

No. 2916 of 2024

Appellant

Respondent

Background

- ### Condition 7

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the Land, being 40 and 48 Killarney Avenue, Darra, which have a real property description of Lots 99 and 98 on RP29723 (**Upslope Lots**);

- (b) an easement over the stormwater drainage infrastructure is an appropriate and reasonable mechanism to ensure that the stormwater drainage infrastructure is accessible, maintained and protected for future use;
- (c) the condition was imposed to ensure compliance with:
 - (i) *Subdivision Code*, overall outcome 2(g) and performance outcome PO4¹; and
 - (ii) *Stormwater Code*,² overall outcomes 2(a), 2(f) and 2(g) and performance outcomes PO2³, PO3⁴ and PO11⁵;
- (d) if condition 7 was removed the proposed development would not achieve compliance with these assessment benchmarks; and
- (e) the condition is supported by the planning purpose of ensuring that appropriate infrastructure is provided, protected and maintained for future use.

Condition 12

7. Council accepts that the appeal should be allowed in relation to this condition and condition 12 should be deleted.

Condition 17

8. Council accepts that the appeal should be allowed in relation to condition 17 to the limited extent of deleting the following (shown in strikethrough):

'17) On Site Drainage – Minor

Provide a stormwater connection to all new or existing allotments and provide drainage infrastructure to ensure stormwater run-off from all roof and developed surface areas will be collected internally and piped in accordance with the relevant Brisbane Planning Scheme Codes to the existing kerb and channel in Ashridge Road and generally as shown on the APPROVED Plan of Subdivision SK01 received 10

¹ The Respondent also alleges non-compliance with the correspondence AO4.1.

² And the guidance provided in the *Infrastructure design planning scheme policy*.

³ The Respondent also alleges non-compliance with the corresponding AO2.2.

⁴ The Respondent also alleges non-compliance with the corresponding AO3.4.

⁵ The Respondent also alleges non-compliance with the corresponding AO11.1 and AO11.2.

~~JUL 2024 and as amended in red. The development site must be filled to create a useable building pad for proposed Lot 2 and to achieve a lawful point of discharge via gravity to the kerb and channel. A charged system does not achieve an acceptable lawful point of discharge.~~

NOTE:

- Guidance for the preparation of drawings and/or documents to comply with this condition is provided in the Brisbane Planning Scheme Policies.

...

9. Otherwise, condition 17 is a lawful condition which should be imposed because the condition:
- (a) seeks to, inter alia, impose a requirement for the provision of a stormwater management system appropriate for the proposed development;
 - (b) the stormwater management system is reasonably required to ensure that stormwater run-off from all roofed and developed surfaced associated with the proposed development is collected and contained within the land and does not cause nuisance to external properties or Ashridge Road;
 - (c) the stormwater system is reasonably capable of being provided on the Land;
 - (d) is a reasonable imposition having regard to the creation of an additional residential lot and the increased stormwater run-off expected to be generated by the additional lot;
 - (e) was imposed to ensure compliance with:
 - (i) *Subdivision Code*, overall outcome 2(g) and performance outcome PO4⁶;
 - and

⁶ The Respondent also alleges non-compliance with the correspondence AO4.2.

- (ii) *Stormwater Code*, overall outcomes 2(b), 2(f) and 2(e) and performance outcomes PO1⁷, PO2⁸, PO3⁹ and PO4¹⁰;
- (f) If condition 17 was removed the proposed development would not achieve compliance with these assessment benchmarks; and
- (g) is supported by the planning purpose of ensuring that an appropriate standard of infrastructure is provided to ensure the impacts of a development are appropriately managed within the site to avoid nuisance or adverse impacts to external properties or roads.

Condition 18

10. Council accepts that the appeal should be allowed in relation to condition 18 to the limited extent of deleting the following (shown in strikethrough):

'18) Up Stream Stormwater Drainage Connection – Minor

Provide a stormwater drainage connection for Lot(s) 98 and 99 on RP29723 designed for ultimate developed catchment conditions and connected to the existing kerb and channel in Ashridge Road being the lawful point of discharge, as generally shown on the APPROVED Plan of Subdivision SK01 received 10 JUL 2024 and as amended in red. ~~The development site must be filled to create a useable pad for proposed Lot 2 and to achieve a lawful point of discharge via gravity to the kerb and channel.~~

Note:

All upslope stormwater connection to existing private properties must extend to the property boundary of the relevant property being ultimately serviced by that connection.

...'

⁷ The Respondent also alleges non-compliance with the correspondence AO1.

⁸ The Respondent also alleges non-compliance with the correspondence AO2.2.

⁹ The Respondent also alleges non-compliance with the corresponding AO3.2.

¹⁰ The Respondent also alleges non-compliance with the corresponding AO4.1.

11. Otherwise, condition 18 is a lawful condition which should be imposed because:
- (a) the condition seeks to, inter alia, impose a requirement for a stormwater drainage connection to be provided to the Upslope Lots;
 - (b) the Upslope Lots are upslope to the Land and stormwater will drain down slope towards the Land;
 - (c) the Upslope Lots are within the LMR3 Low-medium density residential (up to 3 storeys) zone in the City Plan and may be re-developed in the future with increased density;
 - (d) development of the Upslope Lots will create additional stormwater run-off to the Land;
 - (e) the provision of the stormwater drainage connection to the Upslope Lots is an appropriate response to the introduction of a new residential lot and will protect the Land from stormwater run-off if the Upslope Lots are developed in the future and ensure that a lawful point of discharge for those lots is achieved;
 - (f) the stormwater connection is reasonably capable of being provided on the Land and is not an onerous and burdensome requirement in the circumstances;
 - (g) the condition was imposed to ensure compliance with:
 - (i) *Subdivision Code*, overall outcome 2(g) and performance outcome PO4;¹¹
 - (ii) *Stormwater Code*,¹² overall outcomes 2(f) and 2(g) and performance outcomes PO2¹³ and PO11¹⁴;
 - (h) If condition 18 was removed the proposed development would not achieve compliance with these assessment benchmarks; and
 - (i) is supported by the planning purpose of ensuring that infrastructure is coordinated, provided to an appropriate standard and not protected, to facilitate the planned redevelopment of surrounding land.

¹¹ The Respondent also alleges non-compliance with the correspondence AO4.1.

¹² And the guidance provided in the *Infrastructure design planning scheme policy*.

¹³ The Respondent also alleges non-compliance with the corresponding AO2.2.

¹⁴ The Respondent also alleges non-compliance with the corresponding AO11.1 and AO11.2.

Condition 24

12. The Notice of Appeal appears to challenge the imposition of condition 24 on the basis that Council has not imposed an identical obligation on other developments. This is not a lawful basis for an appeal against a condition under the *Planning Act 2016* (Qld).
13. Condition 24 is a lawful condition and should be imposed, in the form set out in the Decision Notice, because:
 - (a) the Land is located on Ashridge Road, which is a district road and major road in Council's road hierarchy;
 - (b) the condition seeks to impose a single access point to the proposed lots. It is reasonable and appropriate to limit access points to and from a major road to reduce points of conflict for both cars and pedestrians;
 - (c) the condition ensures safe and efficient access, through the imposition of a requirement for a single access point, to the Land from Ashridge Road, in a manner which does not impact on the function of Ashridge Road as a busy, major, district road, through the imposition of reasonable design standards which are reflected in the Infrastructure Design Planning Scheme Policy and Transport, Access, Parking and Servicing Planning Scheme Policy of City Plan. The imposition of these requirements are appropriate to reduce points of conflict for both cars and pedestrians;
 - (d) the condition was imposed to ensure compliance with:
 - (i) *Subdivision code*, overall outcomes 2(g) and performance outcome PO3¹⁵;
 - (ii) *Road hierarchy overlay code*, overall outcomes 2(a) and 2(b) and performance outcomes PO1¹⁶ and PO7¹⁷; and
 - (iii) *Transport, Access, Parking and Servicing Code*, overall outcomes 2(c) and 2(e) and performance outcomes PO1¹⁸ and PO3¹⁹.

¹⁵ The Respondent also alleges non-compliance with the correspondence AO3.2.

¹⁶ The Respondent also alleges non-compliance with the corresponding AO1.1.

¹⁷ The Respondent also alleges non-compliance with the corresponding AO7.

¹⁸ The Respondent also alleges non-compliance with the corresponding AO1.

¹⁹ The Respondent also alleges non-compliance with the corresponding AO3.1.

- (e) If condition 24 was removed the proposed development would not achieve compliance with these assessment benchmarks;
- (f) without the design parameters identified in the condition, direct access to the lots from Ashridge Road would not be supported; and
- (g) is supported by the planning purpose of providing safe and appropriate access to future lots, maintaining the amenity of the streetscape and safety of the footpath, and maintaining proper traffic engineering standards in development.

Notations in red on approved plan

14. The notations identified in red on the Approved Plan:

- (a) are administrative in nature (for example, the identification of the plan and drawing number); or
- (b) as indicated, they are “indicative” only and represent one way, but not the only way, that compliance can be achieved with the Disputed Conditions; and
- (c) ought to be included on the Approval Plan in any approval of the Development Application.

Without the imposition of the Disputed Conditions, the Development Application should be refused

15. For the above reasons, the Disputed Conditions (in the form proposed in this document):

- (a) are relevant to and not an unreasonable imposition on the development as a consequence of the proposed development;
- (b) are reasonably required in relation to the proposed reconfiguration of a lot; and
- (c) would be imposed in the exercise of the Court’s discretion.

16. But for the imposition of the Disputed Conditions:

- (a) the development application should be refused; or alternatively;
- (b) the application should be returned to the Council pursuant to section 47(1)(c)(ii) of the *Planning and Environment Court Act 2018* (Qld) to make the decision again;

because:

- (i) the Disputed Conditions are fundamental to the Council's determination of the code assessable development application in being able to appropriately condition the Proposed Development to comply with City Plan; and
- (ii) absent the Disputed Conditions the Proposed Development does not comply with the relevant assessment benchmarks as they relate to the provision of stormwater infrastructure and appropriate access.

City Legal
Brisbane City Council
Solicitors for the Respondent
31 January 2025