



Decision and Reasons for Decision

Application Number: 310734

Applicant: Pallara Action Group Inc

Respondent: Brisbane City Council

Decision Date: 21 September 2012

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application for access to engineering studies and computer modelling used in neighbourhood planning processes - residents group concerned about positioning of a waterway corridor - whether disclosure would prejudice Council's deliberative processes and/or the private and financial affairs of property owners in areas under consideration in relation to road upgrade - whether access to an hydraulic impact assessment may be refused on the basis that disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied to Brisbane City Council (**Council**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to engineering studies and reports relating to local neighbourhood planning processes.
2. Council located three documents and refused access to them on the basis that disclosure would, on balance, be contrary to the public interest, citing prejudice to (i) Council's deliberative processes and (ii) the private and financial affairs of property owners within the relevant areas. One document, an hydraulic impact assessment relating to options for a road upgrade, is the subject of this external review decision.¹
3. The applicant considers that disclosure of the document would enhance Council's accountability in relation to its planning processes and would allow the relevant hydraulic modelling data to be independently evaluated. Council submits that the document was prepared to assess the potential flood impact of various projects under its consideration and that disclosing the document would prejudice its deliberative processes. Council also contends that disclosure could be harmful to land owners in the area, as the value of properties identified in the document may be negatively

¹ The other two documents were released to the applicant by Council during the external review. See the Appendix for further information about the external review process.

impacted, even though those properties may not be affected by the road upgrade option which Council ultimately decides to pursue (if any).

4. For the reasons set out below, Council was entitled to refuse access to the document under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.

Background

5. The applicant, a residents group, is concerned that the suburb of Pallara has been placed in a 'waterway corridor'² in the Draft Lower Oxley Creek (South) Neighbourhood Plan (**Draft Plan**). Council has recently released the Draft Plan for public consultation.³
6. Council has also, in recent years, carried out a Feasibility Study in relation to the upgrade of Paradise Road (**Road Upgrade**) the purpose of which was to assist Council in planning and budgeting for the major road network in the area.⁴ Council explained that:
 - the need for the Feasibility Study was, in part, related to developing neighbourhood planning schemes for the Lower Oxley Creek and Paradise Wetlands Area, but was also to inform other planning agencies with interests along the corridor; and
 - one of the major issues to be addressed by the Feasibility Study was the low flood immunity of Paradise Road and one of the principle objectives of the Feasibility Study was to improve the flood immunity of Paradise Road because of its potential importance to the network.⁵
7. Council's processes relating to the Draft Plan and Road Upgrade are relevant to these reasons for decision as the document remaining in issue⁶ was relied on by Council in relation to both projects.
8. Significant procedural steps relating to the application and external review process are set out in the Appendix.

Reviewable decision

9. The decision under review is Council's internal review decision dated 8 July 2011 refusing access to information under section 47(3)(b) of the RTI Act, on the basis that disclosure would, on balance, be contrary to the public interest.

² A 'waterway corridor' is defined by Council as 'an area along a river, creek or tributary of a creek, which protects and enhances water flow, water quality and biodiversity'. This definition appears on Council's website at: http://www.brisbane.qld.gov.au/downloads/planning_building/current_planning_projects/neighbourhood_planning/draft_lower_oxley_creek_south_neighbourhood_plan_faq_august_2012.pdf.

³ This period commenced on 27 August 2012 and closes on 8 October 2012. See Council's website at: <http://www.brisbane.qld.gov.au/planning-building/current-planning-projects/neighbourhood-planning/neighbourhood-plans-in-your-area/lower-oxley-creek/lower-oxley-creek-south/index.htm>. Council recently published a set of Frequently Asked Questions (**FAQs**) about the Draft Plan on its website – see the link at footnote 2 above. The FAQs discuss a number of neighbourhood planning concepts which are referred to in the submissions made by the applicant and Council in this review. Relevant FAQs are extracted in the Appendix.

⁴ See <http://www.brisbane.qld.gov.au/traffic-transport/roads-infrastructure-bikeways/road-intersection-projects/Paradise-Rd/index.htm>

⁵ Council's submission to OIC dated 15 March 2012.

⁶ See paragraph 11 below.

Evidence considered

10. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Document in Issue

11. One document remains in issue in this review—the *Paradise Road Upgrade Feasibility Study Attachment D: Hydraulic Impact Assessment (draft) (Hydraulic Report)*.⁷
12. I am prevented from describing the actual content of the Hydraulic Report in these reasons.⁸ Broadly speaking, the document sets out the results of an hydraulic model review and refinement of the model to provide for the preliminary hydraulic impact assessment for various road upgrade options; and examines related flood immunity and mitigation strategies.

Relevant law

13. Under the RTI Act, a person has a right to be given access to documents held by a Queensland government agency.⁹ This right is however, subject to limitations including grounds on which access to information may be refused.¹⁰ One ground for refusing access is where disclosure would, on balance, be contrary to the public interest.¹¹
14. The term ‘public interest’ refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.¹²
15. The RTI Act list factors which may be relevant to deciding the balance of the public interest¹³ and sets out the following steps¹⁴ for a decision-maker to take in deciding where the public interest lies in relation to disclosure of information:
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure would, on balance, be contrary to the public interest.

Findings

16. For the reasons set out below, I am satisfied that disclosing the Hydraulic Report would, on balance, be contrary to the public interest.

⁷ Comprising 98 pages.

⁸ Section 108(3) of the RTI Act prohibits the Information Commissioner from including information that is claimed to be contrary to public interest information in a decision or reasons for decision.

⁹ Section 23 of the RTI Act.

¹⁰ As set out in section 47 of the RTI Act.

¹¹ Section 47(3)(b) of the RTI Act.

¹² For example, where disclosure of the information could reasonably be expected to contribute to the administration of justice for a person (schedule 4, part 2, item 17 of the RTI Act).

¹³ In schedule 4 of the RTI Act. This is not an exhaustive list and therefore, other factors not listed in the schedule may be relevant in a particular case.

¹⁴ In section 49(3) of the RTI Act.

Irrelevant Factors

17. I have examined the irrelevant factors in schedule 4, part 1 of the RTI Act and consider that none arise in the circumstances of this case.

Factors favouring disclosure

Accountability

18. The public interest will favour disclosure of information where it could reasonably be expected to¹⁵ enhance government's accountability¹⁶ and/or reveal the reason for a government decision.¹⁷ Where disclosure of information could reasonably be expected to contribute to positive and informed debate on matters of serious interest, this will also favour disclosure.¹⁸
19. The applicant contends that the *'unjustified and illegitimate designation of a large area along Oxley Creek ... as a Waterway Corridor'* represents a misuse of the *Sustainable Planning Act 2009* (Qld) by Council to achieve desired planning outcomes.¹⁹ The applicant submits that if the modelling used by Council in the Hydraulic Report is *'robust, accurate and can withstand examination'*, disclosure would be the best way to reveal reasons for Council's planning decisions and relevant background/contextual information.²⁰ The applicant considers that disclosure will allow it to *'investigate why the waterway corridor designation has been placed on many properties, when they have never experienced the flooding anticipated by the flood modelling done by [Council] – not in 1974 or 2011, or in the many wet seasons in between'* and *'allow for independent modelling to be carried out by professional engineers'*.²¹
20. In its original decision²² Council stated that the Hydraulic Report was:
- '...commissioned by Major Infrastructure Projects Office in relation to the Paradise Road Upgrade, on which a final decision has yet to be made ... [and] was relied upon by the Oxley Creek Task Force and Council's planners in the development of the [Draft Plan], also for which a final decision has yet to be made.'*
21. Council submitted²³ that the modelling within the Hydraulic Report was initially developed to compare the impacts of several road upgrade options assessed in the Feasibility Study²⁴. Council has also confirmed that the Hydraulic Report formed the basis for developing the current flood line.²⁵

¹⁵ The phrase *could reasonably be expected to* requires an objective consideration of all the relevant evidence and consideration of whether the expectation is reasonably based. A reasonable expectation is not irrational, absurd or ridiculous. *Sheridan and South Burnett Regional Council and Others* [2009] QICmr 26 (9 April 2009) at paragraphs 189 – 193 referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97.

¹⁶ Schedule 4, part 2, item 1 of the RTI Act.

¹⁷ Schedule 4, part 2, item 11 of the RTI Act.

¹⁸ Schedule 4, part 2, item 2 of the RTI Act.

¹⁹ Page 3 of internal review application.

²⁰ Page 3 of internal review application.

²¹ Page 1 of external review application.

²² Dated 16 June 2011.

²³ Submission to OIC dated 15 March 2012.

²⁴ Discussed at paragraph 6 above.

²⁵ Submission to OIC dated 17 May 2012. While the applicant's concerns focus on the positioning of Pallara in a waterway corridor in the Draft Plan, the access application specifically requested information used by Council *'to make decisions about the Q100 flood line used in the Draft Neighbourhood Plan'*. As set out at paragraphs 20-21 above, the Hydraulic Report has been used by Council in relation to a number of planning processes, including determination of the current flood line and developing the Draft Plan. Council has explained that the "Q100 flood line" is not marked on the Draft Plan and is not the same as a waterway corridor. However, the applicant considers there is no distinction between the two concepts. For the purpose of this decision, I do not consider it is necessary to make a finding on this point, though I note that the FAQs distinguish between "Flood Hazard Areas" and waterway corridors – see the Appendix.

22. I consider it is reasonable to expect that disclosing the Hydraulic Report would enhance Council's accountability to the extent that it was used to inform the Draft Plan and determine the current flood line, and that it would reveal background/contextual information which Council relied on to make decisions in relation to those matters. As the Hydraulic Report considers specific properties and areas that may be impacted by the Road Upgrade, I am satisfied that disclosure could reasonably be expected to enhance Council's accountability to residents in relation to future neighbourhood planning decisions which may directly impact their properties.
23. As set out in paragraph 5 above, the Draft Plan is currently the subject of a public notification process during which members of the community can make submissions to Council. I consider that providing access to the Hydraulic Report would allow the applicant to have a more comprehensive body of information available to it in preparing any submissions in relation to the Draft Plan. This would, in turn, allow residents to contribute to positive and informed debate on the content of the Draft Plan.
24. In view of the above, I am satisfied that disclosing the Hydraulic Report, to the extent that it was used in developing the Draft Plan, assessing options for the Road Upgrade and determining the current flood line, could reasonably be expected to enhance Council's accountability in relation to these projects and reveal reasons for related decisions. I am also satisfied that matters concerning neighbourhood planning have the potential to significantly impact residents, land use, property values and future development, and therefore, disclosure could reasonably be expected to contribute to positive and informed debate on these matters. In summary, I consider these factors should be afforded substantial weight in favour of disclosure.

Revealing incorrect information

25. Where disclosure could reasonably be expected to reveal incorrect information, the public interest will favour disclosure.²⁶ The term 'incorrect' is not defined in the RTI Act, and therefore, when applying this factor, the ordinary meaning of the word is relevant.²⁷
26. The applicant considers that the location of the waterway corridor in the Draft Plan is the result of incorrect computer modelling as it conflicts with what actually happens in the area during flooding and wet seasons.²⁸ The applicant also submits that the modelling used to predict flooding levels is based on '*wrong and/or hypothetical inputs*'.²⁹
27. Based on the information available to OIC, including a careful analysis of the content of the Hydraulic Report and the applicant's submissions, I do not consider that there is sufficient evidence to establish that information in the Hydraulic Report is not factually correct. I therefore find that this public interest factor does not apply in the circumstances of this case.

²⁶ Schedule 4, part 2, item 12(a) of the RTI Act.

²⁷ The Macquarie Online Dictionary www.macquariedictionary.com.au defines 'incorrect' as '*not correct as to fact*'.

²⁸ Applicant's email to Council dated 23 May 2011.

²⁹ Application for internal review dated 16 June 2011.

Factors favouring nondisclosure

Prejudice to private, business and commercial affairs of entities

28. If disclosure of information could reasonably be expected to prejudice the private, business, commercial or financial affairs of entities³⁰, the public interest will favour nondisclosure.³¹
29. Council has submitted that releasing the Hydraulic Report could reasonably be expected to prejudice the affairs of property owners in areas identified as potentially subject to the Road Upgrade in that they may *'unnecessarily suffer potential loss of valuation to their properties and grief'*.³²
30. Council explained that while the Hydraulic Report was initially developed to compare the potential flooding impact of several options under consideration by Council for the Road Upgrade, the flooding impacts it sets out are indicative only.³³ Council emphasised that if any of the Road Upgrade options canvassed by the Hydraulic Report were to proceed, more work would be required on refining the flood prediction model and further developing flood mitigation strategies and structures.³⁴ Council submitted that the premature release of the information could *'result in undue community concern and adversely affect residents financially'*.³⁵
31. In *Metcalfe and Maroochy Shire Council*³⁶, the Information Commissioner found that documents concerning sites under consideration by the local council for a proposed bioreactor landfill could, if disclosed, inflict unnecessary financial and emotional harm on property owners in the vicinity of the potential sites.³⁷
32. As a final decision has not been made by Council in relation to the Road Upgrade,³⁸ I consider that releasing the Hydraulic Report could reasonably be expected to prejudice the private and financial affairs of property owners as it could negatively impact the value of properties identified as subject to flooding impacts in the context of Road Upgrade options under consideration by Council.³⁹ In the circumstances, I consider the prejudice to the private and financial affairs of property owners would be significant and that therefore, this factor should be afforded a corresponding level of weight.
33. The applicant contends that house prices in the area have already been negatively impacted by the Draft Plan and other information released by Council on its website.⁴⁰ In considering the level of prejudice to property owners' affairs that may be caused by disclosure, the relevant information to consider is that which appears in the Hydraulic Report in the context of Road Upgrade options. There is no evidence available to OIC that any of that information is already in the public domain and therefore, I do not consider that the applicant's submission in this regard reduces the significant weight to be attributed to this factor.

³⁰ Section 36 of the *Acts Interpretation Act 1954* (Qld) defines 'entity' to include 'a person and an unincorporated body'; 'person' to include 'an individual and a corporation'; and 'individual' to mean 'a natural person'.

³¹ Schedule 4, part 3, item 2 of the RTI Act.

³² Council's submission to OIC dated 15 March 2012.

³³ Council's submission to OIC dated 15 March 2012.

³⁴ Council's submission to OIC dated 15 March 2012.

³⁵ Council's submission to OIC dated 9 July 2012.

³⁶ Unreported, Queensland Information Commissioner, 19 December 2007 (*Metcalfe*) at paragraph 59.

³⁷ This was one of the factors that the Information Commissioner relied on to find that disclosure of the documents would, on balance, be contrary to the public interest.

³⁸ Council confirmed the current status of the Road Upgrade to OIC on 13 September 2012.

³⁹ I have carefully considered whether the information relating to particular properties could be severed from the Hydraulic Report – section 75 of the RTI Act. However, due to the way the report is compiled, the information appears throughout the document, rather than in discrete sections. Therefore, I am not satisfied that information concerning particular properties could be extracted so as to avoid prejudice to the property owners' affairs.

⁴⁰ Applicant's submissions received by OIC on 19 April 2012.

Deliberative process

34. The RTI Act recognises that there is a public interest in protecting information where disclosure could reasonably be expected to:
- (i) cause a public interest harm through disclosure of an opinion, advice or recommendation that has been obtained, prepared or recorded or a consultation or deliberation that has taken place, in the course of, or for, the deliberative processes involved in the functions of government (**Harm Factor**)⁴¹; and/or
 - (ii) prejudice a deliberative process of government (**Prejudice Factor**)⁴².
35. Deliberative processes involved in the functions of government have been defined as '*...thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action*'.⁴³
36. The Harm Factor will not apply:
- where the deliberative processes include public consultation and the public consultation has commenced⁴⁴; or
 - to the extent information consists of expert opinion or analysis (other than expert opinion or analysis commissioned in the course of, or for, the deliberative processes⁴⁵) by a person recognised as an expert in the field of knowledge⁴⁶ to which the opinion or analysis relates⁴⁷.
37. Council submitted that disclosing the Hydraulic Report would reveal deliberative process information in relation to the Draft Plan and Road Upgrade and would prejudice those processes as a final decision has not been made in relation to either project.⁴⁸ Council also indicated that disclosure would prejudice the deliberative processes of '*other entities and agencies relying on the same modelling information and data*'⁴⁹. Council did not however, provide specific details of those other processes.
38. The Hydraulic Report canvasses various options for the Road Upgrade—a Council planning process which has not been released for public consultation and is yet to be the subject of a final decision. There is also no evidence available to OIC to indicate that the Road Upgrade has advanced beyond the Feasibility Study stage. I am satisfied that the Hydraulic Report comprises an opinion, advice or recommendation that was obtained by Council in the course of its deliberative processes relating to the Road Upgrade.

⁴¹ Schedule 4, part 4, item 4 of the RTI Act. The interpretative note to this section gives the following example of the type of information covered by this section: '*a document prepared to inform a decision by an agency about potential road routes, where disclosure of all potential routes, including those that are subsequently rejected, could have a negative impact on property values or cause community concern*'. This public interest 'harm factor' is similar to the previous exemption in section 41(1) of the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**).

⁴² Schedule 4, part 3, item 20 of the RTI Act.

⁴³ *Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 (**Eccleston**) at paragraphs 28-30 citing with approval the definition given in *Re Waterford and Department of Treasury (No.2)* (1984) 5 ALD 588 at 606.

⁴⁴ Schedule 4, part 4, section 4(2) of the RTI Act.

⁴⁵ Mentioned in schedule 4, part 4, section 4(1) of the RTI Act.

⁴⁶ In *Cairns Port Authority and Department of Lands* (1994) 1 QAR 663 the Information Commissioner decided that for the purpose of the equivalent section 41(2)(c) of the repealed FOI Act, a person may be considered an expert in their relevant field if that person would be accepted by a court as qualified to give expert opinion evidence. In that case, the Information Commissioner also recognised at [49] that a person's seniority and experience will have a bearing on whether they would be an expert.

⁴⁷ Schedule 4, part 4, section 4(3)(c) of the RTI Act.

⁴⁸ Council's decision dated 16 June 2011 and submissions to OIC dated 15 March 2012.

⁴⁹ Submission to OIC dated 15 March 2011.

39. While I accept that the Hydraulic Report comprises expert opinion and/or analysis and was prepared by an expert in the relevant field,⁵⁰ I am satisfied that it was commissioned by Council for the purpose of its deliberative processes relating to the Road Upgrade and that therefore, the relevant exception to the Harm Factor does not apply.
40. For the reasons set out in paragraphs 38-39 above, I am satisfied that disclosing the Hydraulic Report would disclose deliberative process information relating to the Road Upgrade and that therefore, the Harm Factor applies. Accordingly, I must now consider the extent of the public interest harm that could reasonably be expected to be caused to the relevant deliberative processes through disclosure.
41. In its decision, Council stated that the public interest lies with the public being properly informed of a government decision once the deliberative processes of government have been concluded, and not with '*uninformed speculation*'. Specifically, in relation to the Road Upgrade, Council submitted that '*it would be wrong at this stage to interpret the model predictions as true as they are intended generally for the purposes of comparison and would not reflect an accurate picture of the situation if an upgraded structure were to be implemented*'.⁵¹
42. The Information Commissioner has previously recognised that there is a public interest in government being able to:
- make informed decisions in the course of carrying out its functions and in doing so, to have access to the widest possible range of information and advice without fear of interference; and
 - maintain the confidentiality of their deliberative process in some circumstances, particularly where those deliberative processes relate to ongoing negotiations.⁵²
43. On the basis that Council's deliberations in relation to the Road Upgrade have not advanced beyond the Feasibility Study stage and given the indicative/preliminary nature of the predictions, options and recommendations set out in the Hydraulic Report, I am satisfied that disclosing the Hydraulic Report could reasonably be expected to cause a moderate level of harm to Council's deliberative processes as it would limit Council's ability to proceed with its deliberations without interference. For these reasons, I also consider that disclosing the Hydraulic Report at this stage of Council's deliberations could reasonably be expected to prejudice Council's deliberative processes relating to the Road Upgrade. In the circumstances, I consider the Prejudice Factor also carries moderate weight in favour of nondisclosure.
44. While the Hydraulic Report was *relied on* by Council in developing the Draft Plan, I am not satisfied that its disclosure could reasonably be expected to cause a public interest harm to Council's deliberative processes relating to the Draft Plan. I have formed this conclusion on the basis that the Hydraulic Report was not obtained, prepared or recorded for the purpose of Council's deliberations in relation to the Draft Plan and does not comprise a consultation or deliberation that has taken place with respect to the Draft Plan. In any event, I note that Council has recently commenced public

⁵⁰ The report was prepared by AECOM, 'a global provider of professional technical and management support services to a broad range of markets, including transportation, facilities, environmental, energy, water and government' see <http://www.aecom.com/About>. Council provided information to OIC on 18 September 2012 about the qualifications and experience of the Principal Scientist from AECOM who prepared the Hydraulic Report. On the basis of this information, I am satisfied that the Hydraulic Report was prepared by an expert in the relevant field of knowledge.

⁵¹ Council's submission to OIC dated 15 March 2011.

⁵² *Metcalf* at paragraph 47 in the context of considering the equivalent exemption in section 41(1) of the repealed FOI Act. In that case, the Information Commissioner found that disclosure of a Council report regarding potential landfill sites was exempt as it would prejudice Council's deliberative processes. In considering relevant public interest factors, the Information Commissioner found that the prejudice to Council's pre-decisional thinking carried significant weight in favour of nondisclosure.

consultation in relation to the Draft Plan⁵³ which means the exception discussed at paragraph 36 above would apply. Accordingly, I find that the Harm Factor does not apply in relation to disclosure of the Hydraulic Report as it relates to Council's deliberative processes relating to the Draft Plan.

45. I also do not consider that Council has provided sufficient evidence to establish that disclosure of the Hydraulic Report would prejudice Council's deliberative processes in relation to the Draft Plan or the deliberative processes of *'other entities and agencies'*. Accordingly, I find that the Prejudice Factor does not apply in relation to those processes.

Balancing the relevant public interest factors

46. The public interests in enhancing Council's accountability in relation to its neighbourhood planning processes and revealing reasons for the decisions Council has made, based on the Hydraulic Report, in developing the Draft Plan, assessing options for the Road Upgrade and determining the current flood line, carry significant weight in favour of disclosure. Given the potential for these planning processes to impact residents, land use, property values and future development, I am also satisfied that disclosure would substantially contribute to positive and informed debate in the community.
47. Balanced against the factors favouring disclosure is the significant prejudice which could reasonably be expected to be caused to the private and financial affairs of property owners in those areas identified in the Hydraulic Report in the context of Road Upgrade options. I am also satisfied that, given the status of Council's deliberations in relation to the Road Upgrade, moderate weight should be given to protecting Council's deliberative processes in relation to that project.
48. In the circumstances of this case, I find that the factors favouring nondisclosure marginally outweigh the factors favouring disclosure and that therefore, disclosure of the Hydraulic Report would, on balance, be contrary to the public interest.

DECISION

49. For the reasons set out above, I affirm the decision to refuse access to the Hydraulic Report under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
50. I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 21 September 2012

⁵³ See paragraph 5 above.

APPENDIX

Draft Plan FAQs (extract)

Q) What are 'Waterway Corridors' and how were they determined in the draft LOCSNP?

A) Waterway Corridor is a term used in the Brisbane City Plan 2000, the overarching document that directs development in Brisbane. The term refers to the area along a river, creek or tributary of a creek, which protects and enhances the water flow, water quality and biodiversity. Brisbane City Plan 2000 limits development in waterway corridors throughout Brisbane.

A waterway corridor designation already exists on some properties in the Lower Oxley Creek area and in most cases this waterway corridor is not changed in the draft plan. To find out if your property is currently included in a waterway corridor, you can do a property search on Council's website www.brisbane.qld.gov.au or call Council on (07) 3403 8888.

Q) Why is development limited along waterway corridors?

A) By limiting development along waterway corridors Council is reducing the potential impact of development on natural water courses (in respect of water flow, water quality and biodiversity) as well as to avoid possibly compounding flood impacts.

Q) Can I build, rebuild or renovate a house on my property if it is proposed to be in the waterway corridor?

A) Yes. Property owners are still able to build a single house on a lot (or an approved ancillary secondary structure such as a granny flat or shed), renovate an existing house or demolish and rebuild a house. However, they will be required to minimise impacts to vegetation, achieve flood immunity standards and minimise filling. This requirement currently exists in the Brisbane City Plan 2000 for these properties.

Q) My property is now shown as being in a Flood Hazard Area. What does this mean?

A) The new Flood Hazard Area classification generally represents the lots outside of the Waterway Corridor that require development controls in regard to flooding and managing flood impacts. Those areas are susceptible to flooding in a 100 year ARI flood (the standard of flood risk used widely throughout Queensland, which has a 1% chance of happening each year).

The same development controls apply to the Flood Hazard Area as currently apply in the City Plan with additional restrictions on filling to ensure that flooding impacts are not exacerbated in the event of a flood. It should be noted that lots within the Waterway Corridor may also experience flooding and flood related development controls.

The Flood Hazard Areas have been mapped as per the requirements of State Planning Policy (SPP) 1/03: Mitigating the Adverse Impacts of Flood, Bushfire and Landslide.

Q) Why is my property in a Waterway Corridor or Flood Hazard Area when it didn't flood in January 2011?

A) The Brisbane flood event in January 2011 was a river not creek flood event. The rainfall that caused the 2011 flood predominantly fell to the west and north of Brisbane and not within the Oxley Creek Catchment.

Some flooding of Oxley Creek did occur in the 2011 flood as a result of the Brisbane River ponding into low lying areas of Oxley Creek. This was more evident in areas of Oxley Creek that are closer to the Brisbane River.

Major flooding in the Oxley Creek and Blunder Creek only occurs as a result of heavy or sustained rainfalls **over the Creek catchments**, which in the case of Oxley Creek has an area of approximately 260 square kilometres.

There is less warning time for creek flooding events than there is for river flooding events, highlighting the importance of this issue in the drafting of a Neighbourhood Plan.

Significant procedural steps

Date	Event
21 April 2011	Council received the access application.
23 May 2011	In an email to Council, the applicant narrowed the terms of its application as follows: 1) <i>...final engineering studies and reports on the computer modelling used by the town planners and the Oxley Creek Task Force to make decisions about the Q100 flood line used in the Draft Neighbourhood Plan as it affects Pallara on the Oxley Creek side ...</i> 2) <i>...the engineering report and the Oxley Creek Task Force report(s) about the proposed road in the Paradise Wetlands Planning Scheme Policy 2009.</i>
16 June 2011	Council issued its decision, refusing full access to three documents on the basis that disclosure would, on balance, be contrary to the public interest.
Undated	The applicant applied for internal review of Council's decision.
8 July 2011	Council affirmed its original decision.
15 August 2011	OIC received the external review application.
25 August 2011	The applicant provided OIC with additional information in support of its application by telephone.
29 August 2011	OIC notified the applicant and Council that the external review application had been accepted and asked Council to provide a copy of the documents to which access had been refused.
12 September 2011	Council provided OIC with copies of the documents to which access had been refused.
29 September 2011	The applicant provided OIC with further information in support of its application by telephone. OIC asked Council to confirm the status of relevant Council planning processes.
6 October 2011	The applicant provided further information in support of its application by email and telephone.
11 October 2011	OIC provided the applicant with an update on the status of the review.
9 December 2011	OIC asked Council to confirm the status of the Draft Plan.
12 December 2011	In an email to OIC, Council confirmed that the Draft Plan was still awaiting endorsement from the State Government and was yet to be released for public consultation.
16 January 2011	The applicant provided OIC with further submissions by telephone.
29 February 2012	OIC conveyed a preliminary view to Council that disclosing the documents in issue would not, on balance, be contrary to the public interest. OIC invited Council to provide submissions in response by 15 March 2012 if it did not accept the preliminary view. OIC provided the applicant with an update on the status of the review.
15 March 2012	Council accepted OIC's preliminary view in relation to two documents and agreed to release them to the applicant. In relation to the third document (Hydraulic Report), Council provided submissions objecting to disclosure.
23 March 2012	OIC obtained Council's consent to disclose submissions it had made in response to the preliminary view to the applicant.

Date	Event
28 March 2012	OIC conveyed a preliminary view to the applicant (enclosing Council's submissions) that disclosure of the Hydraulic Report would on balance be contrary to the public interest. OIC invited the applicant to provide submissions in response by 12 April 2012, if it did not accept the preliminary view.
2 April 2012	Council sent the applicant copies of the documents it had agreed to release in accordance with OIC's preliminary view.
19 April 2012	The applicant provided submissions to OIC contesting the preliminary view.
20 April 2012	OIC telephoned the applicant to clarify certain parts of its submission dated 19 April 2012.
24 April 2012	OIC sought further information from Council in relation to the scope of the application.
27 April 2012	Council confirmed to OIC that it was satisfied all documents relevant to the scope of the application had been located and provided OIC with additional information regarding relevant planning concepts.
3 May 2012	In a telephone conversation, a Council engineer provided OIC with additional information regarding planning concepts and Council processes relevant to the Hydraulic Report.
17 May 2012	Council provided OIC with a further written submission regarding the status of the Draft Plan and relevant planning concepts.
21 May 2012	The applicant provided OIC with further submissions by telephone.
22 May 2012	OIC provided Council's submissions dated 17 May 2012 to the applicant.
21 May – 4 June 2012	OIC attempted to informally resolve this review by arranging a meeting between the applicant and Council. Council advised that it was not agreeable to the meeting sought by the applicant given the status of Council's relevant planning processes.
18 June – 3 July 2012	In telephone conversations and written correspondence, OIC sought Council's view on whether it would consider disclosing parts of the Hydraulic Report, to informally resolving the review.
3 July 2012	The applicant provided further submissions to OIC.
4 July 2012	OIC responded to specific concerns raised by the applicant in its 3 July 2012 submissions and provided an update on the status of the review.
9 July 2012	Council provided submissions to OIC rejecting the informal resolution proposal and maintaining its view that disclosure of the entire Hydraulic Report would, on balance, be contrary to the public interest.
31 July 2012	OIC provided the applicant with an update on the status of the review.
1 August 2012	The applicant provided further submissions to OIC by telephone.
30 August 2012	OIC provided the applicant with an update on the status of the review.
13 September 2012	Council confirmed to OIC that a final decision had not yet been made in relation to the Road Upgrade process.
18 September 2012	Council provided OIC with information about the experience and qualifications of the AECOM Principal Scientist who prepared the Hydraulic Report.