

<i>Name of Witness</i>	Neil John FITZPATRICK
<i>Date of Birth</i>	[REDACTED]
<i>Address and contact details</i>	[REDACTED]
<i>Occupation</i>	Chief Financial Officer
<i>Officer taking statement</i>	Detective Senior Sergeant Mark Reid
<i>Date taken</i>	13 September 2011

Neil John FITZPATRICK states:

1. I am a [REDACTED] year old man and I currently work as a Chief Financial Officer. I currently live in a townhouse at [REDACTED] Long Street East Graceville. The complex has approximately 90 townhouses. I was living at this address at the time of the floods in January 2011.

INSURANCE ISSUES

2. In January 2011 I had a house contents policy with Suncorp Insurance. We are part of a body corporate, which is responsible for the insurance of the building itself. My inquiries indicated that we don't have an insurable interest in the building that I own. However, we had "Unitowners Mortgagee Insurance" in our Suncorp contents policy which paid for the any cost of building repairs not covered by the Boy Corporate insurance. Our Body Corporate has not been able to secure flood cover for many years. I do not have a copy of the insurance policy for the building, but I do have the clause about the extra cover we paid under the Unitowner Insurance. We have had that insurance policy for the last three years since we purchased the townhouse.

I have attached a copy of the Unitowner Mortgage Insurance document for the purposes of reference and to assist the commission.

TENDERED AND MARKED EXHIBIT NO.....

3. The complex was inundated during the floods of January 2011 with most of 82 of the 90 townhouse residents flooded to the top floor of their units.
4. I went to see Suncorp before I put the claim in on the contents special cover. No one there knew much about it the Unitowner Policy at first, but we finally sorted it out and they said I could make a claim. I then had to go to my financier and get them to demand payment and Suncorp paid them and the financier has released funds as the rebuild progressed. To make it clear the special policy clause for Unitholders Mortgagee Insurance has nothing to do with our mortgage holder. We organised it and paid an extra premium. Suncorp were very good to deal with both on the contents side of our policy and the special clause.
5. I submitted the insurance claim for Suncorp contents insurance in mid February, but I do not have a copy of the claim. We were required to email a list of the lost items to Suncorp and they then paid in full on a total loss basis. In regard to the special clause

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claim, Suncorp paid up on the claim from Westpac 10 days after the receipt of the letter.

- 6. At the time of making the claim we had no discussion with the insurer, we just did what the policy document told us to do. After emailing the information I had to follow up to get a claim number and make sure that Suncorp received the claim. We had a short visit from a claims assessor after that. The Assessor came to our address about 5 weeks after the claim was lodged, which was okay by us because everyone was obviously busy at that time.
- 7. We remained in contact with Suncorp via email and telephone. The claim itself was settled to our satisfaction. The insurer didn't really keep us informed of the progress of the claim, but I wasn't concerned. We knew we were dealing with a reputable company and they had a lot to deal with at the time. The contents claim funds arrived in our bank account the day before we received the notification our claim had been satisfied.
- 8. I believe there are serious problems with the Body Corporate legislation that does not permit me to protect myself by arranging my own insurance for the building which I own. Without the special cover we had in our contents policy, we would be struggling financially. To the best of my knowledge the other 81 unit owners had to bear the repair costs personally. When I bought the townhouse, my wife and I handed over a substantial sum of money, but according to the legislation I have bought nothing in which I have an insurable interest. We have a large gated complex with a replacement value of about \$45m and because of the flood risks it is understandable why no insurer will risk providing flood cover insurance.
- 9. On the issue of not having an insurable interest, I read through the Act and then telephoned the Commissioner of Body Corporate and Community Management's office to ask specifically about the 'insurable interest' issue. A young lady advised me that the commission had become aware of a number of problems with the Legislation since the floods and action was being taken. She said the Deputy Premier's Office was responsible for this and she put me through. After fruitless discussions with several staff I just gave up.

LAND PLANNING ISSUES


- 10. My address is part of the Brisbane City Council. Our complex is about 10 years old. The buildings surrounding the property are considerably older than our site. The site was originally horse paddocks with a creek running through the middle. There are pictures on the BCC development application file.
- 11. The development approval was granted in 1991 for the property, but construction did not proceed until 2001. Council development records tend to indicate potential flood issues were proving difficult to deal with. Topography and the creek running through the property were problematic. There was considerable ongoing discussion on the file about the potential cost to the developer if he had to make the land 'flood proof'.

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- 12. The source of the flooding from 2001 was a mixture of water coming from the Brisbane River, up the Oxley Creek or overland direct from the Brisbane River. This met suburban run-off from surrounding streets that are channelled into the creek that runs through the centre of the property.
- 13. Our townhouse faces Long Street and backs onto the rest of the complex. Water crept up the road and came from the rear. The front of our property is built up at least 20 feet from the road surface to our front door (part of the development requirement) but is flat to the rest of the complex at the back. It also flowed from the creek to the eastern side of our property. An inspection of the Council's development files for the site indicated a number of local residents lodge objections to the development on the basis of the fact the entire site flooded in the 1974 flood to a significant depth. There was also considerable effort put in by local residents who feared future flood action might be exacerbated if the land fall was altered. A public meeting actually happened and the then Lord Mayor attended.
- 14. Development application documents record significant concerns by several BCC departments regarding flooding problem potential if the site was developed. The BCC committee that first considered the application declined it on the basis of concerns about 'water issues' and townhouse density. The application was never returned to that committee when it was re-lodged. Council spent considerable time looking at ways to deal with the 'water issue' (as they called it) and even suggested a mitigation dam in the middle of the property to capture stormwater run-off coming down the creek from surrounding suburbs. The developer rejected this on the basis that it would make the proposal uneconomical.
- 15. One BCC Department said flood warning beacons would be required on the site if it was developed (even after lifting the site by 30 feet) because it was feared flood water may rise so quickly. This was never implemented but does indicate the degree of concern over whether it was a good idea to allow the site to be developed. The entire site should never have been developed and it was clear many Council Staff were concerned about letting it go ahead.
- 16. I have not taken any action regarding these approvals/constructions. I undertook the file review for our Body Corporate because at the time there were several committees formed to look at different aspects of our predicament. After the review, my advice to the Committee was that there were many issues that concerned me about the approval process, but to form a view on whether legal action could be taken, we would need to have expert advice from engineers etc, because the flood level data in the file was more complex than my skills could interpret. Also I expected we would need to take ground measurements to determine whether shortcuts were taken in the actual development of the site. I feel that it would be too difficult and costly for the Body Corporate to proceed regarding the matter. Based on my review of the development files, the actions of a previous council in approving the development despite the vast amount of information that questions such an outcome seems indefensible and bordering on negligent behaviour given Councils' role is to protect and nurture the community - not create opportunities for unnecessary disasters.

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17. I believe the Brisbane City Council also broke a council bylaw to approve it. BCC also had access to an expert flood report prepared by the developer. The report said 'BCC records show the site is flooded at times (plural) of peak flows in the Brisbane River', 'Q100 will top the site at 8.0, Q50 at 6.7. The property was to be built up to the 8.0ADH level for the top floor of the townhouses so it was estimated the entire site had to be raised. On 5/5/98 – Council says development proposal 'generally meets development standards'.
18. A hand written note on minutes of a BCC/Developer meeting, dated 5/5/98 from the file read - *At the meeting (BCC with developer), on 30/4/98, it was discussed and agreed that as the whole road network (in the suburb) was at Q30 level it would be unreasonable to require the development to meet Q50 or Q100. Further, this will involve a massive amount of fill that would raise the development several metres above surroundings. From a visual and aesthetic point of view, this would not be acceptable. From an engineering point of view – not practical as at Q50 surrounding road networks would be flooded and no one could get in or out of the site'. Signed TW.*
19. 5/5/98 – [REDACTED] – *Mayors Business Policy Advisor – Meeting where hydraulics issues are of 'concentration'.*
20. 2/10/97 *Amendment to development application ordered by Council 'Alter overland flows to ensure all buildings are above flood levels (not defined, but the requirement was 8.5AHD at that time). – redirect density. This is not a minor amendment'.*
21. BCC Memo 4/9/98 – [REDACTED] to [REDACTED] – *'Plan needs amendment. Relies too much on a couple of check dams upstream (in creek) and sediment fences. Potential flood issues. Dams never got built.*
22. BCC Memo 19/10/90 – *'Fill to be 300mm above Q100 level'.*
- *'4 metre lift in entire site = 8.3 AHD'*
 - *'Planning Policy 20.07(i) requires land being subdivided for residential purposes- floor levels proposed.....above Brisbane City Gauge of 3.7m above AHD.*
 - *Allotments should contain sufficient land unaffected by flooding for the erection of anticipated residential buildings. In order to overcome this, proposal to modify filling requirements (of site).*
 - *In order to overcome this....propose to modify filling requirements(no clarity about what this meant)*
23. BCC Assessment Committee report of 17/12/91. *'Given the topographiocal features and the drainage problems – (site) was considered unsuitable for the development of townhouses at the proposed density.*
24. BCC Supervising Engineer 6/1/93
- *Flood access from the site is set at 20 year Brisbane River flood level – need warning devices on site and at entrance'*

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- *This is a relaxation of Regulations*
- *Basement level residences classified as flood prone on BCC records*
- *Must prevent residents from turning ground floors into living areas.*

25. BCC letter to Developer's architect 25/2/93

'Council will not require full engineering hydraulics despite local residents' concerns'.

26. Also on the file was a BCC pre-printed form that appeared to represent some sort of AHD flood calculator. It had a height of 10m AHD on it but the point of interest was a pre-printed line in the equation *'Wivenhoe Dam mitigation (2m)'*. Within the calculation, this appears to reduce the living area AHD level to 8 metres for the purpose of the development based on the fact that Wivenhoe will reduce the risk of residential flooding by 2m.

27. I was aware that the property was subject to flooding. We were told the site had been built up such that it would not be affected by another 1974 flood event. Given we were not from Brisbane, we were unaware of the flood issues and certainly unaware of the difference between liveable and non-liveable areas and the relationship they had to building approvals dealing with flooding.

28. In any event we were flooded 0.6m into our top floor, which, by BCC calculations and development policies should have been built above the 1974 flood level, yet publicly we are being told the January flood was below the 1974 level.

29. The Government needs to make up their mind about the primary purpose of Wivenhoe Dam and completely review the Body Corporate legislation.

30. BCC need to review their policy of on resuming residential properties that flood twice excluding unit complexes. If they are responsible for original decision to approve medium to high density dwelling proposals, then they should accept the responsibility when something goes wrong.

N J FITZPATRICK



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CERTIFICATE OF CURRENCY

To Whom It May Concern

Date: 04.03.10
Policy No.: [REDACTED]
Type of Insurance: Residential Strata Insurance
Period Of Insurance: 28.02.2010 to 28.02.2011

This policy referred to is current at the date of issue of this certificate and whilst a due date has been indicated, it should be noted that the policy may be cancelled in the future. Accordingly, reliance should not be placed on the expiry date.

Insured : Graceville Park - [REDACTED]

Situation : [REDACTED] Long Street East
Graceville QLD 4075

Section 1 :	Building including common contents	\$ 38,392,200
	Loss of Rent/Temporary Accommodation (15%)	\$ 5,758,830
	Catastrophe or Emergency (15%)	\$ 5,758,830
	Additional Loss of Rent	\$ Not Insured
	Additional Catastrophe	\$ 5,758,830
Section 2 :	Glass	\$ Included
Section 3 :	Theft	\$ Included
Section 4 :	Liability	\$ 20,000,000
Section 5 :	Fidelity Guarantee	\$ 100,000
Section 6 :	Office Bearers Liability	\$ 1,000,000
Section 7 :	Voluntary Workers (Weekly/ Capital Benefit)	\$2000/200,000
Section 8 :	Government Audit Costs	\$ 25,000
Section 9 :	Legal Expenses	\$ 50,000
Section 10:	Workplace, Health. & Safety Breaches	\$ 100,000
Section 11:	Machinery Breakdown	\$ Not Insured
Section 12:	Lot Owners Improvements (Per Lot)	\$ 250,000
Section 13:	Workers Compensation	Not Insured

Excesses :

Section 1	\$ 5,000	all water damage claims
Section 1	\$ 500	all claims + as per policy wording
Section 2	\$ 500	all claims
Section 3	\$ 500	all claims

On behalf of the Insurers: CGU Insurance Limited ABN 27 004 478 371

This is to certify cover has been granted in terms of the Insurers Standard Policy, a copy of which is available on request.

This certificate is not a substitute for the Policy of Insurance issued to you. The Policy, not this certificate, details your rights and obligations and the extents of your insurance cover.

5. Mortgagee's interest for unit owners with a mortgage

We cover

- If the unit shown on your certificate of insurance suffers loss or damage by an insured event:
- and the body corporate building insurance either doesn't apply or fully cover the cost of repairing the building
 - and the mortgagee on your unit makes a claim under your policy for repayment of the mortgage
 - then we will pay the mortgagee the lowest of these 2 amounts:
 - the difference between the body corporate insurance cover and the cost of repairing the damage or
 - the amount to fully repay your mortgage at the time of the loss.

Note

This optional cover is only available if you insure contents in a unit under this policy.

We do not cover

Additional features 1 to 18.

What you are not covered for

This section details what is not covered under any part of your policy.

We do not cover loss or damage:

Anything you don't own

- To any home, contents you don't own, but we will cover:
- additional feature 13 (uninsured contents owned by grandchildren and other visitors)
 - contents you borrowed and are legally liable for under a written contract but not a tenancy rental agreement
 - your legal liability for loss or damage to the property of others under additional feature 18 (legal liability).

Any business activity

- To any part of the home used for any business activity or loss or damage to contents kept in this area **except when the business activity is:**
- letting up to 2 bedrooms to paying guests or boarders (e.g. bed-and-breakfast accommodation)
 - using a part of your home as a home office
 - one you told us about and we agreed to continue cover and this is noted on your certificate of insurance.

Erosion or subsidence

- Caused by or as a result of erosion, vibration, subsidence, landslip, landslide, mudslide, collapse, shrinkage or any other earth movement, but we will cover subsidence damage to your home if it is caused by:
- insured event 2 (burst pipes, leaks and overflows)
 - contents items insured by portable cover
 - these insured events if the damage occurs within 72 hours of the event happening:
 - insured event 1 (storm and flood)
 - insured event 8 (explosion)
 - insured event 11 (earthquake and tsunami).

Actions or movements of the sea

- Caused by actions or movements of the sea, but we will cover:
- damage caused by storm surge to the extent it is covered under insured event 1 (storm and flood)
 - damage caused by insured event 11 (earthquake and tsunami).