

## Environment & Planning Alert

### Landmark P&E Court Decision

### Development in Flood Plain - 270

### Apartments approved despite lack of flood free access

September 2012

On 14 September 2012, the Queensland Planning and Environment Court handed down its Judgment in the matter of *Arora Constructions Pty Ltd & Jans Constructions Pty Ltd -v- Gold Coast City Council*. The decision represents a landmark decision in the development of flood prone land. It is a typical requirement for residential development to have flood free access up to a 1 in 100 year flood event. The Court found that, despite the land being inaccessible by cars in greater than a 1 in 20 year flood event, the measures implemented by the development were sufficient to ensure that the risk to life and property was acceptable. Thomsons Lawyers acted for the developer.

#### The Proposal

The proposal is for 270 residential apartments, split across 7 multi-storey buildings. The development is to be built on a raised platform with basement car parking, with the majority of the site (70%) being used for sporting fields and ephemeral wetlands.

The site is located on Nerang-Broadbeach Road, Carrara, in the Carrara/Merrimac flood plain, adjacent to a major roundabout and across the road from a recently constructed Woolworths anchored shopping centre.

#### The Issues

Although the Council initially raised a myriad of issues opposing the proposal, during the course of the appeal it was accepted that the proposal was appropriate for the land in terms of height and density and the proposal had

no hydraulic impacts on the function of the flood plain or any other unacceptable environmental or amenity impacts.

The only issue argued at trial was that the access road for the land, Nerang-Broadbeach Road, was impassable to cars beyond a 1 in 20 year flood. There was a distance of some 3.6km to land above the Q100 flood level, outside the flood plain. In a Q100 flood event, the site would be isolated for a period between 30 and 40 hours. In the theoretical probable maximum flood (**PMF**), this period would be extended to between 2 and 3 days.

The Gold Coast planning scheme generally requires that residential development have 'flood free access' up to a Q100 flood event.

#### The Court's Decision

The Court approved the development despite the lack of 'flood free access' up to the Q100 event because of three key aspects of the development proposal.

Firstly, the design of the development incorporated a variety of measures that greatly reduced the risk to life and property in a flood. These included:

- Constructing the development on a platform so that ground floor units are above the Q500 flood level, with internal roads at the Q1000 level; and
- Incorporating bunding and temporary barriers that would make all of the units and the basement carparks immune to the PMF.

The second of the key aspects of the development was the implementation of an early warning and voluntary evacuation system. The Carrara/Merimac floodplain is typified by slow moving, slow rising flood waters, providing time for evacuations to take place. As part of the evacuation strategies to be overseen by the body corporate of the development, action will be triggered when flood waters reach a level of 0.5m below the lowest section of Nerang-Broadbeach Road. Notification, including via a text message service, would then be issued to residents, advising them that a voluntary evacuation of the development could occur. From the first notification, residents have 4 hours before Nerang-Broadbeach Road is no longer trafficable, giving them sufficient time to evacuate, should they elect to.

The third key aspect is the adoption of a 'shelter in place' strategy for the residents. Given the flood immune nature of the development, there is no risk of injury or death from flood waters for residents who chose to stay in their homes. To ensure the comfort and safety of residents that elect to shelter in place, further measures are to be implemented as part of the development, including:

- Provision of a tractor, two boats and a helipad for use in case of emergency (e.g. for medical reasons);
- Inclusion of a community common room where information and instructions could be given and where first aid, pharmaceuticals and emergency communication equipment would be kept; and

- Adequate supplies (including food rations, water, power generators and fuel) to allow the development to continue to operate normally throughout the expected isolation period of a PMF (3 days).

The decision of the Court in this case has wide ranging implications for flood plain development both on the Gold Coast and in other areas. The Court has shown a willingness to allow a residential development to proceed where it cannot ever hope to provide flood free access by car in a Q100 flood, but where the development itself is constructed to a high flood protection standard (the highest possible standard, PMF) and implements a variety of safety measures to ensure the safety of the residents in case of flood isolation.

The decision recognises that flood plain land, whilst constrained, is a valuable land resource and that development proposals which respond appropriately to that constraint, should be approved.

If you would like a copy of the Judgment or further details about it, please contact Michael Marshall or Rayne Nelms.

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