



PLANNING & ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Kirkham v Brisbane City Council* [2007] QPEC 106

PARTIES: **RS KIRKHAM, PM DALY & AM DALY, C
CROWTHER, M GRIMALDI, C ANDERSON, M
MCINTURFF, A MCINTURFF N GRIMALDI, R
GRIMALDI, A ROSICH, J KIRKHAM, RUTH WOODS,
SPENCE JAMIESON, CHRIS BOEN & JOHNATHON
BERRY**

Appellants

v

BRISBANE CITY COUNCIL

Respondent

and

**SOUTHERN DISTRICTS RUGBY UNION CLUB INC
QLD BLIND CRICKET ASSOCIATION INC**

Co-Respondents

FILE NOS: P & E Appeal No 3001 of 2006
P & E Appeal No 3002 of 2006
P & E Appeal No 3444 of 2006

PROCEEDING: Appeals

DELIVERED ON: 23 November 2007

DELIVERED AT: Brisbane

HEARING
DATES: 27, 28, 30 and 31 August 2007

JUDGE: Judge Brabazon QC

ORDER: **Appeals allowed**

CATCHWORDS: ENVIRONMENT AND PLANNING – DEVELOPMENT
CONTROL – CONTROL OF PARTICULAR MATTERS –
Community Facilities and Recreational Areas – proposed
development to upgrade an existing sporting field in a
memorial park - appeal against Council decision to approve
development application - assessment of impacts of the

proposed development – whether development should be approved in accordance with Council’s planning provisions – whether development should be approved in accordance with planning principles

COUNSEL: Mr R S Kirkham on his own behalf
 Ms PM Daly on her own behalf
 Mr M Labone of counsel for Ms Woods
 Mr T Trotter of Counsel for the Brisbane City Council
 Mr ANS Skoien of Counsel for Southern District Rugby Union Club Inc and Queensland Blind Cricket Association Inc

SOLICITORS: Environmental Defenders Office for the appellant Woods
 Brisbane City Legal Practice for the respondent
 Carter Newell for the co-respondents

1. The Issues

- [1] Yeronga Park is a large park in Brisbane. Souths Rugby Club (since the 1970’s) and the Queensland Blind Cricket Association (since 1964, though blind cricket has been played in the park since the 1920’s) have had clubhouses in the park. Souths has its own football oval and clubhouse.
- [2] Both clubs have been making use of an area of the park that has been called the cricket oval. The footballers use it for training. The blind cricketers play games there. Junior cricketers also play there.
- [3] Souths wants to enlarge and improve the surface of the cricket oval, so that it is a proper football field where games can be played in winter. There would be more room for the blind cricketers, in summer. The wicket block would be put in place for the cricket season.

- [4] The joint application was made on 8 February 2005. The Brisbane City Council approved the application on 8 September 2006 with conditions. That has brought many protests, mainly from nearby residents. Those appearing here as appellants and most of the submitters, say that the Council's decision should be overturned.
- [5] The issue is this – when the impacts of the proposed development are understood, do Council's planning provisions show that it should be approved? If there is a conflict, are there good planning reasons for allowing it, in any case?

2. This Court

- [6] This is a fresh hearing¹. The duty of the Court is to take into account the evidence before it, and to give an impartial decision on the merits of the case. It is not bound to accept or be influenced by the decision of Council, in favour of the development. In this case, as in most appeals, the court has before it more information than was available to Council and its officers.
- [7] Souths and the QBCA bear the burden of establishing that the appeals should be dismissed and that the development application should be approved².
- [8] The Court is not a planning authority. That is the responsibility of Council. The court is bound to take into account the planning strategies and policies adopted by Council. The Council, and this Court, have to consider any objections duly made.
- [9] The *Integrated Planning Act* requires any application to be decided on the law and policies in force when the application was made. If any new laws or policies come

¹ *Integrated Planning Act* p4.1 s 4.1.52(2)

into effect after the application is made, then the Court may give whatever weight seems appropriate to those changes.³

3. The Proposed Development

- [10] The proposal is to improve and enlarge the cricket oval, so that it can be used for rugby games, and be better for blind cricket matches. A cut would be made into the embankment on the eastern side, and fill would be placed on the lower western side. The cut in the south east corner would be retained by walls with a safety fence on top. There would be no other walls. There would be battered edges to parts of the enlarged field, with slopes of about 1:3. The only fencing would be the safety fence above the retaining wall in the south east corner. The grass would be irrigated.
- [11] The goal posts would be removable. The existing three lights on small poles would be replaced by four taller lights on thicker poles, spread around the field. Otherwise, the new field would have no structures on it such as fences or seating.
- [12] At present the rugby club uses the cricket oval for training only, on a couple of nights a week. It is not suitable for games. Souths says that the new work would see games played during the winter season, and training. The senior games would continue to be played on the existing oval, with the junior games assigned to the new field. It is expected there would be four or five matches on a Saturday or Sunday, on about ten weekends a year. Training would be on two nights a week during winter.

² *Integrated Planning Act* s 4.1.5(1)

³ *Integrated Planning Act* s 4.1.52(2)

- [13] Cricket is played in the summer. The scale of the cricket matches would not change. The enlarged ground would be rather more efficient for the holding of blind cricket matches.

4. The Strategic Plan

- [14] It is essential to identify the planning provisions that apply to this proposal. They start with the Strategic Plan for Brisbane. The Strategic Plan for the city places this land within “residential neighbourhoods”. It then sets out a number of desired environmental outcomes and strategies for the city which might have an impact on the application for this development:

“3.2.2.2 Cater for a balanced range of recreational and sporting opportunities, natural environment and attractive landscapes to meet community needs through:

- (b) park diversity – parks and recreational facilities have different types and scales containing different land forms, fauna communities, vegetation types and features, and maximising opportunities to protect cultural, recreational, ecological and aesthetic values.
- (c) facilities and infrastructure – high quality park facilities that respect each park’s character and are appropriate for potential users.”

3.2.2.3 Promote cultural diversity through:

- (c) History/heritage – development that respects elements of local history in a way that informs present and future communities of historical value, role or function of that place or structure.
- (e) Limiting impacts – development that does not have a negative impact on the cultural heritage significance of a place.

3.2.2.6 Reduce pollution and its impacts through:

- (a) Pollution control – development that incorporates appropriate air, water, noise and light pollution and other environmental control measures.
- (f) Buffering – buffering uses sensitive to noise, light and/or air pollution, from activities that generate these pollutants at unacceptable levels.

3.3.2.2 Required development to enhance the amenity, environment and cultural context of it’s locality through:

- (c) Enhancing character – development that is sympathetic to the character of the surrounding areas.
- (h) Sense of place – development that creates a feeling of belonging in places with a distinct character.

4.2.2 The residential neighbourhoods are elements of the city:

They contain the elements that help make Brisbane so liveable; the residential areas and relating amenities and facilities such as convenience shopping, local parkland, schools, churches, hotels and clubs.

4.2.2.1 Meeting realistic expectations for future amenity

People should be able to choose their residential location with realistic expectations for the future amenity of the area. The planned strategic directions in this regard are to:

- Prevent intrusion of development that could seriously detract from residential amenities.
- Allow development that complies with the Plan.

The park is part of the Green Space System. See par 4.1.1:-

“... this valuable asset (The Green Space System) must be maintained, managed and enhanced in accordance with strategies for growth management throughout SE Qld ... The key challenges are to ensure that recreational and cultural values of land contained in the Green Space System are protected.”

Para 4.1.2.1 sets out the Green Space Values, including:-

“recreational value – active and passive recreational opportunities including public open space, formal sporting fields and major recreation complexes.”

- [15] The Strategic Plan sets out the principles applying to places of cultural heritage significance:

“4.7.1 The challenge

Brisbane contains a wide range of places of cultural heritage significance.

These heritage places make an important contribution to the city’s character and culture. Once lost they can not be recovered.

Among these heritage places are:

- buildings, monuments and other structures both singularly and in groups
- topographic features, landscapes, sites, parks, gardens, significant amenity areas, forests, wetlands and other habitats.”

- [16] A Heritage Register has been set up. Yeronga Park was placed on the Council's Heritage Register on 1 January 2004.

“4.7.2.1 Heritage Register

A Citywide Heritage Register will identify heritage places. In those cases, the Heritage Place Code will be considered in assessing any development proposal.

To conserve places of significance and manage the impacts of developments on these places, the significance of places listed in the Heritage Register will be considered when assessing an impact assessable development application. Development that adversely affects these places is not considered appropriate.

4.7.2.2 Places of cultural heritage significance

Places that have cultural heritage significance for any group/s of people will be conserved by:

- Listing the places in the Heritage Register so that their attributes are identified and known.
- Supporting the use of these places for purposes that retain their significance.
- Ensuring that development does not detract from their cultural heritage significance.

This conservation will be carried out in accordance with principles of the (Burra Charter).

The new development will protect the cultural heritage significance of the place by keeping and preserving the significant fabric and by avoiding harmful intrusions on significant views ...”

- [17] Because this proposal will involve operational work on the site of a heritage place, impact assessment is required. See Ch3, p 17 of City Plan. The Heritage Place Code will apply to the impact assessment. In particular, see par 3.2.1:

“P1 The proposal must not damage the cultural heritage significance of the heritage place, but provide for future protection;

P2 The proposal must be based on, and take account of, all aspects of the cultural significance of the heritage place.

P3 The proposal must protect the fabric and setting of the heritage place, while providing for its use, interpretation and management.”

An acceptable solution is a report accompanying the application that verifies the proposal has been prepared in accordance with the Guidelines to the Burra Charter: Conservation Policy.

It should be kept in mind, that the “acceptable solutions” are not the only way of satisfying the Code. Other ways of complying may be demonstrated.

5. City Plan 2000

[18] The City Plan puts Yeronga Park in the Sport and Recreation Area:

“3.3.1 Intent

The sport and recreation area provides for more formal sport and recreation and may include club buildings and associated off street parking facilities.

Activities requiring permanent facilities such as youth clubs are accommodated in this area, but only where they are located in large tracks of land and the activity occupies only a small part of the surrounding parkland.

The area includes public land that is generally accessible to the public. Accessibility may be limited in certain parts, either by physical means such as fences or other means such as club membership where there is an overall community benefit.

3.3.2 Desired Environmental Outcomes

Sport and recreation areas accommodate a wide range of organised sport, recreational cultural activities at local, district and citywide levels.

Adverse impact(s) on adjacent sensitive uses and of surrounding areas by development and activities are minimised.”

[19] When the Council was appointed trustee of the park in 1930, the purpose of the land was for “park and recreation”. It is not known how the planning category became “sport and recreation”. That having happened everyone, including this court, is obliged to follow the new description.

6. The Outdoor Sport and Recreation Code

[20] This Code applies to this development. Relevant provisions of this Code are these, in relation to performance criteria:

“P1 The proposal must provide an overall community benefit. Acceptable solutions are:

- Public access is not restricted by fencing.

P4 The proposal and its scale, design and character must not adversely impact on and must be compatible with this existing and likely future amenity of the surrounding area.”

- (No acceptable solution is prescribed.)

7. The Stephens District Local Plan

[21] The park is within this local plan. It contains some specific, additional local planning requirements, which prevail over City Plan, in the event of a conflict. It contains a development principle:

“2.4 Existing parks such as Yeronga and Leyshon Parks are to remain important multi-purpose use conservation areas.”

[22] The precinct intends included these provisions:

“3.12 Any organised sport and recreation areas of Yeronga Park should be contained to existing leased areas and preferably only serve local and district sporting needs. Club facilities are to have minimal impacts on surrounding residential areas.

3.13 Large scale activities that serve a regional function may be allowed in Goodwin Park and Leyshon Park ... Smaller scale activities serving a local or district function will be allowed in Fehlberg Park.”

- 3.12 There is also a reference to the intents to be found in Map A, which covers the Stephens District. This notation refers to Yeronga Park:-

“Promote Yeronga Park as an area of open space that offers opportunities for organised sport and informal recreation.”

8. The Queensland Heritage Register

- [23] On 2 August 2005 Yeronga Park was included on the Queensland Heritage Register. The citation opens with this explanation:-

“Yeronga Memorial Park is important in demonstrating part of the pattern in Queensland’s history, being a recreation reserve established in 1882 and later a memorial park from 1917. Within the layout, structures, buildings, plantings and activities pursued in the park are several important themes and events in Queensland’s history. These historical layers include: sporting activities since the 1880’s, including blind cricket, bowls and croquet since 1920’s, Boy Scouts and Girl Guides activities, a World War I and World War II memorial function and providing a depression era work opportunity in the construction of the stone wall along Ipswich Road.

In 1970 (Souths) took out a lease in the park. Their current clubhouse was built in 1986 ...

The memorial avenue lined with trees, memorial gates and memorial pavilion created between 1917 and 1921, are key aspects of the park, both historically and in establishing the current layout of the park. They demonstrate the process of grieving that was occurring across Stephens since Yeronga Memorial Park is important in demonstrating the principal characters of its type – a public park since 1882 and a memorial since 1917... Honour Avenue is formed by a memorial of trees.

The abundance of trees in the park, interspersed with the open sporting areas, provide for pleasing views within the park, especially between the croquet club and the tennis courts, and across the central cricket oval.”

It was not submitted here that the fact of the Queensland Heritage listing had any particular impact, as a matter of law, on the outcome of this appeal. The listing and the citation serve to demonstrate the heritage significance of the park.

9. The Yeronga Park Conservation Management Plan

[24] This document, notable for its understandable influence on the expert witnesses, is not part of the statutory planning scheme. It is a document created by Council. It started in February 2001 with a survey of council properties, to assess their cultural heritage significance and to formulate policies for their conservation. Early recommendations led to listings of the park on the Council's Heritage Places Register, and on the Queensland Heritage Register. Stage 2 led to the Conservation Management Plan for the park, commissioned by Council in November 2002. It was prepared by Brisbane City Council officers, with assistance from Ms Catherine Brouwer, landscape architect.

The Plan can be taken to be the informed and considered view of Council with respect to the history and management of the park. It is published by Council. In this case, the approval package says that any lease agreement over the cricket oval is to, "incorporate the requirements of the Yeronga Park Conservation Plan ..." (Ex2 p512)

[25] The Plan contains an extensive study of the park, and its history. It is concerned to identify assets of cultural heritage significance. It goes on to describe the implementation of appropriate heritage management policies. It recognised the use of the park by a number of sporting clubs since 1882. It shows that opposition to increasing use of the park by sporting bodies is long standing. See p26 – opposition emerged in 1993, 1972, and 1974/75, when Council received a petition from Yeronga residents, expressing concern at the use being made of the park by sporting

clubs, and requesting assurance that the area would not be completely taken over by sporting clubs and other organisations.

[26] With respect to cultural heritage significance, the Plan says this:

“Places of cultural heritage significance are considered important to past, present and future generations and are places that we wish to keep. Yeronga Park has cultural heritage significance for a variety of reasons. It is significant because:-

- The park is associated with the early development and settlement of the suburb of Yeronga and is important for providing public parkland space for the playing of organised sport and for informal recreation since the late 19th century;
- As a landmark open space of rolling grassed fields and groves of mature trees the park provides an important contribution to the street scape;
- The elegant sets of memorial entrance gates and prominent freestanding memorial pavilion are important built elements in the park;
- The freestanding memorial pavilion are important built elements in the park;
- The freestanding memorial pavilion is important as a rare monument type in Brisbane;
- The memorial plantings, two sets of memorial entrance gates and a memorial pavilion give the park a special and sacred purpose in commemorating the lives of those from the district who participated and those who fell in the Great War and generally commemorates Australia’s participation in the Second World War;
- The Ipswich Road memorial gates are important in remembering the women workers of the district;
- It has social value as a venue for the playing of organised sport, staging community functions and gatherings into engaging informal recreation. It is important to the community as its formal meeting place.

[27] With regard to the cultural heritage significance of the park, it was proposed that:

“The cultural heritage significance of Yeronga Park will be best protected by maintaining the character of the park and taking necessary care of it. The park will be best protected by maintaining and where possible reclaiming the public open space.”

[28] It was recommended that the use of the park for various sporting activities, including football, should continue. (p49)

- [29] Mention was made of the leases which various sporting or community groups held over parts of the park. In particular, Policies 9 & 11 says this –

Policy 9

“Proposals for changes of use in a current lease or for changes to the facilities incorporated within a current lease should be reviewed against the cultural heritage values and the design and management guidelines in this conservation management plan.”

Policy 11

“No additional leases which alienate further sections of the park should be granted.” (p50)

“New Structures

The open space of the park is valued by the community and contributes to the character of the park. Over time the amount of open space in the park has been diminished by the insertion of various dedicated sports and community group facilities. While these activities are valued by the community the park should not be further reduced by additions that exceed the present lease boundaries No new structures should be inserted in any area of the park that is not presently leased to a sports club or community group.” (p54)

It can be seen that these policies are consistent with the local plan, paras 3.12 and 3.13, above.

- [30] Caution was expressed about the use of increased parking areas. With respect to

Souths, it says:

- “The existing car parking at the football field and near the Bowls Club should be contained to the designated sites and the areas of grass previously used rehabilitated.”
- “The parking needs of the football club should be assessed, and the carpark areas designated and limited, and the park area damaged by the overflow parking use be rehabilitated into the park.”

10. Souths

- [31] Souths Rugby Club, established since 1948, now has nearly three hundred members. Most of the members are from the local community. They play home and away games against other teams, in a competition administered by the Queensland Rugby Union. In 2007 Souths had seven grades of rugby played at Yeronga Park. Sometimes there are other social teams which play at Yeronga. All the Yeronga games are on the main oval, next to the clubhouse. The cricket field is used for training only.
- [32] The QRU now require all premier grade clubs to have a minimum of two competition fields. Souths is the only club that has one field. The amount of play on the single oval is now becoming difficult and expensive to manage. It is a field built to international standards.
- [33] Souths wishes to improve the cricket oval into another playing field. If the more junior games could be moved there, pressure would be taken off the main oval, and the demands of the QRU would be satisfied. The proposed field, shown in Exhibit 1, would not be of international standard. The playing area would be smaller, and the distance between the touch lines and the edges of the field would be small. The standard international rugby field is 70 metres x 100 metres. There should be a space of at least 10 metres from the goal line to the dead ball line. In this case, the constraints will mean that 4.5 metres is available. On the south western side, there would be a 2 metre space from the edge of the playing field to the drop at the top of the batter.

[34] Mr I. J. Cameron is a senior member of the club, a former president, and a top-level coach. His evidence should be accepted, that rugby is often played on fields of less than an ideal size, and that the speed of play in the lower grades make injury a most unlikely event. Padding is used on hard objects that are close to the field of play. He said that there would be a no danger to players on this field. While that may be not completely accurate, it can be seen as his expert opinion, that there is no unacceptable danger.

[35] It is expected that the Blind Cricket Association will have the use of the field in summer. The wicket block would be removed for the rugby season. There was also a suggestion that the goal posts might be removed after each game, or training session. That is surely an unrealistic expectation. As Mr Cameron said in his statement, they could be erected at the start of the rugby season and then removed at the end of the season.

[36] Souths has been at the park since the early 1970's. It took over a large open area at the east of the park, which was identified by local residents as "the village green". That space was used for such things as Sunday School picnics, circuses, fetes, RSPCA dog competitions, Girl Guide and Scout rallies, and athletics. Activities of that sort then moved to the present cricket oval, which some people now identify as the village green. It has been used for community events, such as festivals, film nights, and senior citizens parties.

[37] The clubhouse, and the fence around the field, have the practical effect that members of the public are excluded.

[38] Parking spaces are provided in front of the clubhouse. There is a need for more parking, and informal use has been made of space near the northern side of the rugby field. It is accepted that the new rugby field would bring additional players, spectators and cars to the park. In addition to the players, thirty or forty spectators might watch a game on the weekend. It is now proposed that an additional thirty five formal car parking spaces should be added, where the existing informal parking takes place.

[39] The clubhouse is licensed. A large Fourex sign nearby points to the clubhouse. Not surprisingly, the activities of its patrons have caused upset to local residents, from time to time.

11. The Proposed Conditions

[40] It was submitted for Souths that the approval should be subject to conditions, designed to limit the use of the field. These conditions should be taken into account:

- “1. Subject to the specific requirements set out in these additional conditions, the operational works shall be performed generally in accordance with the plans contained in Exhibit 21.
2. Excavations on the northern side of the proposed field are to be limited to the profiles shown on drawing number 1-043027-02 revision G in Exhibit 21, with no more than 100mm of additional excavation beneath, and to produce, the finished profiles shown on that plan.

With regard to the Fig Trees numbered F2 to F6 on the northern side of the proposed field:

- (a) pruning of the canopies is only to be performed under the supervision and direction of a qualified arborist, and is limited to pruning the canopy to prevent overhanging in the field of play or, alternatively, there is to be no pruning of the canopy of any tree irrespective of whether that canopy overhangs the field of play;

- (b) any interference with individual roots that interfere with the platform or the field of play should only be conducted under the supervision and direction of a qualified arborist; and
 - (c) the area of mulch beneath the trees is to be maintained as it is, to a 75mm depth of coverage over the natural soil surface.
- 4. Pruning of branches of Tallowood Trees numbered T10 and T11 overhanging the field of play shall only be conducted under the supervision and direction of a qualified arborist.
- 5. With the exception of the retaining wall in the south-east corner of the proposed field, irrespective of whether a retaining wall is required in the south-west corner of the proposed field (to avoid root compaction for nearby trees), all edges of the platform for the proposed field shall be battered at a slope of no greater than 1:3.
- 6. There shall be compliance with the requirements set out in section 2.1, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.10, 2.11 and 2.14 of the Joint Arborists Report 30 August 2007¹.
- 7. Installation of electrical services and the proposed irrigation system shall be conducted under the supervision and at the direction of a qualified arborist.
- 8. The proposed light pole in the vicinity of Fig Trees numbered F5 and F6 shall be relocated so that it is positioned generally in the north-eastern corner of the proposed field, away from the line of Fig Trees numbered F2 to F6.
- 9. There shall be designed and constructed an additional formal area for car parking adjacent to the existing car park, for no less than 35 motor vehicles, with such location, design and construction to be performed under the supervision and direction of a qualified arborist and a qualified traffic engineer (to ensure traffic safety and efficiency and to avoid adverse impacts upon significant vegetation), and it shall involve the use of permeable paving materials (to avoid hardstand areas).
- 10. The playing field, the edges of the platform and all battered slopes shall be grassed (to ensure the maintenance of access to and from the proposed playing field generally from all directions), save that there shall be plantings around the proposed playing field for aesthetic and environmental reasons, as advised by a qualified landscape architect, limited to:
 - (a) plantings in the planting areas between the stepped retaining walls in the south-east corner of the proposed playing field and in the vicinity of the safety fence above those retaining walls;
 - (b) the planting of replacement Tallowood Trees on the eastern and southern side of the proposed playing field;

- (c) plantings in the area of the bio-retention basin;
 - (d) plantings in appropriate locations on the battered slope between Eucalyptus Tree number E6 and Tallowood Tree number T11.
11. The light poles and the retaining walls for the proposed development are to be coloured, for aesthetic reasons, in accordance with the joint advice of qualified landscape and heritage architects.
 12. All devices or structures used for the playing of rugby union or cricket (including cricket stumps, boundary markers, goal posts, corner pegs and safety padding) shall only be placed on the field on the day of any such use and shall be removed from the field upon the cessation of that use.
 13. The extent of any use of the proposed field for rugby union or cricket shall be generally in accordance with the proposed usage schedule set out in attachment G to the Town Planning Report of Shane Howard, Exhibit 3.
 14. Use of the proposed field for rugby union fixtures shall occur on no more than one day on any given weekend, between the hours of 9.00 am and 6.00 pm, Saturday or Sunday.
 15. Use of the proposed field for rugby union training shall be limited to two nights per week, between the hours of 5.00 pm and 9.00 pm, Monday to Friday.
 16. With regard to irrigation and maintenance of the proposed field, after construction;
 - (a) irrigation of the proposed field shall only occur at night between the hours of 7pm and 5am;
 - (b) access by members of the public to the proposed field shall not be restricted during maintenance work, save when, and where, restriction of such access to part of the proposed field is specifically necessary for the safe performance of maintenance work on that part of the proposed field.
 17. Six new fig trees (of no less than 2 metres in height) shall be planting and maintained for 12 months in locations identified by Brisbane City Council in the line of the existing Honour Avenue of Fig Trees, between the proposed field and Ipswich Road.
 18. There shall be no movement, or storage, of vehicles or machinery across the line of the existing Honour Avenue Fig Trees numbered F2 to F6 for any purposes whatsoever associated with the construction, maintenance or use of the proposed playing field.
 19. Access for vehicles or machinery associated with the construction maintenance or use of the proposed playing field shall be limited to, and from, the southern side of the playing field (between the south-east corner and Tallowood Tree number T11).

20. Within 90 days of the obtaining of the approval of the Stephens RSL Sub-branch to the erection, and wording, of a memorial plaque on the proposed eastern retaining wall below Tallowood Tree number T7 (which approval shall be sought in writing before the commencement of any construction works), such a plaque shall be erected in that location and shall be subsequently maintained.

12. The Cricket Oval

- [41] The existing field is a relatively flat area, roughly rectangular in shape. The long axis runs east west - not an ideal orientation for a rugby field. It has a length between 80 and 90 metres and a width between 60 and 65 metres. The rectangle has a bulge in its north western corner, which facilitates a circular oval for blind cricket.
- [42] The inspection in late August showed that the grass was in poor condition, and contained many bindies. There had been a significant drought by then.
- [43] The eastern side of the field is below the level of Souths' clubhouse. There has been a cut into the natural land, deepest in the south east corner. The soil from that cut has been pushed down as fill to the western end. At that end the level surface of the fill then runs down a slope, to the natural ground level further to the west.
- [44] It is not clear when the changes to the natural state of the ground were made. It seems likely that some, if not all, of the work had been done by the time of the Second World War. Some further work might have been done in the early 1970's, about the time that Souths came to the park. There is no evidence that Souths did any of the work. No work has been done since then.

- [45] There was a road across the field during WWII. That has now disappeared, or been covered by a later layer of fill. Vegetation surrounding the existing field is of varying ages. There are some young, small tallowwood trees located in the area of cut in the south west corner. Larger and older tallowwood trees stand in the south east corner, at the top of the cut, on the eastern side.
- [46] There are no fences or goal posts on the field. There are three light towers, shown on the plan. There are no goal posts. There are no signs, or other furniture, apart from a picnic table in the shade of the fig trees.
- [47] Overall, it can be said that the structure and appearance of the oval has been untouched for the last thirty or so years.

13. Leases and Licences

- [48] Souths' existing clubhouse and oval is held under the terms of a Council lease from 1 November 2004 to 31 October 2009. The area of the lease can be seen on the plan, Ex 30, p86.

- [49] The following conditions are contained in the lease:-

“19. Availability to other Organisations

- 19.1 The Council reserves the right to direct the tenant by at least thirty days written notice to:-
- (a) enter into a sublease of the premises or part of the premises or by;
 - (b) enter into a licence of the premises or part of the premises with the person nominated by the Council, on terms and conditions approved in writing by the Council.
- 19.2 The tenant is to make the premises available to schools for the playing of school sport and for other activities as a minimal fee only to cover the cost of ground preparation and outlays.

- 33.2 The tenant will make the playing ovals, change rooms and any other facilities on the premises which are necessary for the proper conduct of school sport available free of charge for the playing of organised school sports throughout the term at times which do not conflict with the normal activities of the tenant.
- 33.3 The Council may take possession of and use the premises free of charge for special public purposes at any time during term after giving the tenant at least fourteen days notice.
- 33.4 The tenant must construct and display upon the premises in the manner determined by Council, notices informing the public that the area of the premises forms part of an area to be used for Park and Recreation purposes and may be used by the public for those purposes where not in actual use by the tenant or any other persons approved from time to time by the Council.”

[50] The Blind Cricketers’ clubhouse is occupied under a lease, from 1 April 2005 to 31 March 2010. It is also marked on the above plan. However, the conditions affecting Souths’ lease, set out above, do not apply.

[51] The Blind Cricketers’ use of the park for games depends on yearly licences. For the current licence, see Ex 30 pp35-55. The licences do not create any interest in the land. An attached plan shows that it has the right to use two areas for cricket. One is on this cricket oval. The other is an area immediately in front of the clubhouse.

[52] Souths and the Blind Cricketers have jointly entered into a lease for the use of the cricket oval. It is from 1 June 2005 to 30 April 2010. However, the lease is not effective as it is subject to the consent of the Minister, which has not yet been given (cl33.1). The lease contains conditions which are identical to the clauses set out above.

[53] According to item 4 in the Schedule, Souths has the use of the field during the winter months and at other times as first agreed in writing by the Blind Cricket

Association. The Blind Cricket Association has the right to use the field during the summer months and at other times as first agreed in writing by Souths.

- [54] The permitted times of use are 8.00am to dusk, Monday, Wednesday, Friday, Saturday and Sunday, and 8.00am to 8.30pm Tuesday and Thursday.
- [55] There is no written agreement or licence about Souths' use of the oval for training

14. A Memorial Park

- [56] It is common ground that Yeronga Memorial Park does have cultural heritage significance. The reasons for that can be usefully taken from page 5 of the Conservation Management Plan:

“Yeronga Park is considered to have cultural heritage significance:

- As a large recreation area established in the 19th Century the park is important for its association with the development of the district;
- As a memorial park, it has a sacred and special purpose in commemorating those in the district who participated in the Great War and, in particular, commemorating the lives of those in the district who died in the Great War and later in the Second World War;
- The elegant sets of memorial gates and prominent free standing memorial pavilion are important as thoughtful well designed monuments standing within the grassed and treed park;
- As a large landmark area of open space with a mature parkland scape of large trees located within a dense urban suburb of Brisbane, the park is important for its contribution to the street scape of Yeronga;
- For its value to the local community as a place to engage in organised sports, and as a venue for its formal recreation and gathering since the 1880's, the park is important for its special association with the life of the local community for social and cultural reasons.”

- [57] An outline its history as a memorial park can be taken from pages 13 and 14 of the Conservation Management Plan:

“Memorials

The Great War left Australia to mourn the loss of sixty thousand from a population of four million – a loss of one in five of those who had served in the first international venture undertaken as a new nation. The dead were buried beside the battle fields where they fell, too far away for most Australians to visit to mourn. For Australians public mourning was expressed in a range of monuments often located in prominent locations including main streets and public parks.

The War had a large impact on the residents of Yeronga – of the five hundred and ninety nine from the Stephens Shire that enlisted, ninety six lost their lives. A number of commemorative monuments were erected throughout the district. Yeronga Park became a focus for commemoration for the district and accommodates two sets of memorial gates, an honour avenue of trees and a memorial pavilion.”

15. Honour Avenue and Anzac Avenue

- [58] An avenue of weeping figs and african flame trees was planted in three plantings – 15 September 1917 (41 trees), 26 July 1918 (31 trees) and in 1919 (24 trees). A commemorative plaque affixed to a small timber post was placed under each tree. Over time the plaques and posts deteriorated or were damaged. Many were lost. Recently new plaques were set into small concrete surrounds in the ground at the base of each tree, between the tree and the curb of the bitumen road which runs between the rows of trees. There are also new plaques placed at the base of each of the palms in the Avenue defining the east path in the north east corner of the park.
- [59] There are no longer any african tulip trees on the avenue. The majority of the trees are ficus benjamina (weeping fig trees). There is a leopard tree and several ficus rubignosa. The recent plantings of figs in the venue at the park road end are ficus hillii.
- [60] Some additional information appears in Ex 35, “The Avenues of Honour”. It is a research report, and a recent publication of Council:

“Avenues of Honour commemorating WWI were a memorial form unique to Australia. The plantings were seen as commemorative monuments of practical work, contributing to the environment and were valued for both their shade and aesthetic value. Usually, trees that would grow tall, and be large and prominent – often fig trees and pines – were planting in lines to form a strong presence in a street setting. The trees in Honour Avenue, Yeronga are a fine example of this, and the avenue is thought to be the second oldest memorial planting in Australia.

The Queenslander of 22 September 1917 reported that “on Saturday afternoon at Yeronga Park, an impressive ceremony consisting the planting on the Avenue of trees was performed by the chairman of Stephens shire council, counsellor FA Stimpson. The idea was initiated by the council, as an honour to the residents of the shire, who had paid the supreme sacrifice in the Great World War.”

.... Lieutenant Colonel Ferguson attended the planting ceremony and spoke of the local men’s gallantry. After the speech the departed men’s next of kin planted the trees. Counsellor Stimpson planted a tree in the memory of Robert Douglas whose relatives could not attend and Lieutenant Colonel Ferguson planted one in memory of James Fielding whose relatives were in England. ...

In the mid 1990’s the Stephens RSL sub branch took on the major task of replacing lost or damaged plaques with the polished stone plaques which are now in place. ... placed the plaques in concrete blocks under the trees in Honour Avenue as well as under other trees in the area adjacent to the domed memorial pavilion. These included the palms that lined the footpath to the memorial and other palms in the open memorial lawn area near Ipswich Road.

Each year just before ANZAC Day, the Yeronga State School hold a commemoration ceremony in the school grounds ... the students move into the Avenue, and stand in class groups with the veterans at individual memorial trees while the names of the fallen servicemen are read out on the school loudspeaker. Each class is allocated a tree to stand around and they also bring their own individual bouquets that they place around the trees. This practice is part of a long standing tradition by the Yeronga primary students.”

- [61] Honour Avenue is a living memorial, of great significance to the park and to local residents. This case has shown that many people have very strong feelings about any interference with the trees. Many of the objections referred to a need to leave the trees to grow naturally. The report by Margaret Cook, historian, shows why there are still such strong feelings. (Ex 17)

- [62] It might be mentioned that the trees in Honour Avenue have been somewhat neglected, at least up until recent times. Some are missing, and should be replaced. Others are now benefiting from recently placed mulch around their roots. Their maintenance is the responsibility of Council. It is very likely that Council's now closer attention to the trees will continue. The Avenues of Honour booklet was produced for the national 2015 Avenues of Honour project. The project, which is a national initiative co-ordinated by an organisation called Treenet, is to document, preserve and reinstate such original tree plantings. That is to be done by 2015, the centenary of the Anzac landing at Gallipoli.
- [63] There is another avenue of trees in the park. It is an open avenue of palm trees running from the southern boundary of the park (from the School Road frontage, opposite Bradley Street) in an arc to the memorial gates in Ipswich Road. Another row of palms links Frederick Street with the Cenotaph. Much of that avenue has been lost, from the boundary of Souths car park to Ipswich Road. It is believed that these trees were planted by servicemen who came back from the Middle East after the Great War, and brought the seeds with them. They are usually known as Anzac Avenue.
- [64] It can be seen that the avenue has been interrupted by the parking arrangements in front of Souths clubhouse. The palm trees P1 and P2 near the proposed wall at the south eastern corner of the cricket oval are part of the avenue. See Ex 21.

16. The Fig Trees

- [65] Honour Avenue contains, in particular, six fig trees on the northern side of the cricket oval. Their closeness to the proposed rugby field has been the source of much contention.
- [66] Exs 1 and 21 show the position of the proposed work. Exs 21 is a later revision, and shows a widening of the space on the northern side, near the trees. That wider space was created, just before the hearing, by rotating the field around a fixed point at the south east corner, in an anti-clockwise direction. The red line represents the edge of the platform, and the green line is the edge of the playing field. The existing fig trees F2, F2.5, F3, F4, F5 and F6 can be seen to the north. The canopies of F2 and F3 are now just over the edge of the playing field. The trees will continue to grow. Their likely growth means that three of them, F2, F2.5 and F3 will overhang the playing field. See Exs 16 and 28. Ex 16 also conveniently shows the position of the light poles. In the north west corner, a pole will be clear of F2, although growth by that tree means that the leaves will just touch the pole. The position of the pole to the north east is already near the edge of the canopy of F6, and will become enveloped in the growing canopies of F5 and F6.
- [67] Souths proposes that the growing trees should be cut back, under the supervision of an arborist. Alternatively, it is suggested that the trees not be cut back at all (see the proposed conditions, above). The players would then have to tolerate an increasing amount of interference with the field of play, in the north west corner.
- [68] There are some other difficulties. The arborists agreed that mulching is important to the continuing health of the fig trees. That may have been neglected in the past.

Some mulch put around them in recent times has been beneficial. The usual practice is to mulch such trees to a depth of about 75mls, under the canopy of the tree. That would see the mulch under three trees encroach onto the playing field. Even if some free space were kept around the touchline on the northern side, then the mulch under F2.5 would have to be restricted to a distance about midway between the trunk and the edge of the canopy.

[69] Compaction would be another difficulty. It is already a concerning issue in this area. Spectators would gather in the shade of the trees. The proposed access to the field (Ex 3, p73) ran between F3 and F4. Vehicles passing over that area would seriously impact the health of those trees. It is now suggested that the access point could be elsewhere, to avoid the trees. See the conditions. It is still not clear that construction work would have no detrimental affect on the trees. It may also be expected that the fig tree roots will extend under the playing surface in the north west corner, as they search for water and nutrients. It is likely that they would have to be cut back, to protect the playing field.

[70] Otherwise, it should be accepted that excavation of the current field near the trees might be limited to 100mls, as the arborists agree, and that the placing of underground electrical and water services could be clear of the trees.

[71] In addition to the physical impacts, the emotional impacts on those who value the fig trees as a war memorial have to be taken into account. They regard the ground under the canopy as an essential part of the memorial. In July 1918 the Governor attended a second planting, and said that "... it was a charming idea, that each tree should wave in the breeze and throw a shadow over the ground sanctified by the

name of the man who had fallen” (Ex 18, p 40 and Ex 17, p8). They also appreciate the solitude which, for most of the time, prevails along the length of Honour Avenue. Interference with those qualities is strongly opposed by them. Respect has to be paid to those feelings. To put it in planning terms, the amenity of the avenue in the eyes of many of its users will be reduced by such a development.

[72] Attention also has to be paid to interference with other existing trees. They are the tallwoods, T8 and T9, which are presently growing on the eastern edge. The retaining wall will see those trees removed. See Ex 1. It is hoped that T7, which is a very large tree, will remain. However, there is a threat to its health because of the excavation within its root zone to allow the construction of the retaining wall. See Ex 21.

[73] It is proposed to replace T8 and T9 with mass planting which, while not as high, will soon produce an equivalent amount of green growth. If they are removed, no doubt that is the best solution. However, it does not mean that the loss of the trees is desirable, in the first place.

[74] In the south west corner, construction work would necessarily be close to the collection of smaller trees, ranging from E6 around to T11. There is some uncertainty about the impacts on those trees. The encroachment of the work to them is closer than desirable.

[75] A retention basin is to be constructed near the eucalyptus. Its purpose is to trap the first run off of undesirable chemicals before they get into a nearby creek. It would be underground, with vegetation on top. It is made necessary by the likely use of fertilisers on the field.

- [76] Two palms, forming part of Anzac Avenue, are at the south east corner. See P1 and P2. It is uncertain whether they can be retained.

17. Landscape and Heritage Values

- [77] There was a conflict between the expert witnesses, as to the degree of damage to the landscape and heritage values of the cricket oval.
- [78] It is true that a comparison has to be made between the existing situation, and the proposed situation. The existing situation already contains an artificially levelled surface in the park, being about 80 metres x 60 metres, lit at night by three light poles.
- [79] The proposed changes have been designed to have the least possible impact on this part of the park. That is, there is no fencing around the field, no signs, and no goal posts for at least half the year. There will be a retaining wall in the south east corner, but a short time after construction, a visitor to the park would be barely aware of the changes. Any mass planting would not be so extensive, as to be a barrier to pedestrian movement over the field. The only real barrier to movement would be around the south east corner where there is the retaining wall, and where present movement is restricted because of the steep slopes which are mulched.
- [80] The significant features to take into account, therefore, are the extension of the platform to the west, for a distance between 15 and 22 metres, an additional light pole, with all four light poles being higher and thicker than the present three, the greenness and regularity of the grass on the playing surface, the likely presence of white line markings at least during the rugby season, the retaining walls and

plantings in the south east corner, and the steep batters at the western end. Some additional mass plantings may be evident around the south west corner, and below the batter to the west. Mr Chenoweth has provided a photo montage to show the proposed field, with and without planting. See Ex 2, Vol 2, p342. It can be accepted that the field, when not used for rugby or cricket, would provide an improved venue for general community use, being larger and better maintained than the present oval.

[81] It is significant that the use of the field will be considerably more than at present. If the cricket use does not change, there will be rugby matches there on at least ten weekends, in addition to training. These matches will bring additional players and spectators onto and around the field. Overall, the field could be used on thirty or more weekends of the year.

[82] Ms Brouwer, landscape architect, thought that the changes were unacceptable. Her report was written before the most recent changes, eliminating any railings, south west retaining wall, and changing the position of the field, making it about 4 metres further away from the fig trees in the north western corner. She was aware of the present proposal, when giving her oral evidence.

[83] In her opinion, the cricket oval still holds the major landscape character and aesthetic values developed through the early 20th century design. Those landscape values are of heritage significance. She thought that the field would be a visual feature that would appear to be a formalised or structured sports field, thus diminishing the aesthetic landscape and heritage values which placed the oval in a grassed parkland. The proposed pruning of the trees extending over the sports field,

and the particular access between the trees, would damage the heritage fabric. The result would be a loss of social and aesthetic cultural heritage significance. The present oval would be used for occasional sports, while the proposed development would be a large scale, structured, delineated, flat space which would be substantially and visibly out of portion, character and landscape form with the existing spaces and landscape character. That would be to diminish the landscape and heritage value of the parkland. Ms Brouwer thought that the Conservation Management Plan was the most significant guide to the proper use of the field.

[84] There is need to be conscious of the considered views of Mr Veal, Mr Scott and Mr Chenoweth, to the effect that the changes are relatively minor, will have some benefits and do no real damage to the heritage values of the park. Mr Scott's report discussed its heritage significance, and concluded that the physical changes will not alienate the playing field from the park. The "noisy and active" use for rugby would be close to the memorial avenue, but would be for relatively short periods of time. He says that it will otherwise be an attractive facility for the public.

[85] Overall, Ms Brouwer's opinions should be accepted. If it were not for the heritage issue, then the opinions of Messrs Veal, Scott and Chenoweth might be accepted. However, her impressions from the point of view of one observing the collection of changes to the heritage value of the central park area, should prevail. That is, there are a number of changes which, together, will have a significant impact on the appearance and use of the oval – the increased size, the steeper batter at the edges, the retaining wall and fence in the south-east, the taller and wider light poles, the goal post and lines (when in use as a rugby field), the irrigated surface and the loss of a large tree. Those changes take place in the setting of the memorial avenue.

When these changes are assessed according to the Burra Charter, because of the heritage listing, they are seen to have a detrimental impact on the park's heritage values. The character of part of the park will be changed. The setting of the park will be different.

[86] To meet the performance criteria of the Heritage Place Code, the proposal must not damage the cultural heritage significance of the park. The heritage experts agreed that the Conservation Management Plan had been prepared in accordance with the Burra Charter and was the foundation of the heritage listing. These experts took different views in their conclusions, about the impacts of this proposed development on the cultural heritage significance of the park. Overall, the most persuasive conclusion is that of Mr Kennedy, at s1.12 of his report. He concludes that the proposed development would detract from the cultural heritage significance of the park for these reasons:

- The granting of a new lease for organised sport as proposed is inappropriate in the public parkland setting and in breach of policies 7 and 11 of the Yeronga Park Conservation Management Plan. (Policy 11 is opposed to the granting of new leases, and reflects the similar intent of par 3.12 of the Local Plan)
- The proposed sports field will intrude significantly on the peaceful contemplative setting of Honour Avenue. As he observed, the public “ownership” and “atmosphere” of the oval will change, if it becomes a rugby field which is used by the Souths; rather than an entirely public space. (This concern was explained, for example, by Dr Mary Daly, a regular user of the park – she would not walk across a rugby field.)

- The proposed development would adversely impact on the future management and conservation of the trees forming Honour Avenue, which should be allowed to grow to their maximum size.

18. The Planners

[87] Three planners gave evidence. Messrs Howard and Mulcahy were in favour of the proposal, while Mr Buckley was against it.

[88] Mr Mulcahy gave weight to a number of factors – the oval has been in existence for about thirty years, the land is in the Sport and Recreation Area according to city plan, it is included in council’s registered heritage places, and listed on the Queensland Heritage Register, Souths and the Blind Cricketers are presently using sub-standard playing fields, there has been a council offer on a lease of the land, with conditions, and the continued use as a sports field is supported by s 2.1.6 of the Yeronga Memorial Park Conservation Plan.

[89] He thought that the primary question is whether or not the operational works to build the new football oval would detract from the cultural heritage significance of a heritage place. In his view, bearing in mind the conditions for approval set out in the approval package, the proposed works would be minor in impact and would not adversely affect the cultural heritage significance of the park.

[90] Mr Shane Howard concluded that the proposal to develop a formalised sports field is entirely consistent with and supported by the provisions of the Brisbane City Plan. He believed that the proposal would have no impact on the history of the park, and its heritage value. He thought that the proposal appropriately respected,

maintained, and would be compatible with the heritage and character values associated with the cricket oval, and park. The existing oval would simply be extended and that its appearance would not change. The long standing use of the oval for rugby training, while not being the subject of a former lease, needed to be appropriately recognised. If the proposal were allowed, Souths' total use of the park would amount to 3.4 hectares, or only 15 per cent of the total area.

[91] He concluded that the proposed lease would not be contrary to the provisions of the Stephens District Local Plan. Precinct Intent 3.12 states that leases should be contained to existing leased areas. There is a discretion to allow additional leases to be approved. He appeared to make no mention of opposition by local residents.

[92] Mr Chris Buckley was against the proposal. In his opinion, three main planning provisions applied – the requirement of the aims of the Sport and Recreation area (generally in favour of such sporting activities), the Stephens District Local Plan (with provisions designed to limit adverse impacts), and the scale of organised sport.

[93] If the planning provisions stopped there, in his opinion, the proposal might be approved, because of the reasonable expectations (of Souths and the local residents). However, in his view, the Heritage Place Code represented another layer of planning, so that the proposal had to be carefully reviewed. The “standard of acceptability” had been raised to a very high level. He concluded by observing that there had been demonstrated community concern about the proposal, and that the heritage impacts were significant.

- [94] In his report, he also expressed a doubt that Souths' proposal amounted to a local or district sporting need. However, at the hearing, it seemed to be generally accepted that Souths indeed served "a district sporting need".

19. Parking

- [95] Souths' application did not propose any additional parking spaces, saying that the existing sixty six spaces were sufficient. Increased traffic was raised as an issue, in appeal 3444/06. At the hearing, the traffic engineers for the Council and Souths agreed that 100 spaces (the standard requirement to service two fields) would be appropriate. They rapidly prepared some sketch plans showing an extension of the parking spaces near the clubhouse, by adding thirty five spaces.
- [96] It is now submitted by Mr Labone, that the Court should not deal with that issue, as it would amount to more than a minor change to the application. That seems to be an accurate observation. It would require public notification, and could be the subject of additional objections.
- [97] The report of the engineers' meeting shows that there is already informal overflow parking around Souths. That was a reason to expand the formal parking spaces. The report also points out that the second field would increase peak vehicle generation due to the proposed compression of the playing timetable. The engineers proposed time limits on the use of the two fields, to ensure that daily traffic generations do not increase unacceptably.

[98] Ms Woods' affidavit shows that the overflow parking can be experienced on match days. Cars park under some of the fig trees, and that is likely to damage them. Her figures show that even the additional thirty five spaces would not solve the problem.

20. The Submissions

[99] The submissions should be taken into account, to the extent that they deal with relevant issues.

[100] There are hundreds of properly made submissions. Not all are against the proposal. There are several letters from members of Souths. They are for it. A former player is against it.

[101] The large majority of submissions are against the proposal. Some are in a standard form, but there are many which have been individually composed. There are two principal points of opposition – interference with the trees in Honour Avenue, and the creation of a football field in the middle of the park. There is a substantial group of local residents who are concerned about the proposal, are opposed to it, and whose opposition is based on concerns discussed in these reasons.

21. Conclusions

[102] Fundamentally, the planning controls are against the proposal. The particular provisions of the Stephens District Plan and the Heritage Place Code are against it. Another licence would be created, over land in the park.

- [103] From a planning perspective, the opinions of Mr Buckley should be preferred as he gives more weight to the intentions of those documents and the objections of the local residents, and less weight to Souths' informal use of the field.
- [104] The physical alterations to the oval and, above all, its new and active use as a field for rugby games, would damage the landscape and cultural heritage of the park. The views of Mr Kennedy and Ms Brouwer should be preferred, as they give better recognition to the impacts of those changes on the users of the park. Those impacts include the enlarged oval (or rectangle), the increase in players, spectators and traffic, the intrusions onto the memorial avenues, and upon existing native trees. There would be an adverse impact on the very sensitive memorial values of Honour Avenue.
- [105] The scale of the field, its use by Souths, and the proposed lease, would mean that the space would be alienated from public use.
- [106] Souths' wish to have a second field is a worthy one, and every effort has been made, by the use of conditions, to soften the impact of the proposal. It remains a proposal that is contrary to Council's expressed intentions for Yeronga Park, and against the wishes of a great many local residents. While there are undoubtedly some planning grounds in favour of the proposal, such as the desirability of assisting organised sport, they are not sufficient to overcome that conflict.
- [107] The appeal is allowed. The approval is set aside. Souths' application is refused.