



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	30 - 2018
Appellant:	Baycrown Pty Ltd
Respondent:	Gold Coast City Council
Site Address:	Yawalpah Road, Pimpama and described as Lot 7 on SP177500 and Lot 2 on SP250780 – the subject site

Appeal

This is an appeal under section 229 and Schedule 1, section 1(2)(j) of the *Planning Act 2016*, against the Gold Coast City Council's (**the Respondent**) decision to refuse a conversion application made by the Appellant with respect to certain works conditioned by the Council in its decision to allow the reconfiguration of the subject site.

The decision made by the Council to approve the reconfiguration of the subject site was notified by decision notice dated 7 September 2017 and was given a Council reference ROL201500352 (**the ROL approval**). The ROL approval allows an eleven-lot subdivision subject to conditions.

Date and time of hearing:	9 April 2019, 1.00pm
Place of hearing:	Gold Coast City Council Service Centre, Waterside East Building, Holden Place Bundall
Tribunal:	Wendy Evans – Chair Carolyn Hunt - Member
Present:	Greg McDonald, Baycrown – Appellant Glen Holdsworth, TPS Traffic and Parking Systems Pty Ltd: traffic engineer for the Appellant Gavin Collar – Gold Coast City Council Sophie Chivas – Gold Coast City Council Shane Healey - SLR Consulting: traffic engineer for the Respondent

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(a) of the *Planning Act 2016* (**the Planning Act**), confirms the decision of the Respondent to refuse the conversion application.

Background

1. By decision notice dated 7 September 2017, the Respondent advised the Appellant that it had decided to approve the subdivision of the subject site (two lots into eleven lots), subject to various conditions (**the ROL approval**).
2. On or about 16 March 2018 an application for conversion of non-trunk to trunk infrastructure was made to the Council on behalf of the Appellant, to which the Respondent issued an information request on 24 April 2018 – seeking clarification as to which conditions of the ROL approval were the subject of the conversion application. Consultants for the Appellant confirmed by letter dated 27 April 2018, that the conversion application only applied with respect to conditions 7, 8 and 11 of the ROL approval (extracted in full below).

<p>7 Yawalpah Road/Road 2 Intersection</p> <p>a. Design and construct Yawalpah Road, turn lanes into Road No. 2 and Road No. 2 leg generally in accordance with the layout shown on Drawing No K004 as amended by the condition titled ‘Amended Yawalpah Road functional layout drawings to be submitted’, and in accordance with the following:</p> <ol style="list-style-type: none"> i. Council’s Land Development Guidelines; and ii. Austroads Guide to Road Design Part 4a: Unsignalised and Signalised Intersections; <p>b. Design and construct traffic signals and all associated infrastructure at the intersection of Yawalpah Road and Road No 2.</p> <p>c. The applicant must apply for and obtain a development permit for operational work from Council for the design and construction of the above traffic signals. Approval of plans, which show traffic signals as part of this approval, are not to be taken as an approval to construct.</p> <p><i>Information note: This condition is imposed in accordance with section 665 of the Sustainable Planning Act 2009 (i.e. non-trunk infrastructure).</i></p>	<p>Timing</p> <p>Timing for items (a) and (b) to be prior to the earlier of Council’s compliance assessment of the subdivision plans or the commencement of the use of Stage 1.</p> <p>Timing for item (c) to be prior to the commencement of any works within the road reserve.</p>
<p>8 Old Pacific Highway/Road 1 Intersection</p> <p>a. Design and construct Old Pacific Highway/Road 1 intersection generally in accordance with the layout shown on Drawing No K007, Issue 02, Old Pacific Highway Functional Layout Plan, prepared by Arcadis and dated 12 July 2016 and in accordance with the following:</p> <ol style="list-style-type: none"> i. Council’s Land Development Guidelines; and ii. Austroads Guide to Road Design Part 4A: Signalised and Signalised Intersections. <p>b. Design and construct traffic signals and all associated infrastructure at the intersection of Old Pacific Highway and Road No 1.</p>	<p>Timing</p> <p>Timing for item (a) to be prior to the earlier of Council’s compliance assessment of the subdivision plans or the commencement of the use of Stage 1.</p> <p>Timing for item (b) to be prior to the earlier of Council’s compliance assessment of the subdivision plans or the commencement of the use of Stage 4.</p>

<p>c. The applicant must apply for and obtain a development permit for operational work from Council for the design and construction of the above works. Approval of plans, which show works as part of this approval, are not to be taken as an approval to construct.</p> <p><i>Information note:</i> This condition is imposed in accordance with section 665 of the Sustainable Planning Act 2009 (i.e. non-trunk infrastructure).</p>	<p>Timing for item (c) to be prior to the commencement of any works within the road reserve.</p>
<p>11 Roadworks: 2 lane road – urban</p> <p>Design and construct Roads 1 and 2 to a ‘2 Lane Road – Urban’ classification. The roads must have the following minimum widths: 2m wide bike lanes, 3.5m wide travel lanes and 4.5m wide verges.</p> <p><i>Information note:</i> This condition is imposed in accordance with section 665 of the Sustainable Planning Act 2009 (i.e. non-trunk infrastructure).</p>	<p>Timing</p> <p>Prior to Council’s compliance assessment of subdivision plans.</p>

3. By decision notice dated 13 June 2018, the Respondent advised the Appellant that it decided to refuse the conversion application. The reasons for refusal are provided in full below:

Deciding Criteria	Comments
<p>7.3(b) The development infrastructure must have the capacity to service other developments in the area to the desired standards of service</p>	<p>Criterion not complied with. The development infrastructure does not have capacity to service other developments in the area to the Desired Standards of Service (DSS) because the infrastructure conditioned in 7, 8 and 11 only service the development. The proposed internal road will be comprised of speed platforms and roundabouts which will see reduced capacity for the internal road to effectively service developments in the area.</p>
<p>7.3(c) The development infrastructure must be located such that it is available to service other developments in the area based on the desired standards of service (DSS).</p>	<p>Criterion not complied with. The development infrastructure is not located in an area available to service other developments. It is considered that the proposed infrastructure would be less attractive to motorists than the established trunk road network. The delays to motorists imposed by the proposed infrastructure would inevitably increase travel times due to traffic flow delays induced by direct lot access.</p>
<p>7.3(d) The development infrastructure must be the same size and type and perform the same function and purpose as trunk infrastructure included in the LGIP.</p>	<p>Criterion not complied with. The development infrastructure is not the same size and type and does not perform the same function as trunk infrastructure identified in the LGIP. The proposed infrastructure is not identified in the City’s transitional LGIP and draft LGIP as it does not form part of the intended future road network. The future road network is based on strategic considerations for the City whereas; the proposed infrastructure is merely required to service the needs of the development.</p>

	<p>The applicant's drawings identify that Road 1 and 2 are consistent with collector streets. Collector streets do not achieve the desired standard to be identified as trunk road infrastructure. To be considered trunk, roads must be designed to arterial, sub-arterial or distributor standard.</p>
<p>7.3(e) The development infrastructure must not be consistent with non-trunk infrastructure for which conditions may be imposed under s. 145 of the PA</p>	<p>Criterion not complied with. It is considered that the condition is consistent with non-trunk infrastructure described in s145 of PA and therefore the criterion is not met.</p> <p>The trip generation report provides a snapshot of the expected traffic generation for the development. It identifies that it is expected that during the morning peak (7:45am – 8:45am) the development will generate 1,317 trips and during the afternoon peak (4:45pm – 5:45pm) the development will generate 1,888 trips.</p> <p>Traffic volumes suggest that the internal roads meet the criteria for collector streets (751-3000 vehicles per day) but fall short of the volumes expected on arterial, sub-arterial or distributor roads. Essentially the roads and intersections will provide access to and from the development.</p> <p>In all, the proposed infrastructure will benefit Baycrown Pty Ltd in servicing the development as opposed to benefiting the trunk transport network which will see little to no benefit from the infrastructure.</p>
<p>7.3(f) The development infrastructure must be of a size, type and location that is the most cost-effective option for servicing multiple users in the area.</p>	<p>Criterion not complied with. This proposal is not a cost-effective option for the City. It is considered that the current trunk road network in the area is sufficient and does not require an additional trunk road link in this vicinity.</p> <p>The costs involved in buying land and construction of the proposed internal road could not be considered cost effective or an appropriate use of the City's fiscal resources as there is already a trunk road network in place to service users in the location.</p>
<p>7.3(g) The development infrastructure must comply with the DSS for the equivalent trunk infrastructure identified in the LGIP.</p>	<p>Criterion not complied with. The City does not have any planning for a link that incorporates the proposed infrastructure so therefore no standards are in existence for the DSS to be complied with.</p>
<p>7.3(h) The development infrastructure must service development that is consistent with the planning assumptions for the premises identified in the LGIP in terms of</p>	<p>Criterion not complied with. In the case of these premises the draft LGIP assumes traffic generated from a large residential component for this site. The development infrastructure is not consistent with this land use because the assumption has not anticipated any trunk transport in this location. Therefore, the proposed infrastructure is not consistent with the planning assumptions for the premises identified in the LGIP in terms of scale, type, timing and location.</p>

scale, type, timing and location.	
<p>7.3(i) The purpose of the provision of the development infrastructure must not have been to secure an increase in density of the approved development or a concession or relaxation for the approved development under a planning instrument.</p>	<p>Criterion not complied with. The site is currently subject to the Coomera One Development Code under a Preliminary Approval, which typically sets out land uses consistent with the fringe business domain. There is no evidence available to Transport & Traffic Branch which would support that there will be an increase in density or a concession or relaxation for the development.</p>
<p>7.3(j) The development infrastructure must not have been proposed by the applicant on the basis that it would remain non-trunk infrastructure for</p>	<p>Criterion not complied with. The City originally requested that Baycrown Pty Ltd construct a cul-de-sac at the end of Road 1 as a continuation onto Old Pacific Highway provided no benefit to the road network. Baycrown Pty Ltd, of their own initiative, proposed the through road and intersection providing access to Old Pacific Highway assumedly to assist with access into the development site. The City agreed to the through road on the basis that it would be considered non-trunk works as there was no planning for this proposed road to perform a trunk-like function. The applicant obtained approval knowing the City's intention to condition it as non-trunk infrastructure.</p>
<p>7.3(m) The development infrastructure must comply with the Council's Land Development Guidelines.</p>	<p>Criterion not complied with. The two lane urban road proposed does not comply with the City's standard drawings in the LDG's for a 2 lane Urban sub-arterial road.</p>
Network Specific requirements	
<p>7.3(p)(i) The development infrastructure must be for a proposed arterial, sub arterial or distributor function road.</p>	<p>Criterion not complied with. The development infrastructure inclusive of signalised intersection works and construction of Roads 1 and 2 is solely related to the development site. The proposed road does not perform the same or similar function as a trunk road and does not comply with the requirements of a trunk road identified in the Land Development Guidelines.</p>

<p>7.3(p)(ii)</p> <p>The development infrastructure must not be for works that provide direct frontage access to a development or works required to facilitate development access traffic.</p>	<p>Criterion not complied with.</p> <p>The infrastructure provides both direct frontage access and facilitates development traffic.</p> <p>The proposed intersections are required to facilitate access to the development site and would not have been undertaken by the City as a project to meet the needs of the road network.</p>
<p>7.3(p)(iii)</p> <p>The development infrastructure must be constructed to a major traffic route standard in accordance with Council's land development guidelines.</p>	<p>Criterion not complied with.</p> <p>The standard drawing for an Urban Sub-arterial (Two Land) road clearly highlights that there shall be no direct lot access for the infrastructure to be compliant with the City's Land Development Guidelines.</p> <p>As the proposed infrastructure has direct lot access it does not comply with the Land Development Guidelines. Further the proposed road is not of an arterial, sub-arterial or distributor standard nor will it perform the functions of a trunk road. The engineering treatments for the road (speed platforms etc) detract from its ability to meet the needs of a Major Traffic Route.</p>

4. The reason given with respect to clause 7.3(i) was subsequently withdrawn as a reason for refusal by the Respondent, under cover of letter to the Tribunal Registrar, dated 5 December 2018. The Respondent, in that communication, advised that its assessment of the conversion application had determined that the Appellant did comply with that criteria.
5. Mr Healey, the traffic engineer retained on behalf of the Respondent, agreed in the joint report of experts that criteria 7.3(h) has been satisfied – i.e. that the development proposed, which will be serviced by the subject infrastructure, is generally consistent with the scale and type of development envisaged by the Respondent's local government infrastructure plan (LGIP).
6. The 'deciding criteria' against which the Respondent's comments (for refusal of the conversion application) were provided, are taken from the 'Conversion Criteria' section of the Respondent's Charges Resolution.
7. The parties to the appeal have both observed that Charges Resolution No. 1 of 2017 was in effect at the time the conversion application was made (and decided), but that the applicable criteria in the later (and still effective) Charges Resolution No. 1 of 2018 is relevantly the same as it was under the earlier resolution.
8. Section 251 of the Planning Act does not apply to this appeal. Where the Tribunal has an ability to inform itself in the way it considers appropriate when hearing proceedings, and here where it was agreed between the parties that the applicable conversion criteria are effectively the same, regard has been had to Charges Resolution No. 1 of 2018 in the making of this decision.
9. For completeness, it should be recorded that whilst the ROL approval was issued in reliance on the superseded *Sustainable Planning Act 2009*, the conversion application and the subsequent appeal were made at the time the Planning Act was in effect. This Tribunal is satisfied that the Planning Act applies with respect to the making and deciding of the appeal.

Jurisdiction

10. Schedule 1 of the Planning Act includes Table 1, which states the matters that may be appealed to the Planning and Environment Court, or to the Tribunal.
11. Schedule 1, Table 1, Item 5 of the Planning Act confirms that appeals may be made against the refusal of a conversion application or a deemed refusal of a conversion application. Together with Schedule 1, section 1(2)(j) of the Planning Act, and recognising that Schedule 1, section 1(3) is not triggered, the Tribunal is satisfied it has jurisdiction to hear this appeal.
12. Section 55 of the *Planning Regulation 2017* provides that if a tribunal is to hear only a proceeding about an infrastructure charges notice or a conversion application, the chairperson of the tribunal must be a lawyer. The constitution of this Tribunal satisfies this requirement.
13. In circumstances where the decision notice for the conversion application was produced by the Respondent on 13 June 2018 and based on the evidence – received by the agents for the Appellant on 14 June 2018, this appeal was to be filed on or before 12 July 2018. This was satisfied.

Decision framework

14. The onus was on the Appellant in this appeal, to establish the appeal should be upheld (section 253(2) of the Planning Act).
15. Whilst the Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Respondent, the Tribunal is entitled to consider other evidence presented to it pursuant to the terms in sections 253(4) and (5) of the Planning Act.
16. The decision framework for this Tribunal is established in section 254 of the Planning Act.

Material Considered

17. In reliance upon section 249 of the Planning Act, it was decided that this appeal would be conducted in the following manner:
 - a. The Tribunal would attend an inspection of the site the subject of the ROL approval, which occurred on 12 March 2019;
 - b. The parties were directed to deliver a list of experts, proposed to give expert evidence in the appeal;
 - c. Any nominated experts were directed to meet to discuss and attempt to reach agreement about their evidence in relation to the issues in dispute, and produce a joint report (which was completed by traffic experts on 25 January 2019);
 - d. The parties were directed to produce any other evidence they wished to rely upon, and further exchange written outlines of submissions;
 - e. Oral evidence, which did not deviate from the written evidence, was given then at the hearing of the appeal, with the tribunal's leave.
18. As a consequence of the above, a significant body material has been considered in arriving at this decision. The material considered comprises:
 - a. 'Form 10 – Appeal Notice' including the grounds for appeal and letter from Baycrown Pty Ltd's directors, lodged with the Tribunals Registrar on 12 July 2018;
 - b. Decision notice to the Applicant from the Respondent dated 7 September 2017;
 - c. Application for conversion of non-trunk to trunk infrastructure;
 - d. Information request regarding the conversion application to Arcadis Australia Pacific Pty Ltd from the Respondent dated 24 April 2018;

- e. Letter to the Respondent from Arcadis dated 27 April 2018;
- f. Decision notice regarding the conversion application to Arcadis Australia Pty Ltd from the Respondent dated 13 June 2018;
- g. Email from the Respondent attaching the conversion decision notice package, dated 14 June 2018;
- h. Letter to the Respondent from Arcadis dated 16 November 2017, attaching TPS Group report 'Review of Conditions Relating to Trunk Works' dated 13 November 2017;
- i. Letter to Arcadis from the Respondent dated 12 December 2017;
- j. Letter to Arcadis from TPS Group dated 7 March 2018;
- k. TTM Traffic Engineering report dated 3 March 2017;
- l. Joint report of traffic engineers dated 25 January 2018;
- m. Letter to the Tribunal Registrar from the Respondent dated 5 December 2018;
- n. Submissions on behalf of the Respondent (undated but received by the Tribunal on 4 March 2019);
- o. Expert statement by Shane Robert Healey dated 15 February 2019;
- p. Statement of Brett Ramon Bass dated 18 February 2019;
- q. Second statement of Brett Ramon Bass dated 28 February 2019;
- r. Submissions on behalf of the Appellant dated 3 April 2019;
- s. Statement of Gregory Neil McDonald dated 12 March 2019;
- t. Supplementary submissions of the Respondent (undated but received by the Tribunal on 9 April 2019);
- u. Charges Resolutions of the Respondent (2017 and 2018).

19. It is noted that Gregory Neil McDonald in his statement, recorded his job description as a 'development manager', but further listed town planning experience between the years 2000 – 2007. Mr McDonald was not identified as an expert witness in accordance with the orders of the Tribunal and accordingly, his evidence is taken as that of a lay witness for the Appellant, as opposed to a technical expert witness.

Findings of Fact

Construction commencement

20. At the time of the site inspection and the hearing, the land the subject of the ROL approval was vacant. However, substantial works to Yawalpah Road were underway, inclusive of the works required by condition 7 in the ROL approval¹. The works were apparently not commenced until September/October 2018 – being some time after the Respondent's decision to refuse the conversion application, and further, after the institution of this appeal.

21. A similar scenario arose in the case of *The Avenues Highfields Pty Ltd v Toowoomba Regional Council* [2017] QPEC 48, in which case the Planning and Environment Court

¹ Paragraph 14 of the statement of Gregory Neil McDonald dated 12 March 2019.

considered itself to still have jurisdiction to decide the appeal, despite the construction of the subject works having commenced.

22. Neither party to this appeal took issue with the Tribunal's ability to decide this appeal, despite the start of the works the subject of one of the conditions in dispute. The Tribunal accordingly adopts the position of the Planning and Environment Court in this regard.

Decision framework

23. In reconsidering the evidence that was before the Respondent, it is appropriate that the Tribunal also operates with recourse to section 140 of the Planning Act ('deciding conversion application') and relevantly, the criteria for deciding the conversion application contained in the Respondent's charges resolution (section 140(2) of the Planning Act).
24. That criteria, discussed above, is found in section 7 of both the 2017 and 2018 versions of the Respondent's charges resolution.
25. In section 7 of the charges resolution, there are requirements for development infrastructure that apply to all of the infrastructure networks, as well as network specific requirements.
26. The requirements for development infrastructure that apply to all the infrastructure networks are cumulative and must all be complied with. The Appellant says they are either all satisfied together with the one requirement for transport development infrastructure, or, in the case of 7.3(j) – the criteria ought to be given little weight². Conversely, the Respondent says (by virtue of their letter dated 5 December 2018, and the joint experts report) that eight (b, c, d, e, f, g, j and m) of the fourteen general criteria are not satisfied, and all three limbs of the transport development infrastructure specific requirement are not met.
27. The parties agree that criteria a, i and n for the general criteria are satisfied. In these circumstances, no contrary evidence as to their compliance was available and the Tribunal accepts the views of the parties in terms of these criteria.
28. Indeed, should any one of the criteria in dispute be found as not being satisfied, the conversion fails given they are cumulative (see the wording in section 7.3 of the charges resolution – either version).

Findings on the disputed requirements for development infrastructure for all infrastructure networks

29. A point worth observing before the criteria in this regard are addressed, is that Mr Holdsworth appears to be of the opinion that the conditioned roadworks should have a functional status of at least a 'sub-arterial road', on the basis that:
- *"infrastructure which has the effect to 'intersect' two major roads such a(s) Yawalpah Rd and Old Pacific Hwy has a functional status that is at least equivalent to the status of the roads which the infrastructure connects"*³; and
 - *"the future road network function of Old Pacific Highway will be equivalent to that of Yawalpah Road...[and both roads under Council's road hierarchy are shown as]....having an equivalent 'sub-arterial' road status"*⁴.
30. Criterion 7.3(b) of the charges resolution requires *"the development infrastructure must have capacity to service other developments in the area to the desired standards of service"*. In relation to this criterion:
- Mr Healey, in the joint report of experts (and reconfirmed in his individual report, with regard to version 4 of the planning scheme), considered the desired standards of service

² Paragraph 63 of the Submissions on behalf of the Appellant.

³ Paragraphs 16 and 18 of the joint expert report.

⁴ Paragraphs 16 and 18 of the joint expert report.

for an urban sub-arterial two lane road and formed the view that this standard could not be satisfied by the development infrastructure the subject of conditioned roads 1 and 2.

- The evidence of Mr Holdsworth in relation to this point suggested that “*the only standards of service which should be considered in this are those which address the effectiveness to which the subject infrastructure creates a practical intersection between Yawalpah Road and Old Pacific Highway*”.
- The Tribunal agrees with the Respondent’s submissions that the Appellant’s evidence is unresponsive to whether the capacity of the infrastructure is achieved to the desired standards of service⁵, and in the absence of evidence to the contrary, accepts the evidence of Mr Healey in relation to criterion 7.3(b) of the charges resolution.

31. Criterion 7.3(c) of the charges resolution requires “*the development infrastructure must be located such that it is available to service other developments in the area based on the desired standards of service (DSS)*”. In relation to this criterion:

- There is expert consensus that the development infrastructure would provide a connection between Yawalpah Road and Old Pacific Highway, which (at least theoretically), could be used by other developments⁶.
- However, again, no evidence has been provided by the Appellant which demonstrates the ability of the conditioned infrastructure to attend to that level of service based on the desired standards of service. Accordingly, and again in the absence of evidence to the contrary in this regard, the Tribunal accepts the evidence of Mr Healey in relation to criterion 7.3(c) of the charges resolution.

32. Criterion 7.3(d) of the charges resolution requires “*the development infrastructure must be of the same size and type and perform the same function and purpose as trunk infrastructure included in the LGIP*”. In relation to this criterion:

- The Appellant and the Respondent’s traffic engineers, each approached a response to this criterion very differently;
- Mr Holdsworth expressed the view in the joint report, that “*In addition to providing access for the Baycrown development, the subject infrastructure will provide for ‘intersection’ traffic movements between Yawalpah Rd and Old Pacific Hwy. No ‘trunk’ infrastructure is currently identified in the LGIP to provide for those movements. In that respect the infrastructure will provide an important connection between two major traffic routes by substituting intersection turn lanes which the LGIP would have assigned to the intersection of Yawalpah Rd and Old Pacific Hwy had the intersection not been grade separated due to the adjacent railway*”;
- Mr Healey instead observed that “*to be considered as an alternative trunk infrastructure solution to that envisaged by Council, the infrastructure would need to provide for a more efficient sub-arterial road connection between Yawalpah Road and the Old Pacific Highway than that currently envisaged by the LGIP. The road configuration conditioned does not provide for a connection to the same standard as other sub-arterial roads within the LGIP. The LGIP trunk road network mapping identifies the existing and proposed upgrading to the Old Pacific Highway – Attenborough Boulevard trunk sub-arterial road route and amongst other improvements the proposed extension and upgrading of Cunningham Drive which will provide a direct connection between the Coomera town centre and Yawalpah Road*”;
- The evidence made available to the Tribunal does not properly attempt to demonstrate that the conditioned works are of the same size and type, and perform the same function and purpose as trunk infrastructure which is included in the LGIP, which makes it difficult for the Tribunal to make a finding in relation to this criterion. On the basis that the criteria

⁵ Paragraph 26(d) of the Respondent’s written submissions.

⁶ Joint expert report – Attachment No. 1, response to criterion 7.3(c).

are cumulative, and it has been determined by this Tribunal that some have not been demonstrated by the Appellant, this shortfall is not critical to the task at hand.

33. Criterion 7.3(e) of the charges resolution requires “*the development infrastructure must not be consistent with non-trunk infrastructure for which conditions may be imposed under s. 145 of the PA*”. In relation to this criterion:

- The Tribunal accepts the evidence of Mr Healey, and finds that:
 - To the extent the conditioned development infrastructure are new roads, they are internal to the subject site and accordingly satisfy section 145(b)(i) of the Planning Act; and
 - To the extent the conditioned development infrastructure is intersection works, it allows for the connection of the subject site to the external road network, and accordingly satisfies section 145(b)(ii) of the Planning Act.
- The Tribunal considers that the conditioned development infrastructure possibly also satisfies section 145(b)(iii) of the Planning Act, but has insufficient evidence to conclude firmly in this regard. It is again noted that it is not necessary to conclude that all subsections of section 145(b) of the Planning Act are satisfied, provided at least one limb is met.
- The evidence led by the Appellant in relation to this criterion is wholly unsatisfactory and does not respond to the terms of the criterion.

34. Criterion 7.3(f) of the charges resolution requires “*the development infrastructure must be of a size, type and location that is the most cost-effective option for servicing multiple users in the area*”. In relation to this criterion:

- The Tribunal accepts the evidence of the Respondent, that the “*trunk road network infrastructure identified in the LGIP... provides for a network that allows for traffic movements:*
 - *Between the Old Pacific Motorway (south) and the Pacific Motorway (west) to occur using the Old Pacific Highway-Attenborough Boulevard route and:*
 - *Between the Old Pacific Motorway (south) and Yawalpah Road (east) to occur using Cunningham Drive and other connections*”.⁷
- The Tribunal also accepts that following construction, the internal road could be used by road users performing the above movements.
- However, the Tribunal does not accept that merely due to the perceived convenience and availability of an alternative route (that is not contemplated by the LGIP) being made available – does that alternative route automatically satisfy this criterion.
- The Tribunal is not satisfied, based on the evidence provided, that this criterion has been satisfied.

35. Criterion 7.3(g) of the charges resolution requires “*the development infrastructure must comply with the DSS for the equivalent trunk infrastructure identified in the LGIP*”. In relation to this criterion:

- Mr Healey, in the joint expert report, states that “*the subject development infrastructure does not meet the defined DSS for equivalent trunk infrastructure which in this case is that described for an Urban Sub-Arterial Road in the LGIP Extrinsic Material Report*”⁸;

⁷ Joint expert report – Attachment No. 1, response to criterion 7.3(f).

⁸ Joint expert report – Attachment No. 1, response to criterion 7.3(g).

- More specifically, Mr Healey states that “*the following criteria are not met by the conditioned design:*
 - a. *70kph posted speed / 28kph minimum link speed (Table 2.2-1)*
 - b. *300m minimum intersection spacing (Table 2.2-3)*
 - c. *No direct access except for major development (Table 2.2-1)*
 - d. *CHR & AUL turn lane provisions (Table 2.2-5)⁹*”
- Conversely, Mr Holdsworth in the joint expert report, expresses the opinion that “*there is no practically ‘equivalent’ trunk infrastructure identified in the LGIP*”, and that “*by an order of magnitude, the proposed infrastructure will operate significantly more efficiently and at a lower cost to road users than any alternative route. For example, a northbound motorist in Old Pacific Hwy wanting to turn west on to Yawalpah Rd (or a motorist engaged in the return journey) will travel approximately 2.5km less via the subject infrastructure than via another route if the subject infrastructure was not to be constructed*’.
- In circumstances where Mr Holdsworth elsewhere, appears to accept the functional status of the conditioned connection road as being of at least a sub-arterial status (see paragraph 29 above), the Tribunal struggles to accept the evidence of Mr Holdsworth in relation to this criterion, and accordingly prefers the evidence of Mr Healey.

36. Criterion 7.3(j) of the charges resolution requires “*the development infrastructure must not have been proposed by the applicant on the basis that it would remain non-trunk infrastructure for which an offset or refund would not be payable*”. In relation to this criterion:

- The Appellant’s evidence is simply that “*this is not the case*”¹⁰;
- Conversely, the evidence of the Respondent recalls a letter to the Respondent dated 20 October 2014 from TTM Consulting Pty Ltd, concerning the development application which resulted in the ROL Approval. Specifically, it is recalled that that letter represented that “*the internal road link between the roundabouts will have an urban feel, with two-way traffic (one lane in each direction), barrier kerbs to deter drivers mounting the verge, a central median island and raised crossing points for pedestrian connections. All of the above attributes to the internal link road will deter the majority of possible rat-runners, in particular during the trading hours of the Homemaker site. It is possible that a very small number of drivers may use this route outside the normal trading hours; but they will still need to drive slowly due to the measures noted above*”.
- Whilst the evidence of the Respondent in relation to this criterion does not conclusively satisfy the intricacies of the criterion, it is certainly indicative of an intention in the approval process, of describing the internal road in a fashion that would best suit its constitution as a trunk road only. Where the evidence of the Appellant in relation to this criterion is unconvincing, the Tribunal prefers the evidence of the Respondent in this regard.

37. Criterion 7.3(m) of the charges resolution requires “*the development infrastructure must comply with the Council’s Land Development Guidelines*”. In relation to this criterion:

- Mr Healey is satisfied that the design as proposed complied with the Land Development Guidelines for non-trunk infrastructure;
- Mr Holdsworth again avoids addressing this criterion overtly, and instead reverts to the position that “*the subject infrastructure will substitute intersection turn lanes which the LGIP would normally assign to the intersection of major traffic routes defined in the LGIP. There is no provision in the LGIP which anticipates such a substitution*”;

⁹ Joint expert report – Attachment No. 1, response to criterion 7.3(g).

¹⁰ Joint expert report – Attachment No. 1, response to criterion 7.3(j).

- The Tribunal does not accept the evidence of the Appellant in relation to this criterion as being on point.

Findings on the disputed requirements for network specific requirements – transport development infrastructure

38. Criterion 7(p) of the charges resolution requires the development infrastructure to be:

- (a) For a proposed arterial, sub-arterial or distributor road;*
- (b) Not be for works that provide direct frontage access to a development or works required to facilitate development across traffic;*
- (c) Be constructed to a major traffic route standard in accordance with Council's Land Development Guidelines.*

39. The Tribunal is not satisfied that this criterion has been met, where:

- The evidence does not demonstrate that the development infrastructure conditioned, will perform or function in accordance with the applicable standards, as a sub-arterial road;
- The works (at least in part) do provide direct frontage access to the development the subject of the ROL approval (and will, again at least in part, facilitate development access traffic to the development); and
- The evidence has not demonstrated that the works will be constructed to a major traffic route standard in accordance with Council's Land Development Guidelines.

40. For the reasons detailed above, and in the circumstances where the majority of applicable conversion criteria (which are cumulative) have not been demonstrated, the Tribunal confirms the decision of the Respondent to refuse the conversion application.

Wendy Evans
Development Tribunal Chair
Date: 27 June 2019

Appeal Rights

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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