Date: Wednesday, 18 August 2010 3:18 PM
To: <Peter.Jensen@bundaberg.qld.gov.au>
Cc: <lorraine.pyefinch@bundaberg.qld.gov.au>; <alan.bush@bundaberg.qld.gov.au>; <tony.ricciardi@bundaberg.qld.gov.au>; <wayne.honor@bundaberg.qld.gov.au>; <mary.wilkinson@bundaberg.qld.gov.au>; <greg.barnes@bundaberg.qld.gov.au>; <danny.rowleson@bundaberg.qld.gov.au>; <ross.sommerfeld@bundaberg.qld.gov.au>; <david.batt@bundaberg.qld.gov.au>; <judy.peters@bundaberg.qld.gov.au>; <lynne.forgan@bundaberg.qld.gov.au>; [redacted]
Subject: LS & MM Borg Drainage Issue

Dear Peter,

Thank you for your, Cr Bushes and Cr Honours time yesterday. Following the meeting we jotted down what we interpreted from the meeting:-

* Flood Gate Pipes to be cleaned or replaced,
* Drainage in the low 20 acre block near Palm View Drive would be repaired back to original,
* The derbies in the drain on the south side of Palm View drive pipes would be cleaned, and
* The levels will be checked on either side of each of the crossings that go across the swamp to check for pipe blockages.

As a suggestion, once we have resolved the current problem that we consider weed control along the waterway and regular maintenance.

We thank you for your assistance regarding this matter, and appreciate you making the time to meet with us.

Yours sincerely

Mr Larry Borg & Maryann Borg

Information from ESET NOD32 Antivirus, version of virus signature database 5374 (20100817)

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

Meeting 17/8 taking Engineer, Councillors + Canegrowers Representative [redacted] through to all the blocked areas of the drain. At that meeting the councillors both agreed the drains were all blocked. Witnessed by Larry Borg, [redacted] + Maryann Borg. 19/06/2011

Recruit You Employment Service

From: "Maryann Borg" [redacted]
Date: Friday, 17 September 2010 6:27 PM
To: <alan.bush@bundaberg.qld.gov.au>; <tony.ricciardi@bundaberg.qld.gov.au>; <greg.barnes@bundaberg.qld.gov.au>; <ross.sommerfeld@bundaberg.qld.gov.au>; <david.batt@bundaberg.qld.gov.au>; <judy.peters@bundaberg.qld.gov.au>; <lynne.forgan@bundaberg.qld.gov.au>; <lorraine.pyefinch @bundaberg.qld.gov.au>; <wayne.honor@bundaberg.qld.gov.au>; <mary.wilkinson@bundaberg.qld.gov.au>; <danny.rowleson@bundaberg.qld.gov.au>
Attach: Larry & Maryann - Bundaberg Regional Council.docx
Subject: Larry & Maryann Borg Drainage Issue.

To Mayor Lorraine Pyefinch and Councillors.

Please find attached our letter to you all, addressing our drainage issue.

Please address urgently.

Thank you

Maryann Borg
[redacted] Murdochs Road
Moore Park Beach Qld 4670

Contact [redacted]

_____ Information from ESET NOD32 Antivirus, version of virus signature database 5456 (20100916) _____

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

15th September 2010

Mr L & Mrs M Borg
[redacted] Murdochs Road
Moore Park Q 4670

Mayor & Councillors
Bundaberg Regional Council
Bourbong Street
BUNDABERG QLD 4670

Dear Mayor & Councillors,

RE: DRAINAGE PROBLEM – LS & MM BORG

We confirm that we are Sugar Cane farmers and land owners located at [redacted] Murdochs Road, Moore Park.

We have an ongoing problem with drainage due to the water from [redacted] on deposited plan [redacted] which is in turn resulting in our farm not draining properly and therefore, we are unable to harvest sugar cane and prepare our ground for planting. The position of this drain runs parallel with Murdochs Road.

For sometime we have been having discussions with Peter Jensen of your employment in relation to this ongoing issue and also Councillors Allan Bush and Wayne Honor. Unfortunately, although Allan Bush and Wayne Honor agree that the drain is affecting the flow of the water due to the large amount of debris and also due to the pipes at the flood gate being blocked this problem has not been rectified. This is a result of neglect of the Council not cleaning and clearing the drain for a number of years appropriately. However, Peter Jensen continues to indicate that the water table is too high and that his levels are saying there is not enough fall for the water to flow. Approximately two (2) years ago we had a similar disagreement with Peter Jensen in relation to another drain relating to our farm which is approximately seven hundred (700) metres from the start of the drain we are discussing. Peter Jensen provided the same reasoning for why this other drain was blocked however, eventually he agreed to clean the drain and the water has been flowing constantly from that drain since that time.

Our family has been residents of this property for approximately forty (40) years and we have never had this issue previously. Peter Jensen has indicated that the levels in this drain are the same as the levels in the previous drain and yet he will not agree to clear the drain. We are in the position at the moment were we estimate that we will be unable to harvest approximately forty (40) per cent of our crop, for this current season. This will of course have a significant financial impact on our farm and family finances.

We are of the strong opinion that the Council have the obligation to clean and maintain this drain and we have undertaken the necessary searches in this regard which indicate that the Council holds an easement burdening the land to the Council of the Shire of Gooburrum and Burnett.

We believe that in relation to Peter Jensen's position firstly, cleaning the drain worked for the previous drain and there is no reason it would not work for this drain and secondly, this Council is required to clean and maintain the drain in accordance with the easement which is in place.

We ask that you confirm as a matter of urgency as to when you are going to attend to the cleaning of the drain, and that this will occur within the next fortnight. We remind you that the drain must be

cleaned in this urgent time frame due to the fact we only have approximately six weeks left to harvest the remaining 40% of our crop which we would otherwise be unable to harvest.

Should we be unable to harvest this 40% of our crop this shall result in a significant financial burden to us and shall be required to seek compensation.

Yours sincerely

Mr Larry Borg & Mrs Maryann Borg

Recruit You Employment Service

From: [redacted]
Date: Friday, 17 September 2010 6:55 PM
To: "Maryann Borg" [redacted] "Burnett Electorate Office" <burnett@parliament.qld.gov.au>
Subject: Re: Larry & Maryann Borg Drainage Problem

Maryann,

I've read your Email and yes you are right, it is a very complex situation re the different drains, however one thing is clear.

If the council wanted to fix the problem they could.

The best way to fix this problem is to call a meeting with yourself, Larry, Allan Bush, the mayor and Peter Byrne the CEO.

I don't care what Jensen has to say. He is an employee of the council and a servant of the people, he has to follow the laws and also directions from the Council, Mayor and CEO. If he doesn't he should be sacked. If there is any illegal behaviour or misconduct I won't hesitate to refer it to the CMC for investigation.

They are the people who can make the decisions to fix your problem.

I will ask for a meeting as soon as possible with the Mayor and her CEO next week and give them an opportunity to help you.

If this process fails then I will start writing letters to ministers and or the media in an effort to get the council to do the right thing.

I would be interested to hear what your solicitor has to say about the likely hood of a successful legal action.

I'll be out to visit you at 12noon this Tuesday 21.9.10

Cheers

Rob

On 17/09/2010, at 10:19 AM, Maryann Borg wrote:

> Good morning Rob,
>
> My apologies for interrupting yesterday whilst in parliament.
>
> As discussed please find information about our problem. It is very hard for me to put into writing. I have attached letters and emails to my solicitor and to the council for your information.
>
> Problem:-
>
> We have two farms along Murdochs Road [redacted] Murdochs Road Moore Park. Our farm is experiencing drainage problems. We rely on the 2 areas of release, one being the rear of both farms and the other the front which is located opposite to Murdochs Rd. Normally the front of our farms excess water escapes into a natural water way which is located on my

parents bush land directly opposite us and then that travels downstream the water way eventually being released to the ocean. However the problem is with all the development that has occurred over the years the natural water ways have become filled with debris and have never been maintained by the council, causing the water to remain where it is and not move.

Each time we get rain the water grows and grows and our area remains wet. We estimate that we will not be able to harvest 40% of our cane due to this excess water and we cannot afford not to harvest especially after many years of poor cane prices, finally we get a break and now we can't cut it.

We have expressed our problems to the council however they have not done anything about it, because of one person Peter Jensen who keeps saying he wants to monitor it and take levels. We took Jensen, and Allan Bush and Wayne Honor out see the drain nearly a month ago, and Allan & Wayne can see that the water way is blocked, but Jensen is adamant it is to do with levels and the water table. We have had this same argument with Jensen before about the back drain and he did the same thing, eventually Larry got his way and the Council cleaned it, and we haven't looked back since, the drain works well. This is exactly the same problem.

In the time we have lived in Moore Park in the same spot which has been 36 years for me and my father 37 years he has never had the water sit in that water way (never). The block next to my fathers bush land which is what we call the hole, cane was always planted there and even after you had 10 inches of rain you'd give it a week and you could get in there again to work it or harvest it, now it is like a swamp. The easement actually starts in this what we call the hole, which my father is responsible to clean, however it is pointless to clean this when the problem is downstream. Also note that the pipes that are located near the flood gates are full of mangrove roots as well and the council is aware of this as well.

There is an easement that benefits properties that run along the natural water way called Easement A. So each property sold, on their Title they will see this Easement A, and they will also see a Burden on their title called Easement ???? different letters, and this is a burden by the council, giving the council 24hours a day 7 days a week access to their water way to maintain it (This burden easement is for drainage purposes). It is the councils responsibility to maintain this drain, they have never ever cleaned this drain in the time that housing has existed along that water way, and prior to that it was owned by Fairymead/Bundaberg Sugar, and you'll probably be right in assuming when they had it, it was never cleaned, because it was just bush land. So really it hasn't been cleaned. Now people have built around this area, they've built drive ways over it and put more trees and so on and now looking at it is just a big bloody mess. People have put in pipes which Jensen claims are suitable and they are only pissy 6inch drainage pipes in this water way - how is that going to work.

To add further to this, further up stream where the water way commences, it is reserve land owned by the council. This water way then meets up to land owned by Malvern Development, then there is a road and then land owned by Malvern Development and next to this is my fathers land. What is happening upstream the water is moving down naturally until it gets to Malvern's property and it is then condensed into this pipe under the road into Malvern Development and then it enters into my fathers property and then it is meant to flow downstream, however Malvern and the council do not have a entitlement to Easement A or does my fathers title indicate he has a burden giving either council or Malvern the right to access the drainage. So Malvern is redirecting more water from councils land and his land into my fathers land making it worse.

I have attached some examples of easement records and title searches for your information, plus an email that I sent to my solicitor explaining what they mean, so you will need to read that to make sense of it. Also I have attached a letter that I have sent to the council giving them two weeks to clean their easement otherwise we will be seeking compensation. I have also attached a map and I have written hole and arrow and highlighted in orange where the easement is, and lot 6 is my fathers land. The map is cut into two because it was on A3 so you will need to join the two together the first page is the start of the map.

To add to this - At the moment the mosquitoes are horrendous, the kids at the school have bites all over them the teachers just cannot believe how bad it is, they are actually finding it difficult to teach. The kids had to cancel their school dance because of the mosquitoes, some kids are allergic and have swelled up. I've attached a copy of the slip sent home with my kids so you

can see.

I'm happy to meet with you any time to actually explain it better, by showing maps of what we mean and showing you the water way and some blockages.

Please let me know if you can help us, it is a matter of urgency.

Regards

Maryann Borg
[redacted]
<Larry & Maryann - Bundaberg Regional Council.docx><Maryann Borg drainage problem.eml><School Note.pdf><Map.pdf>

_____ Information from ESET NOD32 Antivirus, version of virus signature database 5456 (20100916) _____

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

P.O. Box 3130, BUNDABERG Q 4670 T 1300 883 699 F 4150 5410
E ceo@bundabergrc.qld.gov.au W www.bundabergrc.qld.gov.au
ABN 72 427 835 198

SD/08/0046:PJ:NJM

All enquiries to:
Mr Peter Jensen

3 October 2008

Mr Larry Borg
[redacted] Murdochs Road
MOORE PARK BEACH QLD 4670

Dear Larry

RE: MOORE PARK DRAINAGE SCHEME COMMITTEE

Please find attached the Minutes of the Committee Meeting held on 13 August 2008.

Yours faithfully

[redacted]

Peter Jensen
Group Manager Roads and Drainage

Enc

N0704LET-PJ

BUNDABERG REGIONAL COUNCIL

Minutes of Meeting
of the
Moore Park Drainage Scheme

The Meeting was held at

150 Lindemans Road, Moore Park

commencing at 4:00pm on 13 August 2008.

SD/08/0046

1. Introductions

All property owners in the scheme area were invited to attend the meeting. Council representatives were Councillor Wayne Honor, Councillor Alan Bush, Peter Jensen and John Russell.

An apology was received from [redacted]

2. Report on Operations

Peter Jensen gave a report on operations since the last meeting which was held in October 2004. Monitoring is continuing on a six monthly basis. The weirs were removed in 2006 and subsequently reinstalled by Council. The wiers had to be relevelled earlier this year because the fall in the drain levels is only 1 metre over 5 kilometres.

Council received a report from Canegrowers Water Use Efficiency Officer detailing monitoring that had been carried out and the impediment to waterflow because of the vegetation in the drain. The farmers agreed that the relevelling of the weirs and the recent vegetation clean out has improved the operation of the system on the Moore Park side.

3. Environmental Management Plan Report

There was not adverse environmental incidents to report.

4. Election of Executive Committee Members

An executive committee consisting of:

- Larry Borg;
- [redacted]

were duly elected.

5. General Business

The effectiveness of spraying vegetation in standing water was discussed and scraping out appeared to be the only practical procedure. The vegetation growth in the wet area of the drain will be reviewed at the end of the year. Council was asked to keep the drains cleaned out.

A request was made that Council consider extending the defined scheme area to include properties upstream which contribute to water flow in the drain.

The issue of the high water table at the bottom of the escarpment was raised and whether Council's reduced pumping from the bore on Zandes Lane is adding to the problem.

Council was asked to consider the purchase of a more efficient sprayer, the details of which have been previously supplied.

Following on from the cleaning out of the drain through to Murdochs Linking Road, Council was asked to consider cleaning out the drain from Moore park Road to the flood gates.

The next meeting date will be determined in consultation with the Executive Committee.

The meeting was closed at 5.30 pm.

Peter Jensen
Group Manager Roads and Drainage
Infrastructure Services

CURRENT TITLE SEARCH

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Request No: 10047529
Search Date: 14/09/2010 11:47

Title Reference: 50708355
Date Created: 04/03/2008

Previous Title: 18215236

REGISTERED OWNER | Interest

Dealing No: 711463422 28/02/2008

[redacted] JOINT TENANTS INTER SE 1/2

JOINT TENANTS INTER SE 1/2

AS TENANTS IN COMMON

ESTATE AND LAND

Estate in Fee Simple

LOT 6 SURVEY PLAN 212093
County of COOK Parish of NORTH KOLAN
Local Government: BUNDABERG

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by
   Deed of Grant No. 10455126 (POR 19)

2. EASEMENT No 601091677 (K161874G) 24/01/1990
   BENEFITING THE LAND
   OVER EASEMENT A ON RP130027

3. EASEMENT IN GROSS No 711463427 28/02/2008 at 12:56
   burdening the land
   COUNCIL OF THE SHIRE OF BURNETT
   over
   EASEMENT H ON SP212093

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

Caution - Charges do not necessarily appear in order of priority

** End of Current Title Search **

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Requested By: SMIS .

QUEENSLAND LAND REGISTRY
Land Title Act 1994 and Land Act 1994

EASEMENT

Form 9 Version 3
Page 1 of 2

Queensland Duty Paid $ 1.50
On the Amount of $ 100 Duty Code TRFB
Duty Imprint

Transaction No. 0710/09
Signed: [redacted] EOQER OR

711463427
$115.00
$115.00
26/02/2009 12:56

BG 600 Withdrawn & resentered

1. Grantor

[redacted]

Lodger (Name, address & phone number)
Payne Butler Lang
Solicitors
PO Box 649
BUNDABERG QLD 4670
Ph 07 41328900

Lodger Code
BG920

2. Description of Easement/Lot on Plan Servient Tenement (burdened land)	County	Parish	Title Reference
Easement H on SP 212093	Cook	North Kolan	18215236
*Dominant Tenement (benefited land)			

[redacted]

* not applicable if easement in gross

3. Interest being burdened
Fee Simple

*4. Interest being benefited
Fee Simple
* not applicable if easement in gross

5. Grantee Given names Surname/Company name and number (include tenancy if more than one)
COUNCIL OF THE SHIRE OF BURNETT

6. Consideration
$1.00

7. Purpose of easement
Drainage

8. Grant/Execution

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in Item 7 and the Grantor and Grantee covenant with each other in terms of -
~~#the attached schedule~~ THE ATTACHED SCHEDULE
~~#the attached schedule and document no.~~
~~# document no. 702410000,~~
#delete inapplicable words

[redacted]

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

Witnessing Officer	Execution Date	Grantor's Signature
signature full name qualification as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)	/ /	SEE ATTACHED SCHEDULE

Witnessing Officer	Execution Date	Grantor's Signature
signature full name qualification as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)	/ /	SEE ATTACHED SCHEDULE

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QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994
and Water Act 2000

SCHEDULE

Title Reference

Witnessing Officer	Execution Date	Grantor's Signature
[redacted] signature [redacted] full name SOLICITOR qualification as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)	05/2/08	[redacted]
Witnessing Officer	**Execution Date**	**Grantor's Signature**
[redacted] signature full name SOLICITOR qualification as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)	05/2/08	[redacted]
Witnessing Officer	**Execution Date**	**Grantor's Signature**
[redacted] signature full name SOLICITOR qualification as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)	~~05/2/08~~ 20/2/08	[redacted]
Witnessing Officer	**Execution Date**	**Grantor's Signature**
[redacted] signature [redacted] full name SOLICITOR qualification as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)	05/2/08	[redacted]
Witnessing Officer	**Execution Date**	**Grantee's Signature**
[redacted] signature full name JP (QUALIFIED) qualification as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)	31/1/[redacted]	COUNCIL OF THE SHIRE BURNETT [redacted]

CLASS OF INSTRUMENT: EASEMENT

PERSON, FIRM, CORPORATION ON WHOSE BEHALF THIS DOCUMENT DELIVERED:

The following are provisions which comprise this Document

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Easement the following expressions shall have the meanings assigned to them below:-

- Council:-

  the Grantee named in Item 5 of the Form 9 and the successors and assigns.

- Owner:-

  the Grantor named in Item 1 of the Form 9 and the successors and assigns.

- Relevant Works:-

- where the purpose of this Easement is "Sewerage":

  sewer(s) and/or pipeline(s) for the purpose of conveying sewerage and all kinds of waste through, across or under the Servient Tenement together with manholes, stopcocks and all other usual or necessary fittings and attachments (including pumps and/or pump stations where required) as well as works for the protection and/or support of all such things;

- where the purpose of this Easement is "Water Supply":-

  water reticulation mains and/or pipelines for the purpose of conveying water supplied by the Council through, across or under the Servient Tenement together with manholes, stopcocks, meters, pressure control devices, pumps and/or pump stations, and all other usual or necessary fittings and attachments as well as works for the protection and/or support of all such things;

- where the purpose of this Easement is "Drainage":-

  overland or underground drains, pipes, conduits and channels for the passage or conveyance of rainwater and other lawful discharges to local government drainage through, across or under the Servient Tenement together with manholes, field inlet pits and all other usual or necessary fittings and attachments as well as works for the protection and/or support of all such things.

- where the purpose of this Easement is "Open Cut Drainage":-

  overland drains created by extensive excavation and incision which substantially alter the natural surface levels and contours of the Servient Tenement for the passage or conveyance of rainwater and other lawful discharges to local government drainage across the Servient Tenement.

1.2 **Interpretation**

In this Easement:-

- a reference to a statute includes Orders in Council, Proclamations, Regulations, Rules, Local laws and Ordinances made under the statute and any statute amending, consolidating or replacing the statute;
- headings have been included for ease of reference and guidance and this Easement is to be construed without reference to them;
- the singular number includes the plural and vice versa;
- words importing a masculine gender only includes all other genders; and
- words importing persons include companies and corporations and vice versa.

1.3 If a covenant contained in this Easement is or becomes invalid or unenforceable, the remaining covenants contained in this Easement remain in full force and effect.

1.4 If the Owner or the Council comprise 2 or more legal entities, the covenants contained in this Easement bind each of them jointly and severally.

2. RIGHTS OF COUNCIL

2.1 The Council has the full and free right and liberty at all times, after the date of this Easement, to enter upon the Servient Tenement for the purposes of constructing and thereafter forever using and maintaining the Relevant Works as it shall from time to time think fit and in so doing, the Council by its employees, agents and other persons authorised by the Council shall have the right to:-

(a) construct, install, extend, deepen, widen, cleanse, add to, remove, inspect, maintain and repair the Relevant Works and when and where thought fit by the Council to remove and replace the Relevant Works with new Relevant Works (whether of a similar nature to those replaced or not);

(b) to change the size and number of any pipes which form part of the Relevant Works;

(c) dig into, sink shafts in, and erect scaffolding upon the Servient Tenement and to open and break up the soil of the Servient Tenement or any part of the Servient Tenement including its sub-surface;

(d) remove and dispose of spoil created as a consequence of the Council exercising its rights under this Easement;

(e) clear and keep clear the Servient Tenement by any means or method and to cut and remove timber, trees and undergrowth from the Servient Tenement and to burn off such timber, trees and undergrowth;

(f) construct and maintain on the Servient Tenement such access tracks, gates and appurtenant works as the Council shall consider necessary;

(g) enter upon and remain, pass and repass on and over the Servient Tenement for all or

any of the purposes aforesaid with or without vehicles, plant and equipment of any description whatsoever;

(h) enter and exit to and from the Servient Tenement over such part or parts of the Owner's land adjoining or adjacent to the Servient Tenement as the Council shall consider most convenient or necessary for the purpose of passing between the Servient Tenement and the most convenient point of entry to or exit from the Owner's land (whether adjoining a constructed road or not);

(i) do such other works and things through, across, in or under the Servient Tenement as are incidental to the proper exercise of the rights granted to the Council under this Easement;

(j) use such part or parts of the Owner's land immediately adjacent to or adjoining either side of the Servient Tenement as the Council considers reasonable or necessary for the proper exercise of the rights granted to the Council under this Easement.

3. **PROPERTY IN RELEVANT WORKS**

3.1 The Relevant Works are and remain the property of the Council notwithstanding any actual or apparent affixing to the Servient Tenement. The Council shall be solely responsible for the operation and maintenance of the Relevant Works.

4. **REMOVAL OF FENCING**

4.1 To gain access to the Servient Tenement the Council may pull down or break open any fencing on or adjacent to the Servient Tenement. However, if livestock are contained within the fenced area, the Council must give reasonable notice to the Owner to enable the Owner to secure the livestock.

5. **REINSTATEMENT OF FENCING**

5.1 The Council must either:-

(a) reinstate all fences (other than a fence erected in contravention of clause 6) damaged by the Council in the exercise and performance of any of the rights and liberties granted to the Council under this Easement; or

(b) if the fences are not reinstated, install a gate using materials and employing workmanship which is not less than the quality of the materials and workmanship in the existing fence. The gate installed pursuant to this subclause becomes the property of the owner of the fence in which the gate is installed and after installation shall be maintained by the owner.

6. **NO STRUCTURES ON THE SERVIENT TENEMENT**

6.1 The Owner shall not at any time without the express written permission of the Council:-

(a)

(i) where the purpose of this easement is Open Cut Drainage or Drainage - erect

any buildings or structures upon the Servient Tenement or any part of it;

(ii) where the purpose of this easement is Sewerage or Water Supply - erect any buildings or structures (other than fences) upon the Servient Tenement or any part of it;

(b) permit the Servient Tenement or any part of it to be used in such a way as to obstruct or interfere with the Relevant Works and/or the proper and effective use of the Relevant Works by the Council;

(c) install concrete, bitumen or other pavement or driveways on the Servient Tenement or gardens or landscaping involving concrete, brick or other permanent materials;

(d) remove or stockpile or permit the removal or stockpiling of any soil, sand, gravel or other substance or material on the Servient Tenement or construct any roads, dam walls or other earthworks on the Servient Tenement which would in any way obstruct or interfere with the Relevant Works and/or the proper and effective use of the Relevant Works by the Council.

6.2 The Owner is to keep grass areas properly mown and is to maintain the existing vegetation in a tidy state. The Owner is not to remove or add any live vegetation or alter ground levels in the Servient Tenement without the express written permission of Council.

7. DAMAGE TO STRUCTURES

7.1 The Council, in its sole discretion, shall determine how and in what manner the rights granted to the Council under this Easement are exercised. The Council must not wilfully damage or destroy any matter to any extent greater than is reasonably necessary in order to exercise the Council's rights under this Easement but:-

(a) the Council is not otherwise responsible for any damage to or destruction of any matter in the course of the exercise by the Council of its rights under this Easement; and

(b) subject to Clause 5.1, the Council is not under any obligation to reinstate or repair any matter damaged or destroyed in consequence of the exercise by the Council of its rights under this Easement and its only obligation where any such matter has been so damaged or destroyed is to leave the Servient Tenement in as clean and tidy a state as is practicable having regard to the nature of the matter which has been damaged or destroyed and the work which it has done; and

(c) the Council is not in any event responsible for any inconvenience or disturbance to the owners or occupiers of the Servient Tenement arising out of the exercise by the Council of its rights under this Easement.

7.2 In this clause, the term "matter" means buildings, structures or other materials or things erected, placed, found or installed upon the Servient Tenement (whether in contravention of Clause 6 or otherwise) and trees and plants within the Servient Tenement.

8. REMOVAL OF UNAUTHORISED STRUCTURES

8.1 If a building, structure or other material or thing (in this clause called "a relevant matter") is erected, placed, found or installed upon the Servient Tenement in contravention of Clause 6,

the Council may, in addition to any other remedies and after having first given the Owner reasonable notice of its intention to invoke this clause, enter upon the Servient Tenement and remove or demolish the relevant matter and, if it does so:-

(a) It may dispose of the relevant matter or any resultant demolition materials in such manner as it sees fit without being liable to account to the Owner therefore (except as provided in subclause (b) of this clause); and

(b) It may recover, in any Court of competent jurisdiction, costs actually incurred by it in taking that action (including internal wage and salary costs) less any moneys actually received by it as a result of disposing of the relevant matter or any resultant demolition materials.

9. PROTECTION OF RELEVANT WORKS

9.1 The Owner will not do any act or make any omission which will jeopardise or prejudicially affect the safety or reliable working of any Relevant Works.

10. FURTHER ASSURANCES

10.1 The benefit and burden of this Easement shall pass with and bind the Servient Tenement so as to ensure to and bind all persons deriving title thereto from and under the Owner and Council respectively and the Owner, whenever required by the Council or the person or persons for the time being entitled to the benefit of this Easement, must do all such things and give all such assurances as are reasonably required for the proper and effective carrying into effect of the rights conferred under this Easement but not so as to render the Owner liable to be called upon by the Council to contribute towards the maintenance and upkeep of the Relevant Works.

FO
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shei
PH 04

Recruit You Employment Service

From: [redacted]
Date: Friday, 29 October 2010 1:28 PM
To: "Maryann Borg" [redacted]
Cc: "Peter Byrne" <Peter.Byrne@bundaberg.qld.gov.au>; "Peter Jensen" <Peter.Jensen@bundaberg.qld.gov.au>; [redacted] "Lorraine Pyefinch - (Mayor)" <Lorraine.Pyefinch@bundaberg.qld.gov.au>; [redacted] "Wayne Honor" <Wayne.Honor@bundaberg.qld.gov.au> [redacted]
Subject: RE: Drainage Issue

Good afternoon Maryann,

Since the meeting at the Moore Park Community Association Meeting on Monday evening, the CEO has briefed me regarding the further discussions with Larry on the drainage issue. Since that time, the CEO, Manager of Design Services and myself have had a meeting with Council's solicitor on Wednesday morning regarding the letter from one of the property owners and the easement document generally relating to drainage through the properties in question. As an outcome of these discussions, the CEO advised myself to arrange for a letter to be forwarded to the owners of all properties downstream of Palmview Drive over which there are drainage easements giving seven days notice that a Council Officer will be inspecting the drainage easement to determine if there are any obstructions that would significantly impede the water flow. Once the inspections have been completed, and all information fully assessed, any action required will be undertaken by Council in accordance with the terms of the easement as soon as practicable.
The solicitor made it very clear that Council is required to act "reasonably" when assessing what works are required within the easement, in view of the environmental sensitivity of the wetlands.
We also wish to confirm that the pipes at the flood gates have been cleaned and checked with a CCTV camera and that the pipes and outlet across Moore Park Road were also cleaned.
We will contact Larry as soon as information is to hand to advise of any works to be undertaken by Council.

Regards,
Wayne Cunningham

WAYNE CUNNINGHAM DIRECTOR INFRASTRUCTURE SERVICES
Bundaberg Regional Council
PO Box 3130
Bundaberg QLD 4670
Tel: 1300 883 699
Fax: (07) 4150 5410
http://bundaberg.qld.gov.au/

BUNDABERG
REGIONAL COUNCIL

From: Maryann Borg [redacted]
Sent: Thursday, 28 October 2010 11:46 AM
To: Wayne Cunningham
Cc: Peter Byrne
Subject: Drainage Issue
Importance: High

Good morning Mr Cunningham,

I was wanting to get an update on the drain issue along Murdochs Road Moore Park.

It was said at the community meeting held at Moore Park on Monday evening that the council was seeking legal advice regarding an objection letter submitted by Mr Wolff, has this been done? and if so what has the feed back been?

Also has anything happened with the other trouble spots along that water way and crossings?

Your feed back would be appreciated by close of business today.

Thank you

Maryann Borg

_____ Information from ESET NOD32 Antivirus, version of virus signature database 5573 (20101028) _____

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

Recruit You Employment Service

From: [redacted]
Date: Monday, 22 November 2010 3:21 PM
To: [redacted]
Cc: [redacted]
Attach: Moore Park Beach drainage easement.eml
Subject: FW: Moore Park Drainage Easement

Larry, Maryann,

This is what I received on Friday. For some reason it bounced back when I sent to you on Friday.

Regards
[redacted]
Manager
Bundaberg CANEGROWERS Ltd

From: [redacted]
Sent: Friday, 19 November 2010 4:21 PM
To: [redacted]
Subject: Moore Park Drainage Easement

Hi [redacted]
We have completed survey from Palm View Drive to the head of the lagoons along Murdochs Road. We have found:

- Abt. 30% of this drains length has an invert level below sea level (< 0m AHD)
- All property crossings do have pipes ranging from 450 RCP to 900 RCP in size and we have witnessed flow to the lagoons. From what we can tell they are open but some require vegetation removal.
- We are waiting on more recent Ground Water levels from DERM so we can cross reference with our survey;
- There are some high points that we need to closely consider but they don't appear to be influencing the water surface of the drain (rather there is significant tail water/ground water intrusion).
- There are no obvious signs of obstruction in the lagoon and levels show about 450mm of free flow above pipe inverts.

Further analysis will be conducted next week with DERM's bore data, but ground water is definitely the primary factor here and given the fixed outlet any benefits made by trying to rectify with a surface drainage solution can only be minimal.

FYI, I have also attached correspondence from another resident's perspective that lives in this area.

Kind Regards,

[redacted] MANAGER DESIGN
B. ENG. TECH (CIVIL) BBA
Bundaberg Regional Council
PO Box 3130
Bundaberg QLD 4670
Tel [redacted]
Fax [redacted]
http://bundaberg.qld.gov.au/

BUNDABERG
REGIONAL COUNCIL

Information from ESET NOD32 Antivirus, version of virus signature database 5637 (20101121)

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

From: [redacted]
Sent: Monday, December 20, 2010 6:00 PM
To: [redacted]
Cc: Maryann Borg
Subject: RE: Drainage Problem

Hi [redacted]

I don't believe council are hiding any secrets from the community. I was asked to investigate drainage in the area and I know that I have discussed the issues at a Moore Park Community meeting (which Larry attended) and I have been communicating with Larry and Maryann on action being taken including the most recent clearing of drain at [redacted] Murdochs Road on the 2nd December (just south of Palm View Drive). What I do know is:

- There is 3mm of fall between the pipes under Palm View Drive and that of the flood gates more than 2.5Km away. It is extremely flat but it does fall;
- Over 200m of the drain is below sea level;
- There is very significant ground water intrusion into the existing drain. It is so severe that on the 3rd December ground water infiltration accounted for over 1m of the pipe/drain depth under Palm View Drive. Ground water levels from DERM in this area are the highest in recorded history.
- To avoid assumptions the stormwater easement was surveyed south of palm view drive to the lagoons to ascertain the condition of the drain. All pipes were clear and free flowing to the head of the lagoon, however, it did indicate vegetation removal was required at [redacted] Murdoch's Road, this work was completed as above and in addition to that already undertaken directly north.
- Calls were received from the property owner directly upstream of the lagoons highlighting increased flows and inundation of their easement from the lagoons. This reflected that the clearing work was successful and reinforced that water flows to the lagoons and then starts to back up while continuing to drain to the flood gates.

Water volume has nothing to do with the speed at which a pipe flows, the only thing that effects the flow is the difference in the water level between the entry and the exit, the greater the difference, the greater the flow. The significant rain event in March (and that we are experiencing now) when combined with record high ground water produce water levels that form a pressure head for the culverts along this drain, this forces them to flow much faster than is normally witnessed. But when the surface drainage dissipates back to the levels of the ground water, then we experience more static conditions, the pressure head ceases to exist and water instead trickles its way toward the floodgates. Any further works to widen or deepen the drain only allow more ground water to infiltrate and has little impact on flow; this can be witnessed by the widened drain directly north of Palm View Drive.

I do note that further pipe work may be required when ground water drops below 1.0m AHD (its currently about 1.71m) but the emergent opening of bank at the floodgates was a direct result of record ground water combined with high surface drainage which hasn't been experienced in recent history. The flood gates aren't faulty to my awareness, more so the combination of extraordinary events exceeded their capacity to provide quick relief.

I hope the above assists in understanding the drainage in this area. I am more than happy to meet with you in person to discuss the data at hand. Also I do appreciate and thank you for your Christmas message and I wish you the same in return.

Larry and Maryann,

The same applies to you both as well, more than happy to further discuss if you feel I have been hiding information from you but I trust this is not the case ☺

Regards,

[redacted]
MANAGER DESIGN
BET(CIVIL) BBA
Bundaberg Regional Council
PO Box 3130
Bundaberg QLD 4670
Tel [redacted]
Fax [redacted]
http://bundaberg.qld.gov.au/

Recruit You Employment Service

From: "Maryann Borg" [redacted]
Date: Tuesday, 4 January 2011 8:27 PM
To: [redacted]
Attach: FW_ Moore Park Drainage Easement.eml; Larry & Maryann Borg Drainage Issue.eml
Subject: Moore Park Drainage Issue

Good evening Rob,

As recently discussed I have included below a summary of my concerns and my opinion as to how this problem can be resolved. This email is of course to be read in conjunction with all other communications I have had with you in relation to this matter. I raise these issues as a concerned landowner, farmer, business man, citizen, community member, drainage committee member and rate payer.

Due to the recent events in Bundaberg I believe that Council should look at assisting us further and doing more with the drainage in Moore Park. To date the Council have ignored the experience and knowledge of farmers who have been farming in this area for in excess of forty years. In lieu of this the Council has chosen to listen and in doing so has taken advice from a small number of residents who have in fact interfered with the main drainage system in Moore Park. These residents have been able to interfere with the drainage system as they have been given permission from the Council to do so. Council has easements through these properties and has chosen not to exercise their rights under these easements.

The properties in question are located along Murdochs Road. Some of the residents and property owners that I am referring to are the following:

1. [redacted], who I understand is a previous employee of the Council when it was known as Burnett Shire Council and is also joint developer with Mr Lindsay Robinson;

2. Mr Lindsay Robinson, who I understand is currently an employee of Bundaberg Regional Council holding the position of Engineer; and

3. [redacted] has built his driveway up and built ponds on either side of his driveway, which is located approximately midway through the drainage system. This has affected the over all flow of water in the drain. **Attached** you will find a email written by [redacted] outlining his reasoning for why he believes that we have a drainage problem in Moore Park. I believe that this letter is nothing more then [redacted] attempting to invent an excuse that would absolve him for being a significant contributor to the drainage problem. I do not believe that [redacted] has the intimate knowledge to write this letter. I find the contents of his letter offensive and in my view it is appalling that he would result to such tactics rather then admit his contribution to the problem and assist to fix the issue. Also **Attached** is our reply to [redacted] email for your information.

I believe that these residents are dictating to the Council what they can and can't do in the Moore Park area particularly, in relation to this drain issue and Council is continually allowing this to occur. I believe that these Residents are taking such an active interest in this as they are some of the main offenders in relation to the disruption of this waterway.

For Council to resolve this issue I believe that the following needs to occur:

1. Council need to cease listening to this small amount of residents that have inappropriately become involved in this matter. These residents have only lived on these properties for approximately seven or eight years. During this time Moore Park has effectively been experiencing a drought and therefore these residents do not have any experience of Moore Park during cyclone and significant wet weather periods.

2. There are various residences' in the Moore Park area that have both lived in the area and farmed in the area for forty or more years and Council needs to listen to these residents and take their advise. These residents have experienced first hand the Moore Park area during cyclones, major rain and flood events. They are aware of how the area reacts to these natural events and how the area has been effected over time due to Council not maintaining the area appropriately particularly in relation to this drainage system.

3. If Council reviews these residents' driveways along with the other residents that are affecting the waterway they will realise that these driveways are causing a significant problem. For Council to rectify this problem they need to make these residents put in bigger pipes in their driveways so that they are

the same as the pipes in place at the Palm View Drive crossing.

4. Council needs to clear the vegetation that needs to be cleared along Council's easement of this waterway.

5. Council needs to update the flood gates for this drainage system which have not been updated since approximately World War II.

6. Council needs to ensure that the crossings in these residence properties are the same height and size as the crossings on Palm View Drive and the flood gates.

Although Council has chosen not to maintain this drainage system and in fact in addition to lack of maintenance has approved various driveways which have affected the system, Council continues to direct a significant amount of water through the system. This is occurring through Council's approval of additional housing and subdivision, extra roads and neglecting the waterways. Please do not misinterpret me when I refer to this. I have no objection to Council allowing Moore Park to expand I believe that this is good for the area however, this expansion and growth can not continue unless this drainage issue is resolved and upgraded.

I believe that Council has neglected their duty of care to the Moore Park Community and rate payers. If we suffered the effects of a Cyclone in the Moore Park District or received a large inundation of water at this point in time, this water would not be able to drain through the drainage system in its current condition. This would add to the already concerning health hazard that the drain has become to the Moore Park Community, this influx of water would also result in a large loss of property to the local residents. If this were to occur I believe that Council and the small group of residents who have knowingly affected that waterway should be held accountable for any loss or damage to the residents and Community of Moore Park. They have had significant notice and opportunity to resolve these issues but for reasons known only to them have not done so appropriately. To date Council have as they say, attempted to clean out the pipes but the work they have completed is not satisfactory and has not nor will it solve the problem.

As the water was only trickling through the flood gates Council dug a trench around the flood gates and the water did move away quickly which resulted in the green slim which was sitting on the water in the drain, disappearing. However, I indicated to Council that this was not an affective long term resolution because they can not leave the trench open because on the upcoming large tidal season, which we are about to enter, the tides will fill the drain again. Council have now closed the trench and therefore, the problem has returned and the green slim is back on top of the water in the drain, because once again the water is not moving quick enough. This short term trench in my view shows that the Council's assertion that Moore Park is simply to flat and that the water will not flow is incorrect and that what I have been suggesting as a long term solution would actually work.

I agree that Council have tried some short term solutions to the problem. I agree that they did approach one resident and found a blockage in his property and cleaned this out. They dug out the drain on the northern side of Palm View Drive, and supposedly cleaned out the flood gate pipes. Unfortunately, however, these pipes are not big enough and cannot handle the volume of water that is being directed into it.

We are very fortunate that recent weather did not affect Moore Park any further then it has as the drain is already a health hazard and would have been made worse due to the recent rain. The recent weather has made it even more obvious that the drain is not doing what it was intended to do and that the water is not draining properly. Although Moore Park escaped the problems that Bundaberg itself has recently had, that is Moore Park did not flood when parts of Bundaberg did if we did suffer a Cyclone that comes in close to 1770 such as cyclone Fran did in approximately 1992 Moore Park would experience the same problems that Bundaberg is currently experiencing due to the neglected drainage system.

The systems I have suggested in my view need to be implemented as a matter of urgency by Council. In the recent rain events and flooding which have effected a large portion of Queensland the Mayors from these various areas indicated on national news that they have spoken to and taken the advise from the long term residence in their district about the history of the area, drainage system and waterways as this would ensure that all repairs are completed properly. I simply do not understand and have not been provided with an adequate reason as to why the Mayor and or CEO of Bundaberg Regional Council will not take a similar approach and listen to the long term residents of Moore Park.

On more then one occasion the CEO, Engineers and Foreman employed by Bundaberg Regional Council, have all said to me that when it comes to this drainage system that we are going to have trouble with Mr Robinson and that he will be a problem, in relation to getting this issue resolved. In addition to this both the CEO of the Council and Councillor Mr Wayne Honour have said that Moore Park should never have been

developed. This is an appalling attitude for any member of the Council to have and is extremely disappointing. I believe however that this is reflective of the lack of support that Moore Park receives from the Council.

Moore Park is a good place to live and raise a family. The only issue that we have is that the Council does not support us. All we are asking for is for the local Council to provide us with the services that we as a community need and deserve. I am a farmer who needs to make a living from my farm. I need this drainage system problem fixed because it is affecting the water flow on and near my farm and has resulted in me and my family suffering significant financial hardship due to crop losses.

We appreciate you listening to our concerns and assisting us.

If you would like to site footage of the recent trench dug that shows how the water is moving very quickly, in comparison to what was and is now before and after the trench was dug of how the water is trickling, please let me know.

Regards

Larry & Maryann Borg

_____ Information from ESET NOD32 Antivirus, version of virus signature database 5757 (20110103) _____

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

CURRENT TITLE SEARCH

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Request No: 10790205
Search Date: 17/01/2011 09:43

Title Reference: 18215230
Date Created: 24/10/1991

Previous Title: 17525090

REGISTERED OWNER

Dealing No: 703638767 18/10/1999

[redacted] JOINT TENANTS

ESTATE AND LAND

Estate in Fee Simple

LOT 24 REGISTERED PLAN 814879
County of COOK Parish of NORTH KOLAN
Local Government: BUNDABERG

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by Deed of Grant No. 10455126 (POR 19)

2. EASEMENT No 601091677 (K161874G) 24/01/1990
BENEFITING THE LAND
OVER EASEMENT A ON RP130027

3. EASEMENT IN GROSS No 601097046 (K792521B) 02/10/1991
BURDENING THE LAND
TO COUNCIL OF THE SHIRE OF GOOBURRUM
OVER EASEMENT G ON RP814878

4. MORTGAGE No 709403026 01/03/2006 at 14:50
SUNCORP-METWAY LTD A.B.N. 66 010 831 722

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

Caution - Charges do not necessarily appear in order of priority

** End of Current Title Search **

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Requested By: SMIS

BACKING SHEET

K792521B $80.00

[redacted]

2 OCT 1991
3:19 PM

5500 EASEMENT

CORRESPONDENCE NUMBER

REQUISITIONS

EASEMENT IN GROSS (Insert type of dealing) $80	LCODE 14 10 91

ENTERED IN THE REGISTER BOOK
VOLUME 7525
FOLIO 90
AT 1:30 AM/PM
CISP 21 OCT 1991
REGISTRAR OF TITLES

9

601097046

K792521B EAS IN GROSS

K7925/90.

BELOW THIS LINE TO BE COMPLETED BY LODGER	LODGER CODE
LODGED BY: J. TATEIN & ASSOCIATES BOX 2400 PHONE [illegible] ADDRESS: Payne Butler & Lang	516

CERTIFICATES OF TITLE, DEEDS OF GRANT, DECLARATIONS ETC. LODGED WITH THIS DOCUMENT (TO BE COMPLETED BY LODGING PARTIES)

1. LODGED BY
2.
3.

BELOW THIS LINE FOR DELIVERY NOTATIONS

RECEIPT NOTATIONS	OFFICE USE
ITEMS RECEIVED: FIRM NAME: PER: AUTHORITY: DATE:	

ITEMS DELIVERED BY POST

FORWARDED TO LODGER OF THIS DOCUMENT ON

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FORM 11

QUEENSLAND
REAL PROPERTY ACT 1861-1985
REAL PROPERTY REGULATIONS 1986

EASEMENT IN GROSS

STAMP DUTIES OFFICER
$1.50

	Item	
GRANTOR	(1)	MALVERN DEVELOPMENT CO. PTY. LIMITED (incorporated in New South Wales)
ESTATE OR INTEREST BEING BURDENED	(2)	Fee Simple
HOW ESTATE OR INTEREST BEING BURDENED IS HELD	(3)	Not Applicable
GRANTEE	(4)	COUNCIL OF THE SHIRE OF GOOBURRUM (incorporated in Queensland)
DESCRIPTION OF SERVIENT TENEMENT (BURDENED LAND)	(5)	VOL. FOL. COUNTY PARISH DESCRIPTION Part of 7525 90 Cook North Kolan & Gooburrum Easement G in Lot 7 on Registered Plan No. 224059 on Registered Plan No. 814878
MORTGAGES, ENCUMBRANCES, ETC.	(6)	Easement Nos. F310263, F648095, F648096, G855835 8K161874G
CONSIDERATION	(7)	$1-00
SHORT GENERAL DESCRIPTION OF PURPOSE OF EASEMENT	(8)	DRAINAGE PURPOSES

(9) THE GRANTOR FOR THE ABOVE CONSIDERATION HEREBY GRANTS TO THE GRANTEE THE EASEMENT HEREIN DESCRIBED AND THE GRANTOR AND THE GRANTEE HEREBY COVENANT WITH EACH OTHER IN TERMS OF THE SCHEDULE HERETO.

(10) SIGNED THIS DAY OF 19 .

EXECUTION

(11) BY GRANTOR

[redacted] RAYMOND CHARLES IRISH
DIRECTOR

COMMON SEAL

[redacted] MILLICENT IRISH
DIRECTOR

who certify they are the proper officers to affix such seal

WITNESS

(12) IN MY PRESENCE [redacted]

[Signature] .....
[Solicitor/A Justice of the Peace]

SUZANNE JOY FLEMING
.....
[Full Name To Be Printed]

GRANTEE MUST ACCEPT PERSONALLY

ACCEPTED BY GRANTEE

(13)

[redacted]

(14) CERTIFIED CORRECT FOR THE PURPOSE OF REGISTRATION BY ~ GRANTEE

by ITS SOLICITOR [redacted]

[Signature] .....

.....
[Full Name Of Solicitor To Be Printed]

FORM 33

QUEENSLAND
REAL PROPERTY ACT 1861-1985
REAL PROPERTY REGULATIONS 1986

S C H E D U L E

THIS IS THE SCHEDULE REFERRED TO IN EASEMENT DATED
THE 31st DAY OF July 1991

NOW THEREFORE IN CONSIDERATION of the sum referred to in Item 7 hereof paid to the Grantor by the Grantee (the receipt of which sum is hereby acknowledged) the Grantor doth HEREBY GRANT unto the Grantee its successors and assigns the full and free right and liberty at all times and from time to time to have lay construct and thereafter forever to use and maintain on over through or under the servient tenement drains pipes conduits and channels for the passage or conveyance of rainwater and all manholes manhole chambers inlets equipment and fittings in connection therewith or for the accommodation of any adjoining or neighbouring property or properties or otherwise in the execution of its drainage powers and for the purposes aforesaid and for the purpose of obtaining free and uninterrupted access to the said drains pipes conduits and channels manholes manhole chambers inlets equipment and fittings from the surface of the servient tenement and for the purposes of changing the size and number and for the purposes of operating inspecting patrolling altering removing replacing reconstructing and/or repairing all drains pipes conduits and channels manholes manhole chambers inlets equipment and fittings as aforesaid full free and uninterrupted right and liberty at all times by day and by night and from time to time to enter upon and to go pass and repass over along and under the servient tenement or any part or parts thereof with or without surveyors engineers servants agents licensees contractors sub-contractors workmen and others authorised by the Grantee and with or without horses carts drays motor cars lorries wagons trucks trollies cranes earthmoving equipment and other vehicles and things laden or unladen and to dig into sink shafts in erect scaffolding upon and to open and break up the soil of the servient tenement or any part or parts thereof as well as the

sub-surface and the surface thereof and to bring and place in and upon the servient tenement or any part or parts thereof and remove such materials machinery equipment tools and other articles and to do such other incidental works and things in the premises as the Grantee and its succesors shall in its and their discretion think fit doing as little damage as may be but being responsible or held liable only for such damage or inconvenience to the owners or occupiers for the time being of any part or parts of the land described in the said Schedule or any subdivisions or subdivision thereof as may be caused or suffered by reason only of the neglect or default of the Grantee and its successors and its and their contractors agents servants and employees AND IT IS HEREBY MUTUALLY COVENANTED AND AGREED by and between the Grantor and the Grantee that for all or any of the purposes aforesaid the Grantee its surveyors engineers servants agents licensees contractors sub-contractors workmen and others authorised by it with or without horses carts drays motor cars lorries wagons trucks trollies cranes earthmoving equipment and other vehicles and things laden or unladen shall have the right:-

(a) of ingress egress and regress to and from the servient tenement over the land of the Grantor adjoining or adjacent to the servient tenement to permit access to the nearest surveyed road or to such other point on the land of the Grantor as the Grantee shall consider convenient or necessary to enable the Grantee its surveyors engineers servants agents licensees contractors sub-contractors workmen and others authorised by it with or without horses carts drays motor cars lorries wagons trucks trollies cranes earthmoving equipment and other vehicles and things laden or unladen to obtain access to and from the servient tenement;

(b) to use such land of the Grantor immediately adjacent to either side of the servient tenement as may reasonably be required by the Grantee in connection with all or any of the purposes aforesaid and it is hereby further agreed and declared that the Grantor will not do or suffer to be done

anything which may in any way injure or damage the works herein referred when so made and that if the Grantor shall do or suffer to be done anything which shall injure or damage the said works or any part thereof, the Grantor will at its expense forthwith properly and substantially repair and make good all such injury or damage and in the event of the Grantor refusing or neglecting forthwith to make good any such injury or damage or other things as aforesaid the Grantee may itself have the same done and recover the costs thereof from the Grantor and it is further agreed and declared that notwithstanding the generality of the foregoing the Grantor shall not erect any buildings fences walls structures or pavings (hereinafter called "obstructions") nor permit or suffer to grow or remain any vegetation (other than grass which is kept properly mown at all times) on the servient tenement nor shall the Grantor by erecting permitting or suffering to remain any obstructions or vegetation other than grass which is kept properly mown at all times on the land of the Grantor immediately adjacent to the servient tenement whereby the rights of the Grantee set out herein are unreasonably restricted or diminished unless and to the extent only that any such obstructions or vegetation are permitted in writing by the Grantee and only on such terms and conditions as the Grantee may impose or require in the event of such permission being granted and it is hereby further agreed and declared that the Grantor agrees to pay all reasonable costs of and incidental to the preparation execution stamping and registration of these presents including any necessary surveyor's fees and mortgagee consent fees AND IT IS HEREBY FURTHER AGREED AND DECLARED that the expression "the Grantor" shall where the context so admits or requires include the transferees and assigns of the Grantor and the registered proprietors owner or owners (and their respective successors executors administrators and assigns as the case may be) and the occupier or occupiers for the time being of the servient

tenement and the expression "the Grantee" shall where the context so admits or requires include the Council of the Shire of Gooburrum and the successors transferees and assigns of the Grantee and that words importing the singular number include the plural number and vice versa and words importing any gender include the other genders and words importing only persons including corporations and/or associations and/or bodies and vice versa in each respective case.