

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Lennium Group Pty Ltd v Brisbane City Council & Ors*
[2019] QPEC 17

PARTIES: **LENNIUM GROUP PTY LTD (ACN 147 434 035)**
(Appellant)

v

BRISBANE CITY COUNCIL
(Respondent)

AND

NICOLE JOHNSTON
(First Co-Respondent by Election)

AND

NOEL MORRIS
(Second Co-Respondent by Election)

AND

NICHOLAS CHARLES READ
(Third Co-Respondent by Election)

FILE NO/S: 77 of 2017

DIVISION: Planning and Environment

PROCEEDING: Appeal

ORIGINATING COURT: Planning and Environment Court, Brisbane

DELIVERED ON: 26 April 2019

DELIVERED AT: Brisbane

HEARING DATE: 2, 29, 30 and 31 October 2018, 1 and 2 November 2018, 10 December 2018, and further written submissions received 21 December 2018, 12 March 2019, 13 March and 1 April 2019.

JUDGE: Kefford DCJ

ORDER: **The appeal is dismissed. The development application is refused.**

CATCHWORDS: PLANNING AND ENVIRONMENT – APPEAL – where the appellant seeks approval for a three storey unit complex with 30 units on part of the Yeronga Bowls Club – where the land is in the Sport and recreation zone – where the land is protected as a local heritage place – where the Council refused the development application – whether the impact of

the proposed development on the cultural heritage significance of Yeronga Bowls Club is acceptable – whether the land is still required for sport and recreation uses or community facilities – whether the proposed development will have an unacceptable stormwater impact – whether there are grounds that justify approval of the development application despite conflict with City Plan 2014

- LEGISLATION: *Planning Act 2016* (Qld), s 311
Sustainable Planning Act 2009 (Qld), s 314, s 324, s 326
- CASES: *GBW Investments Pty Ltd v Brisbane City Council* [2018] QPEC 33; [2018] QPELR 1079, approved
Gillion Pty Ltd v Scenic Rim Regional Council & Ors [2013] QPEC 15; [2013] QPELR 711, approved
ISPT Pty Ltd v Brisbane City Council [2017] QPEC 52; [2017] QPELR 1117, cited
SDW Projects Pty Ltd v Gold Coast City Council [2006] QPEC 74; [2007] QPELR 24, approved
United Petroleum Pty Ltd v Gold Coast City Council & Anor [2018] QPEC 8; [2018] QPELR 510, approved
Weightman v Gold Coast City Council & Anor [2002] QCA 234; [2003] 2 Qd R 441, applied
Woolworths Ltd v Maryborough City Council (No 2) [2005] QCA 262; [2006] 1 Qd R 273, applied
Zappala Family Co Pty Ltd v Brisbane City Council & Ors [2014] QCA 147; (2014) 201 LGERA 82 applied
- COUNSEL: A Skoien for the Appellant
 B Job QC and M Batty for the Respondent
- SOLICITORS: Colin Biggers & Paisley Lawyers for the Appellant
 Brisbane City Legal Practice for the Respondent
 Each of the Co-Respondents by Election were self-represented

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Introduction

- [1] The Yeronga Bowls Club sporting facility is one of the oldest bowls clubs in Queensland. It is located on 11 lots. Five of the lots front Querrin Street at Yeronga and contain the bowling green known as the MacGregor Green. The other six front School Road. They contain the clubhouse, and the bowling green known as the Barclay Green.
- [2] On 31 March 2017, Lennium Group Pty Ltd purchased the five lots fronting Querrin Street from the unincorporated association known as the Yeronga Bowls Club (“*the Association*”). Lennium Group wants to redevelop its land by demolishing the MacGregor Green and replacing the sport and recreation use of those five lots with a three-storey building containing 30 dwellings. Lennium Group made a development application to Brisbane City Council to facilitate its proposed redevelopment. The application related to the five lots purchased by Lennium Group, as well as the six lots retained by the Association. No redevelopment is proposed on the part of the land owned by the Association.
- [3] The Council refused the application. It contends that two fundamental and insurmountable obstacles stand in the way of an approval of the proposed development. The first relates to the local heritage place status of the Yeronga Bowls Club.¹ The second obstacle relates to the inclusion of the land in the Sport and Recreation Zone.
- [4] Three residents of the area have elected to join the appeal: Ms Johnston, Mr Morris and Mr Read. They each made a submission during the application process opposing the development. They maintain their opposition to it, even though the appeal has been allowed to proceed on the basis of a change to the application.² Lennium Group proposes further changes to the development. They have not allayed the concerns of the three residents, nor of the Council.
- [5] The issues for me to decide are:
- (a) whether the impact on cultural heritage values is acceptable;
 - (b) whether the proposed use is appropriate given the land is in the Sport and recreation zone;
 - (c) whether the proposed development adequately caters for stormwater;
 - (d) whether the built form of the proposed development is acceptable; and
 - (e) whether the development application should be approved anyway.

¹ Where I refer to the Yeronga Bowls Club, I am referring to the sporting facility located on the land. I refer to the Yeronga Bowls Club unincorporated association as “*the Association*”.

² The development application originally sought approval for a four-storey unit complex comprising 50 units. On 30 January 2018, the court permitted the appeal to proceed on the basis of a changed application as the change was no more than a minor change.

The decision framework

- [6] The issues must be decided within the statutory framework in the *Sustainable Planning Act 2009* (Qld).³
- [7] The appeal proceeds by way of hearing anew.⁴ Lennium Group bears the onus of establishing that the appeal should be allowed, and the development application approved.⁵
- [8] In this case, the application is for three development approvals. They are:
- (a) a preliminary approval for building work;
 - (b) a development permit for material change of use to facilitate demolition of the MacGregor Green and a change from use for sport and recreation to use for multiple dwellings; and
 - (c) a development permit for reconfiguration of a lot, to create a 1.5-metre wide easement from Querrin Street to the clubhouse.
- [9] The development application is to be assessed against Version 3.01/2016 of Brisbane City Plan 2014, being the version of City Plan in place when the development application was made on 24 May 2016.⁶
- [10] The Council also seeks to rely on its recently amended Sport and recreation zone code, which may be given such weight as I consider appropriate.⁷
- [11] If the development application conflicts with City Plan, it cannot be approved unless there are sufficient matters of public interest to justify approval despite the conflict.⁸

Should the appeal proceed on the basis of further proposed changes?

- [12] Lennium Group wants the appeal decided on the basis of a changed development application. In January 2018, the court permitted the appeal to proceed on the basis of changes identified by the town planner retained by Lennium Group, Mr Greg Ovenden, in paragraph 16 of his affidavit sworn on 6 December 2017. Lennium Group now wants to make four further changes, namely:
- (a) correction of an error in the shadow diagrams;
 - (b) the connection of six slimline roofwater tanks to the 125,000 litre underground detention tank (to increase stormwater detention capacity for the proposed development);

³ The *Sustainable Planning Act 2009* was in force when Lennium Group made its development application and filed this appeal. By operation of s 311(2) of the *Planning Act 2016* (Qld), the *Sustainable Planning Act 2009* continues to apply.

⁴ *Sustainable Planning Act 2009*, s 495.

⁵ *Sustainable Planning Act 2009*, s 493.

⁶ *Sustainable Planning Act 2009*, s 314.

⁷ *Sustainable Planning Act 2009*, s 495(2)(a).

⁸ *Sustainable Planning Act 2009*, s 326 and the definition of “grounds” in Schedule 3.

- (c) the relocation of two columns in the basement carpark adjacent to parking spaces to enable appropriate movements and separation between the carparking spaces and the columns; and
- (d) the provision in the basement parking of appropriate room above car parking spaces adjacent to services in the basement carpark.

[13] I am satisfied that those changes, in addition to the changes identified in the affidavit of Mr Ovenden, would not result in “*substantially different development*” to that which was before the Council at the time of its decision. I am also satisfied that the changes sought by the Appellant constitute no more than a minor change⁹ and that it is appropriate for the appeal to be determined on the basis of the changes.¹⁰

Is the impact on heritage values acceptable?

[14] The acceptability of the impact on the heritage significance of the heritage place is to be assessed by reference to the Heritage overlay code and the Strategic framework.

[15] The Council alleges approval of the proposed development would conflict with performance outcomes PO1, PO2, PO3 and PO4 of the Heritage overlay code, and the code’s purpose. It also alleges conflict with s 3.4.1(1)(c) of the Strategic framework, as well as specific outcome SO19 and land use strategy L19.1 and L19.3 in s 3.4.2, Element 2.1. Ms Johnston, Mr Morris and Mr Read join in those allegations.

[16] Performance outcome PO1 of the Heritage overlay code requires development:

- (a) to provide for the future protection of the heritage place; and
- (b) not damage or diminish the heritage place’s cultural heritage significance.

[17] Both requirements must be met.¹¹

[18] The heritage place mapping identifies the entire area of the 11 lots on which the Yeronga Bowls Club is presently situated as a heritage place.

[19] The Council led evidence from Mr Kennedy, a heritage architect. He is of the view that the statements of significance in the Council’s heritage citation identify the cultural heritage significance of the heritage place. I accept that the Council’s heritage citation for the Yeronga Bowls Club informs the cultural heritage significance of the heritage place in this case.¹²

[20] Lennium Group submits that the focus of the statements of significance is the continuous operation of the Association over the last 105 years, and the addition of specifically identified fabric.

⁹ *Sustainable Planning Act 2009*, s 350.

¹⁰ *Sustainable Planning Act 2009*, s 495(2)(b).

¹¹ *GBW Investments Pty Ltd v Brisbane City Council* [2018] QPEC 33; [2018] QPELR 1079, [83]-[90].

¹² *ISPT Pty Ltd v Brisbane City Council* [2017] QPEC 52; [2017] QPELR 1117, [57]-[67]. This was not in dispute between the parties. Lennium Group submitted that the determination of the heritage issues would largely turn on the proper construction of the heritage citation. It also submitted that the cultural heritage significance of the land was identified in the statement of significance.

- [21] The first statement of significance relates to the importance of Yeronga Bowls Club in demonstrating the evolution or pattern of the local area's history. It identifies the significance of the heritage place as "*a bowls club that has operated on the same site since 1913 and has evolved over the years to meet the changing needs of the club and its members*". I do not regard this as attaching significance to the continued operation of the Association for two reasons.
- [22] First, in construing the statement of significance, it is appropriate to have regard to the context in which it appears.¹³ Immediately before the statements of significance, the citation provides a summary of the heritage value of the heritage place. It is apparent from the first sentence of the summary that the "*Yeronga Bowls Club*" is the "*sporting, leisure and social facility*", not the Association. This construction is supported by the final sentence of the summary, which refers to the "*club*" as a "*venue*".
- [23] Second, the mere existence of the Association does not "*demonstrat[e] the evolution or pattern of the local area's history*". The fabric of the heritage place does. The Yeronga Bowls Club sporting facility officially opened in 1913. During cross-examination, Mr Richards accepted that the MacGregor Green plays a part in the history of the place. He acknowledged that the official opening of the club involved the MacGregor Green. It was the first formal green. It was in place at the inception of the Yeronga Bowls Club and was the principal part of the initial development of the sporting facility. The start of the bowling use involved the MacGregor Green. The MacGregor Green has remained a part of the place since the commencement of activities. Mr Richards also accepted during cross-examination that the clubhouse did not open until two years after the establishment of the use on the MacGregor Green. It was initially constructed in 1915 in the middle of the land. It was later relocated to towards the School Road frontage. Having regard to an extract from the Sunday mail on 10 July 1932, Mr Richards accepted the second green, being the Barclay Green, was constructed about 20 years later in 1932.
- [24] The second reason the heritage place is identified to be of cultural heritage significance is its importance in demonstrating the principal characteristics of a particular class of cultural places. In terms of the criterion, the citation records the heritage place to be significant "*As an example of a sporting and social facility that has operated in Yeronga from the pre-World War 1 era to the present day*". The focus is on the facility, not the Association.
- [25] The third statement of significance focuses on the special association with the life and work of a particular person, group or organisation of importance in the City's and local area's history. With respect to this aspect of the Yeronga Bowls Club's significance, the citation refers to the "*shed and pavilion built for, and continuously occupied by, the Yeronga Bowling Club for more than 95 years, with a memorial drinking fountain (1942) and commemorative gates and decorative fencing built in 1969*". The Yeronga Bowling Club is the "*organisation of importance in the City's and local area's history*" with which the heritage place has a special association. The fabric of the heritage place is significant because of the "*special association*" with a group. The cultural heritage significance identified in this statement is not the continued operation of the Association itself.

¹³ Mr Elliott accepted the citation, as a whole, assists in understanding the statement of cultural heritage significance.

- [26] Lennium Group submits that the clubhouse and a bowling green is the crucial fabric required to protect the cultural heritage significance of the heritage place. It submits the existence of the Association (as a going concern), and the fabric specifically identified in the citation, demonstrates:
- (a) the evolution of Yeronga’s history (through the creation of the Association in 1913 by members of the local Yeronga community);
 - (b) the principal characteristics of a pre-World War I bowls club (being a clubhouse and bowling green); and
 - (c) the relationship of the Association with the local community of Yeronga and its history.
- [27] In respect of the heritage issue, Lennium Group led evidence from historian Mr Richards and heritage architect Mr Elliott. The Council led evidence from historian Dr Blake and Mr Kennedy. They all agree that “*the principal elements that contribute to the [cultural heritage] significance of the place*” are the MacGregor Green, the clubhouse, the Barclay Green, the memorial fountain, the commemorative gates, and the dedicated seats.
- [28] Despite agreeing that the MacGregor Green is a principal element that contributes to the significance of the heritage place, Mr Elliott considered that the proposed removal of the MacGregor Green would not diminish the heritage significance of the heritage place. (He considered the approval of the proposed development complied with all applicable provisions in City Plan.)
- [29] In explaining his opinion, Mr Elliott placed considerable focus on “*commercial*” considerations, in particular the membership and financial viability of the Association. He did so despite acknowledging that such considerations play no part in assessment under City Plan or the Burra Charter. The continuity of the use by the Association weighed heavily in Mr Elliott’s consideration of the impact of the proposed development on the cultural heritage significance of the heritage place. During cross-examination, he confirmed it was material to his conclusions about compliance with the Heritage overlay code.
- [30] Mr Richards also placed considerable emphasis on the continued operation of the Association “*as a going concern*” in forming his opinions about the impact of the proposed development.
- [31] The Council says Messrs Elliott and Richards’ reliance on commercial considerations is a significant flaw in the opinions they express about compliance with the Heritage overlay code. Lennium Group defends its experts’ reliance on such matters. It submits, considered “*sensibly and pragmatically*”, the proposed development involves the provision of funds to the Association to aid it in reorganising itself to continue its operations into the future, if that is possible. As such, it submits that the proposed development positively recognises and aids the achievement of the objectives of the cultural heritage significance of the heritage place.
- [32] I am not persuaded that the relevant cultural heritage significance is the continued operation of the Association for the reasons provided in paragraphs [21] to [25] above. Even if my construction of the statement of significance is incorrect, and the continued operation is of cultural heritage significance, Messrs Elliott and Richards’

reliance on that issue is misguided. The evidence does not demonstrate that approval of the proposed development would aid the continued operation of the Association. That part of the land occupied by the MacGregor Green has been sold. The sale was not conditional upon receipt of development approval. The Association has received the proceeds of sale in return for the transfer of ownership. As such, the future prosperity (or operation) of the Association does not rise or fall on the approval of the proposed development. A decision to approve the proposed development does nothing to assist the continued operation of the Association or its continued use of the balance of the land.

- [33] When Mr Elliott's references to commercial matters are stripped from his analysis in the Joint Expert Report, little remains. Aside from commercial considerations, Mr Elliott formed his opinion by reference to applications for redevelopment of other bowls clubs. He appears to suggest that the Council's position in this appeal is inconsistent with its position about redevelopment of other clubs. One of the difficulties with Mr Elliott's evidence in that regard is that only some of the sites referred to by Mr Elliott were heritage places, and none of them have been developed. The most puzzling "*example*" referred to by Mr Elliott concerned the Tarragindi bowls club. The decision of the Council with respect to that club provides no assistance in determining whether there are acceptable heritage impacts associated with the proposed development. That decision involved application of a former policy "*initiative*" that was never implemented and never formed any part of City Plan. The policy was ultimately withdrawn. Further, that development application did not involve a heritage place, and the proposed redevelopment was for a different use to that sought here, namely aged care and retirement living development. For the Mowbray park site, a development application was not progressed, let alone assessed or decided.
- [34] Mr Elliott's attempts to justify his reliance on the other bowls club sites were unconvincing. His evidence, on this issue in particular, impressed me as argumentative and lacking in impartiality. During his oral testimony, Mr Elliott presented as an advocate for his client's cause.
- [35] I prefer the evidence of Mr Kennedy with respect to the impact of the proposed development on the cultural heritage significance of the heritage place. He performed a far more orthodox, and appropriate, assessment. He provided cogent explanations for his opinions. I also accept the evidence of Dr Blake.
- [36] Mr Kennedy and Dr Blake opine that approval of the proposed development would diminish the cultural heritage significance identified in the first statement of significance in the heritage citation. As was explained by Dr Blake, with whom Mr Kennedy agrees, the MacGregor Green demonstrates the beginnings of the club. It is "*the primary evidence of the operation of the club since 1913*". With the removal of the MacGregor Green, there would be no evidence of the operation of the club on the land since 1913. The clubhouse only provides some evidence of the early history, given it has been relocated and extensively modified. The Barclay Green was constructed much later.
- [37] In relation to the second criterion in the heritage citation, although a clubhouse and bowling green are principal characteristics of a bowls club, the culturally significant characteristics of this bowls club are not so limited. The heritage place is significant "*As an example of a sporting and social facility that has operated in Yeronga from*

the pre-World War I era to the present day". The MacGregor Green is the only remaining pre-World War I element of cultural heritage significance. I accept the opinion of Mr Kennedy and Dr Blake that demolition of that green would substantially diminish the Yeronga Bowls Club's ability to demonstrate its cultural heritage significance.

- [38] For those reasons, the proposed development conflicts with performance outcome PO1 of the Heritage overlay code. It involves the wholesale destruction of a principal element of the heritage place and its replacement with something entirely discordant with the heritage values of the place. It does not protect the heritage place. It diminishes its cultural heritage significance.
- [39] Performance outcome PO2 of the Heritage overlay code seeks development to be based on, and to take account of, all aspects of the cultural heritage significance of the heritage place.
- [40] Mr Richards accepts the MacGregor Green is "*significant fabric in itself*". He acknowledges that the proposed development does not protect that fabric. Despite that, he is of the opinion that the proposed development complies with the requirement that development take account of all aspects of cultural heritage significance. During cross-examination, Mr Richards was given several opportunities to explain how he maintains that opinion in light of his acknowledgment that the proposed development would result in the loss of a principal element of significance. No rational explanation was provided. Rather, Mr Richards repeatedly asserted that the fabric of the heritage place was not the dominant consideration. To his mind, the operation of the Association on the land since 1913 was the dominant consideration. He regarded the continued operation of the Association as sufficient to tip the balance in favour of approval.
- [41] Dr Blake considers that the proposed development does not take account of one of the most significant elements of the heritage place because it proposes the removal of the MacGregor Green. He says, as the original green built in 1913, the MacGregor Green is an essential element in demonstrating the significance of the place. Mr Kennedy is of a similar opinion.
- [42] I prefer the evidence of Dr Blake and Mr Kennedy on this issue. The loss of the MacGregor Green, and its replacement with multiple unit dwellings, fails to ensure that the proposed development either is based on, or takes account of, all aspects of the cultural heritage significance of the place. As such, the proposed development is in conflict with performance outcome PO2 of the Heritage overlay code.
- [43] Performance outcome PO3 of the Heritage overlay code requires development to protect the fabric and setting of a heritage place while providing for its use, interpretation and management.
- [44] As I have already noted, all of the experts agree that the MacGregor Green is one of the principal elements that contributes to the significance of the place. It is significant fabric. In the Historians' Joint Expert Report, Mr Richards acknowledges that "*the proposed development will alter the site by developing the MacGregor Green for a new use.*"
- [45] The proposed development protects some of the fabric of the heritage place. It would see the relocation, and restoration, of the memorial drinking fountain. The fountain

is to be moved to that part of the land not sought to be redeveloped for units. Lennium Group also proposes the restoration and minor relocation, in Querrin Street, of the commemorative gates referred to in the third criterion in the statement of significance. The proposed development is to include fencing along the frontage of Querrin Street that acknowledges the decorative fencing built in 1969. The decorative fencing is referred to in the third criterion of the statement of significance.

- [46] In terms of setting, Mr Elliott acknowledges the proposed development will also substantially change the setting of the heritage place when viewed from the Querrin Street frontage of the land. He does not consider this to be material. He notes Lennium Group proposes to provide a pedestrian easement from the northern pedestrian gates on Querrin Street through the redeveloped northern portion of the land and connecting with the retained facilities on the balance of the subject site. He regards the maintenance of the continued land use over the balance of the land as sufficient.
- [47] The protection of the drinking fountain, gates, and decorative fencing, and the provision of access to the sporting facility from Querrin Street, are commendable aspects of the proposed development, but they are insufficient to demonstrate compliance with performance outcome PO3.
- [48] I accept the evidence of Mr Kennedy and Dr Blake on this issue. Mr Kennedy opines that the proposed development would not protect the fabric and setting of the Yeronga Bowls Club. His view is informed by the proposed demolition of the MacGregor Green, which is fabric he regards to be of considerable cultural heritage significance. He also considers that use of the MacGregor Green is crucial to understanding its cultural heritage significance. In terms of setting, Mr Kennedy considers the location of the proposed multiple unit dwelling on the MacGregor Green would destroy the existing open setting. Dr Blake was of a similar opinion. I accept the views of Mr Kennedy and Dr Blake.
- [49] For those reasons, a decision to approve the proposed development would conflict with performance outcome PO3 of the Heritage overlay code.
- [50] Performance outcome PO4 of the Heritage overlay code requires development to be based on the issues relevant to the conservation of the heritage place.
- [51] As I have already noted, the second criterion of the Statement of Significance included in the Brisbane City Council Heritage Citation says that the heritage place is significant as “*an example of a sporting and social facility, it has operated in Yeronga from the pre-World War 1 era to the present day*”.
- [52] The initial fabric of the heritage place was the MacGregor Green. Its destruction would not allow the proposed development to be based on the issues relevant to the conservation of the heritage place. The only physical link that the heritage place has to the pre-World War 1 era as an operational bowls club is the MacGregor Green. The destruction of that element of the heritage place conflicts with performance outcome PO4.
- [53] The purpose of the Heritage overlay code is to, amongst other things, implement the policy direction in the Strategic framework.

- [54] Section 3.4.1(1)(c) of the Strategic framework intends that “*Brisbane’s character elements and built cultural heritage are appreciated, protected and managed.*” Similarly, specific outcome SO19 and land use strategy L19.1 and L19.3 seek to protect Brisbane’s important buildings and places. These provisions indicate a clear policy to protect and enhance places of importance to Brisbane’s history that have cultural heritage significance. For the reasons set out in paragraphs [16] to [52] above, the proposed development does not accord with this planning intent and is therefore in conflict with the Strategic framework. As such, the proposed development is discordant with the identified purpose of the Heritage overlay code. It does not assist in the implementation of the policy direction of the Strategic framework.
- [55] For reasons provided above, a decision to approve the proposed development would also conflict with overall outcomes (2)(a) and (2)(b) of the Heritage overlay code. Those overall outcomes require that development on a heritage place does not detract from the cultural heritage significance of the heritage place, and that re-use of a heritage place is compatible with, and retains, the place’s cultural heritage significance.
- [56] Lennium Group has not demonstrated that the impact on heritage values are acceptable.

Is the proposed use appropriate in the Sport and recreation zone?

- [57] The Council alleges that the proposed development involves an inappropriate use of land in the Sport and recreation zone. It alleges that approval of the development would conflict with the Strategic framework, in particular land use strategy L6.1 for Element 2.4 in s 3.4.5. It also alleges conflict with overall outcomes (4)(a), (b) and (h) of the Sport and recreation zone code and the purpose of the code. Ms Johnston, Mr Morris and Mr Read join in those allegations. Ms Johnston also alleges conflict with strategic outcome 3.4.1(1)(p) of the Strategic framework and each of the residents allege conflict with a number of additional provisions in the Strategic framework.

Would approval of the proposed development conflict with land use strategy L6.1?

- [58] The dispute between the parties about compliance with land use strategy L6.1 is twofold. It relates to:
- (a) the proper construction of land use strategy L6.1; and
 - (b) whether Lennium Group has demonstrated that approval of the proposed development would not conflict with land use strategy L6.1.

What is the proper construction of land use strategy L6.1?

- [59] Land use strategy L6.1 for Element 2.4 in s 3.4.5 of the Strategic framework requires:
- “Development protects the land used for privately owned sport and recreation facilities, such that:
- (a) the sport and recreation use is retained;
 - (b) if redeveloped, the land is re-used for another form of sport or recreation use;

- (c) the land is only used for another purpose where it can be demonstrably shown that the use has been relocated within the locality or is absolutely not required by the Brisbane community any longer.”

[60] The Council submits this provision sets a very high bar for redevelopment of sport and recreation zoned land. It says it requires Lennium Group to demonstrate that the part of the land to be used for multiple dwellings is absolutely no longer required:

- (a) not just in the locality but by the Brisbane community;
- (b) for bowls, whether social or otherwise;
- (c) for any of what is a broad range of sport and recreational activities; and
- (d) for the even broader range of uses that are “*community facilities*”.

[61] Lennium Group submits land use strategy L6.1(c) permits land to be used for another purpose where it can be demonstrably shown that the use:

- (a) has been relocated within the locality; or
- (b) is absolutely not required by the Brisbane community any longer.

[62] In oral submissions, Mr Skoien said this strategy promotes and encourages reuse of land for purposes other than sport and recreation.

[63] Lennium Group says the Council’s approach involves two errors. First, it is not the land that must absolutely be no longer be required, rather it is the use. Second, the Council’s position ignores that the provision admits of an alternative, namely that the use has relocated.

[64] Lennium Group accepts it has not demonstrated that the existing lawn bowls use is absolutely not required by the Brisbane community. It accepts the lawn bowls use is required. However, it says the use in question, being the Yeronga Bowls Club, has not ceased and will not need to be relocated as it will continue on the Barclay Green. Alternatively, Lennium Group says if the use in question is to be construed only as the bowling use of the MacGregor Green, then that use has relocated to the adjoining Barclay Green. In such circumstances, it says there is no conflict with the Strategic framework.

[65] Sub-paragraph (c) of land use strategy L6.1 is to be read in the context of the whole provision.¹⁴ It is also to be read in the context of City Plan as a whole and as intending to give effect to harmonious goals.¹⁵

[66] The overall planning objective, to which each of the sub-paragraphs are directed, is that “*development protects the land used for privately owned sport and recreation facilities*”.

¹⁴ *Zappala Family Co Pty Ltd v Brisbane City Council & Ors* [2014] QCA 147; (2014) 201 LGERA 82, 94 [52], 95 [55] and [56].

¹⁵ *Zappala Family Co Pty Ltd v Brisbane City Council & Ors* [2014] QCA 147; (2014) 201 LGERA 82, 94 [52], 95 [55] and [56].

- [67] The first mechanism for protecting the land is by retaining the sport and recreation use. Overall outcome (4)(e) of the Sport and recreation zone code provides a useful example of the type of development proposal that would comply with this provision, namely a proposal for a compatible land use, such as a food and drink outlet. That is an example of an additional use of the land that complements the leisure and recreation experience of users and retains the sport and recreation use of land.
- [68] The second mechanism provided in land use strategy L6.1 contemplates redevelopment of the land. In those situations, the provision requires the land to be re-used for another form of sport or recreation use. This is unsurprising given redevelopment for a use other than sport and recreation would likely alienating the land from the finite pool of land available for sport and recreation purposes. A mechanism that limits redevelopment opportunities to those involving another sport and recreation use is consistent with, and supported by, the purpose statement in s 6.2.3.1(2)(c) and overall outcome (4)(h) of the Sport and recreation zone code. Those provisions seek the maintenance of privately-owned sport and recreation land as part of the network of community facilities and uses, and require the land to be re-used for sport, recreation, cultural or community facilities or services should the current activity cease. The planning outcome sought is also consistent with specific outcome SO31 and land use strategy L31 for Element 4.2 in s 3.6.3 of the Strategic framework. Specific outcome SO31 seeks enhancement of Brisbane's existing sporting and recreational facilities. The associated land use strategy L31 indicates that this can be achieved by development maximising the use of existing sport and recreation facilities, including through the development of compatible mixed uses.
- [69] The third mechanism for the protection of the land for sport and recreation is that provided for in sub-paragraph (c). The grammatical structure of this provision is difficult. However, the planning purpose is apparent when sub-paragraph (c) is read in its context. The focus of the land use strategy L6.1 is the protection of sport and recreation land from alienation for other purposes. Consideration of the broader planning context¹⁶ supports that statutory construction. Sport and recreation zoned land is a valuable community asset. Once lost, it is gone forever. The provisions of the Sport and recreation zone code are unambiguous in their intent. They seek to protect land in the Sport and recreation zone for sport and recreation purposes, including by maintaining the role of privately-owned sport and recreation zoned land. To permit land to be lost to sport and recreation uses because the Brisbane community no longer requires a particular form of sport or recreation is not a strategy that would achieve the associated specific outcome, namely that Brisbane has enhanced sport and recreation facilities.¹⁷
- [70] For those reasons, I do not accept Lennium Group's construction of land use strategy L6.1.

¹⁶ The broader planning context includes s 3.4.1 strategic outcome (1)(p) of the Strategic framework, s 3.4.5 Element 2.4 specific outcome SO1 and land use strategies L1.3 and L1.5, s 3.4.5 Element 2.4 specific outcome SO2 and land use strategy L2.2, s 3.4.5 Element 2.4 specific outcome SO8 and land use strategy L8.1, s 3.6.3 Element 4.2 specific outcome SO31 and land use strategy L31 of the Strategic framework. See also the purpose in s 6.2.3.1(1) and (2) of the Sport and recreation zone code and overall outcome (4)(e) of the Sport and recreation zone code.

¹⁷ Section 3.1(3)(f) of the Strategic framework records that, for the purpose of describing the policy direction for the planning scheme, the Strategic framework is structured to provide land use strategies for achieving the associated specific outcomes.

Has Lennium Group demonstrated approval of the proposed development would not conflict with land use strategy L6.1?

- [71] The Council submits approval of the proposed development would conflict with land use strategy L6.1 and the conflict is profound.
- [72] During oral submissions, Mr Skoien submitted that the proposed development complies with sub-paragraph (a) and the first limb of sub-paragraph (c) of land use strategy L6.1. He submitted that the sport and recreation use will be retained as the Yeronga Bowls Club will be retained following approval of the proposed development. Lennium Group also submits that, if the relevant use is that of the MacGregor Green, that use will be relocated to the Barclay Green.
- [73] Lennium Group's submissions are premised on its position that the proposed development, considered "*sensibly and pragmatically*", involves the provision of funds to the Association to aid its reorganisation and continued operation.
- [74] These submissions ignore the evidence and inappropriately conflate Lennium Group's planning proposal with its private economic decision to purchase part of the subject land prior to obtaining a development approval. That part of the subject land occupied by the MacGregor Green has been sold. The sale was not conditional upon receipt of development approval. The Association has received the proceeds of sale in return for the transfer of ownership. The future prosperity of the Association does not rise or fall on the approval of the proposed development. A decision to approve the proposed development does nothing to assist the continued operation of the Association or its continued use of the balance of the subject land. Lennium Group's speculative financial decision is not relevant to whether a decision to approve the proposed development would comply with City Plan. The approval or refusal of the proposed development is immaterial to the ongoing operation of the Association. Lennium Group seeks to pursue its redevelopment regardless of whether the Association continues to operate.¹⁸
- [75] There is no link, in terms of town planning or otherwise, between approval of the proposed development and the bowls use on the balance land. The proposed development does not advance any condition or other planning mechanism to provide for the ongoing bowls use. It does not, for example, propose the creation of a community title scheme with the Barclay Green and clubhouse in common property and a condition requiring the maintenance of the use of the bowls club on the common property. The absence of a link between the proposed development and the retention or relocation of the use was confirmed by Mr McClelland during cross-examination. He acknowledged that the Association has the money in the bank and will retain it regardless of whether the proposed development is approved.

¹⁸ There is some doubt as to whether the Yeronga Bowls Club will continue. A letter of support from the Association provided with the development application indicated that the Association intended to use the funds from the sale of the MacGregor green to refurbish the club house and to otherwise invest the money in perpetual trust to fund ongoing operations and maintenance of the Barclay green and club house development. However, Mr Morris' cross-examination of Mr McClelland revealed that, despite having the sale proceeds for almost 18 months, the Association has taken very few of the actions referred to in the letter. Further, the reports of the President and Treasurer record that the sale of the MacGregor green has made it hard to attract new members. No doubt, the Association's rejection of applications for new membership over the last four years has not assisted.

- [76] In contrast, approval of the proposed development could affect the continued use of the MacGregor Green. At the time of the hearing, Lennium Group was permitting the Association to use the MacGregor Green pursuant to a lease. Under the lease, the Association had to pay \$1 per year. It was also responsible for maintaining the land, and was liable for any rates. As Lennium Group now owns that part of the land occupied by the MacGregor Green it cannot be, nor is it, assumed that the Association will continue to be permitted to use the MacGregor Green for bowling. Renewal of the lease is a commercial matter for Lennium Group. However, as long as the green is preserved, the possibility remains, as slim as that possibility may be.¹⁹ Approval of the proposed development and redevelopment of the land removes the possibility.
- [77] With respect to relocation, Lennium Group has failed to “*demonstrably show*” that the use “*has been relocated*”. At the time of the hearing, the MacGregor Green was still being used for bowls. As such, I reject Lennium Group’s submissions with respect to retention and relocation of the use. Consequently, even if I accepted the construction of land use strategy L6.1 for which Lennium Group contends, it has not demonstrated compliance with the provision.
- [78] Approval of the proposed development will result in the historic Macgregor Green being replaced by a multiple unit dwelling. The sport and recreation use of that land is not retained. Approval of the proposed development would also not result in that land in the Sport and recreation zone being reused for sport, recreation, cultural or community facilities or services, due to the replacement of the MacGregor Green with a multiple unit dwelling.
- [79] Accordingly, the proposed development does not comply with sub-paragraphs (a), (b) or the first limb in sub-paragraph (c) of land use strategy L6.1.
- [80] Lennium Group and the Council called evidence from park and recreation planning experts to assist the court in determining whether the land proposed to be developed is absolutely no longer required by the Brisbane community for sport and recreation purposes. Mr Mason was called by Lennium Group and Mr Alston was called by the Council.
- [81] In their joint expert report, the experts compared the available supply of sport and recreation and open space zoned land within a two-kilometre catchment (but excluding land on the western side of the Brisbane River) to the “*required supply*”. The available supply included the Yeronga Memorial Park, which is a large park that has a wide variety of existing facilities and sport and recreation opportunities situated about 450 metres from the land. The “*required supply*” was calculated by reference to the desired standard of service contained in the draft Local Government Infrastructure Plan. On the basis of their analysis, the experts opined that there is enough open space land in the catchment of the land and that the land is not required for a public recreation or sporting park. I do not accept their opinion for five reasons.
- [82] First, the comparison of the “*required supply*” of trunk park infrastructure to the current supply shows a current deficit of approximately nine hectares of public sport and recreation zoned land in the catchment. Given the Council has not indicated an intention to acquire any additional land for open space within the catchment area, the

¹⁹ Correspondence from the Appellant to the Yeronga Bowls Club dated 20 August 2018 indicated that when the current lease expires, a new lease is proposed at \$33 000 per annum plus GST plus outgoings. Mr McClelland indicated the Yeronga Bowls Club intended to reject the offer.

deficit supports the need to retain other sport and recreation opportunities that presently exist, such as that on privately owned land.

- [83] Second, the analysis of the “*required supply*” of trunk park infrastructure is based on the estimated 2016 catchment population. During cross-examination, Mr Mason confirmed that the analysis did not provide for an increase in population. The experts did not have the population projections for the long term. In those circumstances, the opinion of the experts about the adequacy of the supply for the projected future population to 2036 is inherently unreliable. Increases in the population of the catchment in the coming years will exacerbate the extent of the shortfall already identified by the experts. Mr Mason accepted this.
- [84] Third, the analysis ignores that the purpose of the Local Government Infrastructure Plan is to integrate infrastructure planning with the land use planning identified in the planning scheme. The Council’s land use planning in City Plan informs its infrastructure planning, including plans for acquisition of additional land for open space within the catchment area. The land use planning includes a clear policy objective, evident in the Strategic framework and the Sport and recreation zone code, that privately-owned land in the Sport and recreation zone will be maintained for sport and recreation purposes. The maintenance of sport and recreation land reduces the need for acquisition of further land for that purpose.
- [85] Fourth, the experts’ opinion was informed by their assumption that the area of the subject land (which they say is 2 275 square metres) does not meet the minimum land area according to the Council’s desired standard of service for local informal recreation park, being 5 000 square metres. I do not accept the validity of this assumption. The minimum land area in the Council’s desired standard of service for local informal recreation park relates to public parks. It does not apply to privately owned sport and recreation land. Further, and in any event, the area of the subject land, being the whole of the Yeronga Bowls Club, is 5 230 square metres. If anything, the Council’s desired standard of service reinforces the importance of maintaining the whole of the subject land for sport and recreation, rather than fragmenting the available parcel by approving the proposed development.
- [86] Fifth, even if I were to accept the analysis, it is insufficient to demonstrate compliance with land use strategy L6.1. That provision requires Lennium Group to demonstrate there is no need in Brisbane, not just within a two-kilometre catchment.
- [87] Lennium Group otherwise seeks to discharge its onus on three other bases. First, it submits there are two lawn bowls greens within Yeronga Memorial Park, in public ownership, that have fallen into disuse, are currently in disrepair (as bowling greens) but that can be used for the purpose of lawn bowls, or some other sport or recreation use, if there is any need for such use. Second, it submits that a lawn bowls use of the MacGregor Green is not viable. Third, it submits the MacGregor Green is not suitable for alternative sport and recreations uses.
- [88] Ms Johnston cross-examined Mr Mason about the possibility of use of Yeronga Memorial Park. During the cross-examination, Ms Johnston drew Mr Mason’s attention to two letters she had received from the Council. They indicate that the Yeronga Memorial Park is a heritage property and is State land held in trust by the Council. They suggest that a Land and Conservation Management Plan precludes the establishment of additional leases or licences over the park. Mr Mason acknowledged

that the park was a heritage listed park. He did not know whether there were restrictions over use of the Yeronga Memorial Park.

- [89] Lennium Group has not established that the two lawn bowls greens within Yeronga Memorial Park could be used for the purpose of lawn bowls or some other sport and recreation use.²⁰ Further, even if Yeronga Memorial Park was available for use, that does not establish that the subject land is absolutely no longer required for bowls.
- [90] Mr Mason gave evidence about the viability of the lawn bowls use. He was of the view that the sport of lawn bowls was in serious decline. His view was informed by data compiled under the auspices of the Australian Sports Commission and the Australian Bureau of Statistics, including surveys undertaken in 2003, 2006 and 2010 and a 2013 report. That data does not accord with the more recent information available from Bowls Australia.
- [91] The information produced by Bowls Australia indicates that although, on a State-wide basis, lawn bowls has suffered some decline in membership numbers, participation in social lawn bowls programs grew by approximately 20 per cent between 2010 and 2017. In the last 12 months, 417 072 individuals participated in social programs, such as barefoot bowls. Nationally, over the period of 2010 to 2017, participation increased at an annual average rate of 3.9 per cent. There was 5.9 per cent growth in total participation numbers for bowls nationally in the past year. In the last 12 months, total participation nationally increased from 633 865 to 671 316.
- [92] Having regard to the Bowls Australia Annual Reports, it seems the national growth of bowls has largely been driven by an increased focus on school programs (such as the “*Junior Jack Attack*” program) and “*Jack Attack*”. “*Jack Attack*” is a short format product for social bowls.
- [93] Mr Mason accepts that there has been a “*startling rise*” in social participation in bowls. He accepts that there is a clear intention on the part of Bowls Australia to engage with a younger membership base, and that such a focus is likely to lead to growth in the game over the short term. This renewed interest in the sport is occurring in a context where the number of bowls clubs is diminishing.
- [94] In light of the more recent available data about participation in lawn bowls, I am not persuaded that Mr Mason’s views about the decline of the sport are soundly based.
- [95] Lennium Group submits the perilous financial position of the Association over the last few years clearly reflect the difficulties that have faced lawn bowls in Australia, particularly Queensland, in recent times. It also submits that the uncontested evidence indicates that the Association does not need the MacGregor Green to continue to operate, now or in the future, and that the MacGregor Green has been a financial burden upon the continued operation of the Association. Lennium Group relies on the statement of Mr McClelland in support of these submissions.
- [96] Mr McClelland has been the Chairman of the Association for over four years. He says that membership has been in steady decline, and he considers it unlikely to improve. He also attests to the decline in the financial situation of the Association in

²⁰ No evidence was led by Ms Johnston to establish the truth of the contents of the letters. They are, however, sufficient to put in issue the fact that there may be restrictions on the use of Memorial Park. Ms Johnston has met the evidential burden. It is for Lennium Group to discharge the legal burden.

recent years and suggests that the sale of the MacGregor Green was necessary to obtain funds to refurbish the clubhouse so as to attract new members.

- [97] I accept that in recent years the Association has experienced financial difficulties. During cross-examination Mr McClelland accepted that when he was elected as Chairman in June 2013, the Association had turned a profit in the order of \$50 000. In subsequent years under Mr McClelland's stewardship, the Association sustained increasing losses. In 2014, the Association sustained a loss of \$26 000. Those losses ballooned to \$56 000 in 2015, \$62 000 in 2016, \$110 000 in 2017 and \$130 000 in 2018.
- [98] In terms of the need for both greens, Mr McClelland says the Barclay Green is the primary green. It is used approximately two days per week to host bowls and other club events. The MacGregor Green is used occasionally to host barefoot bowls events for non-members. Mr McClelland says it is rare for both bowling greens to be used at the same time. He says it is not necessary to have both bowling greens available to the Association, even if membership were to improve in future years, and that there is no reason why the additional demand could not be accommodated on a single bowling green. This would save maintenance costs.
- [99] I have grave concerns about the reliability of a number of aspects of Mr McClelland's evidence, particularly the evidence contained in his written statement. Mr McClelland's general demeanour during his oral testimony was one of belligerence. In particular, I am unable to accept Mr McClelland's evidence that the intention of the sale was to allow the Association to continue to operate and to restore and enhance the clubhouse and other facilities in the hope of attracting new members, as opposed to allow him to be repaid the \$30 000 he loaned the Association.
- [100] Mr McClelland's evidence of the intentions of the Association are consistent with those expressed in a letter dated 6 September 2016 that accompanied the development application. In that letter, the Treasurer of the Yeronga Bowls Club provided a list of ways the Association intended to use funds from the sale to refurbish the clubhouse and attract new members and visitors. The letter also said that the Management Committee intended to place the excess funds in perpetual trust and to use the annual interest earned to fund ongoing operations and maintenance of the Barclay Green and clubhouse. However, the actions of the Association do not support the statements made in this letter. Despite the unconditional receipt of \$1.1 million from sale of the MacGregor Green in March 2017, a perpetual trust fund has not yet been established. Further, the only refurbishments that have been undertaken to the clubhouse are small things such as fixing the door to the ladies' toilets. The Association has re-painted the hall, but that was undertaken because of a specific grant obtained for that purpose. The Association has no current plans to undertake the other works referred to in the letter, such as upgrading the kitchen, repairing the hall or establishing a coffee lounge to add an extra revenue stream.
- [101] Further, Mr McClelland's evidence is inconsistent with the Bookkeeper's Report in the Yeronga Bowls Club Inc 105th Annual Report and Financial Statement to 31 March 2018. That report indicated that the sale of the MacGregor Green provided funds needed to pay outstanding creditors and an unsecured loan provided by Mr McClelland.

- [102] During cross-examination by Mr Job QC, Mr McClelland admitted that although the members of the Association are not averse to barefoot bowls, no active steps have been taken in recent times to promote it. In fact, the Association has taken no active promotional steps of any form of late. It does not have a business or marketing plan to promote the Association or increase its membership. To the contrary, over the period of Mr McClelland's stewardship, when the Association started to sustain losses and was in an increasingly precarious financial position, Mr McClelland rejected over 20 applications for membership. He rejected them because he said the names of the individuals made it obvious that the people were not interested in bowling, despite their declaration to the contrary in their application. He also said that new memberships to the Association were of no value "*at the moment*".
- [103] The attitude of the Association to new members is highlighted by the minutes of the Yeronga Bowls Club Inc Management Committee meeting on 13 September 2018. It records that the Management Committee resolved:
- "That any one who has become a full member not be eligible to take any money held with YBC to any other club from the date of the sale to Lennium Group which took place on 30 March 2017."
- [104] It also records that a motion was passed "*That all nominations for membership be suspended until further notice.*"
- [105] Mr McClelland confirmed that if the Association folds, its finances, including those funds received from the sale of the MacGregor Green, would be divided amongst the full members. This appears to be the current intentions of the Association.
- [106] In a report prepared in May 2016, Mr Mason made three recommendations to the Association about how it could improve its long-term viability and improve the recreation opportunities available to the local area. He recommended that the Association prepare a strategic/club development plan, incorporate a multi-purpose program area capable of catering for community meeting/activities, and pursue a potential long-term integration with the Yeronga Services and Community Club. None of these recommendations have been implemented. During cross-examination, Mr McClelland acknowledged that the Association did not explore any options other than sale of part of the land. It did not, for example, explore the possibility of leasing part of the subject land or seeking a tenant. Instead, the "*leadership committee*", comprised of Brett McClelland, Luke Kambouris, Marian Wilson and Dean Boyd, decided to sell the MacGregor Green to Lennium Group. It did so without taking the issue to the other members of the Association, or even the management committee.²¹ Given the evidence of Mr McClelland about his management of the Association, it is unsurprising that none of Mr Mason's recommendations have been pursued.
- [107] The financial decline of the Association is not persuasive evidence that the MacGregor Green is no longer needed for a bowls use. The financial situation of the Association is not demonstrative of a lack of need for this sport – it is more likely the product of the poor management of the Association under Mr McClelland's stewardship. Under its current management, the Association has not been accepting new members. It is not undertaking any marketing or promotional activities. It has prevented parts of the clubhouse being rented, despite having had long term tenants

²¹ Mr McClelland accepted during cross-examination that the Constitution of the Association provides for the business and operations of the Association to be controlled by a management committee of 10 or 11 people and does not make any provision for a leadership committee.

in the past. Mr McClelland indicated that no steps have been taken by the Association to arrest the expenditure that is contributing to the losses the Association has made over the last few years. In short, the Association has been its own worst enemy.

- [108] For the reasons provided, I am not persuaded that the MacGregor Green is absolutely not required for lawn bowls, either now or in the future.
- [109] Next, Lennium Group submits that the question of whether the land is “*absolutely no longer required by the Brisbane community*” for other sport and recreation activities should be construed pragmatically, sensibly and realistically, not literally or technically. It submits a strict and legalistic reading of that provision would preclude any redevelopment of land in the Sport and recreation zone, which it says is not a sound planning outcome. I disagree. Sport and recreation zoned land plays an important social and community role for the Brisbane public. Mr Mason accepted this. Sport and recreation zoned land allows for the maintenance of a fit and active lifestyle by members of the general public. Land suitable for sport and recreation use is a finite resource. It is important that land zoned “*Sport and Recreation*” is well located and accessible.
- [110] While land use strategy L6.1 sets a high bar, it does not preclude redevelopment of land. There may well be circumstances where, due to the characteristics of particular land and its surrounds, sport and recreation zoned land is absolutely no longer required.
- [111] In this case, Lennium Group submits the MacGregor Green is not required having regard to its features and surrounds. It submits the land is not well located for any sort of commercial sport and recreation use due to potential amenity impacts. It also submits the land is not well located for community facilities, which it says ought to be co-located with other facilities to produce some sort of community hub. Lennium Group also submits, quite apart from amenity concerns that would arise from alternative uses, there are obvious commercial and practical issues that would arise in respect of any proposal for an alternative sport, recreation or community use of the MacGregor Green. Any proposal to make an alternative use of the MacGregor Green would have to deal with traffic and stormwater issues, as does the proposed development. It says there is no indication as to how any alternative use of the MacGregor Green could, in reality, cater for such issues. The evidence does not support Lennium Group’s submissions.
- [112] During cross-examination, Mr Mason agreed that there are a variety of sport and recreation pursuits that could be carried out on the MacGregor Green if appropriate facilities were provided. Obviously one such use is lawn bowls. Other uses include tennis, futsal, netball, a health and fitness centre, squash, a learn-to-swim pool or a martial arts dojo.
- [113] The MacGregor Green could potentially accommodate two outdoor futsal courts. An example of that type of re-use can be seen at the Moorooka Sports and Community Club, which converted one of its four bowls greens to two outdoor futsal courts. Lennium Group did not present any detailed analysis about the need for futsal courts in the catchment.
- [114] In respect of netball, the experts agree that the MacGregor Green could potentially accommodate two outdoor netball courts and amenities to be used for training purposes. The only opposition raised by Mr Mason to such a use was that a number

of netball courts are located at Falkner Park, Graceville. They are located 5.5 kilometres from the land. They are outside the two-kilometre catchment that the experts agreed was the appropriate catchment. There is no realistic prohibition to netball courts locating on the MacGregor Green.

- [115] The experts agree that the MacGregor Green could potentially accommodate a health and fitness centre. Although a fitness centre is located nearby at the Yeronga Memorial Swimming Pool, during cross-examination Mr Mason conceded that he has not analysed whether a further health and fitness centre is needed in the catchment.
- [116] The experts agree that the MacGregor Green could accommodate a heated, indoor learn-to-swim pool. Mr Mason did not ascertain whether there is a demand for further facilities of this type in the catchment. He relies on the presence of the nearby Yeronga Memorial Swimming Pool to assert an absence of need. As was noted by Mr Alston, there is no evidence of the adequacy of the learn-to-swim services at the Yeronga Memorial Swimming Pool. Mr Alston said that, “*despite the program at the Yeronga Memorial Pool, there may well be a need for more learn-to-swim services*”.
- [117] Due to the lack of analysis presented by Lennium Group, I am not satisfied that these sport and recreation pursuits, which can be physically accommodated on the MacGregor Green, are absolutely not required by the “*Brisbane community*”, or even in the experts’ catchment, either now or in the future.
- [118] Mr Mason attempted to detract from the potential for other sport and recreation uses of the MacGregor Green on the basis that those uses would generate noise, light and amenity impacts. I am not persuaded that those matters would preclude re-use of the MacGregor Green. Lennium Group did not call a noise or lighting expert. In any event, I accept the opinion of Mr Perkins that, based upon expectations established by the subject land’s existing use and its zoning, potential amenity impacts on the surrounding residential area ought be anticipated and is not a reason to conclude there is no potential for reuse of the MacGregor Green for sport and recreation.
- [119] Lennium Group has not established that the land is absolutely no longer required for other sport and recreation activities.

Would approval of the proposed development conflict with the Sport and recreation zone code?

- [120] The Council alleges a decision to approve the proposed development would conflict with the purpose in (1) and (2) of the Sport and recreation zone code and overall outcomes (4)(a), (b) and (h) of the Sport and recreation zone code.
- [121] The purpose provisions express a planning intent that land in the Sport and recreation zone provide for a range of uses that do not include multiple dwellings. It is to be protected for sport and recreation purposes; and maintained or re-used for sport, recreation, cultural uses or a very broad range of “*community facilities*”. Even where the land is privately owned, it is to be maintained for sport and recreation purposes as it plays an “*important role*” as part of the network of the broad range of community facilities. The current version of the Sport and recreation zone code maintains this planning intent.
- [122] The purpose of the Sport and recreation zone code is to be achieved through the overall outcomes. Overall outcome (4)(a) requires development to provide for land

in the Sport and recreation zone to make an important contribution to Brisbane's liveability. Overall outcome (4)(b) requires development to provide for a wide range of organised sporting, recreational, community and cultural activities to be accommodated at local, district and metropolitan levels whether they are on publicly or privately-owned land. Overall outcome (4)(h) requires land in the Sport and recreation zone to be maintained or reused for sport, recreation, cultural or community facilities should the current activity (i.e. lawn bowls) cease.

- [123] Lennium Group submits that any potential conflict with the Sport and recreation zone code either does not actually exist or is merely a minor or technical conflict. During oral submissions, Mr Skoien submitted that the provisions of the Sport and recreation zone code, particularly overall outcome (4)(h), are inconsistent with the Strategic framework and, as such, "*fall by the way side*". Its submissions are premised on its construction of land use strategy L6.1, which I do not accept. As such, I am unpersuaded that there is an inconsistency between land use strategy L6.1 and the provisions of the Sport and recreation zone code such that the latter can be said to "*fall by the wayside*".
- [124] The proposed development does not maintain the existing sport and recreation use of the land, nor provide for its reuse for sport or recreation. It also does not provide for the land's reuse for community facilities, which are defined under City Plan as including, but not limited to, a childcare centre, community use, educational establishment, health care service, and emergency services.
- [125] For the reasons provided above, approval of the proposed development would conflict with overall outcomes (4)(a), (b) and (h) of the Sport and recreation zone code and would be inconsistent with the purpose of the code.

Would approval of the proposed development conflict with other provisions in the Strategic framework?

- [126] Ms Johnston alleges conflict with strategic outcome 3.4.1(1)(p) of the Strategic framework. It is a higher order planning provision that expresses a desire that Brisbane have a broad range of community facilities that support the community's recreational, cultural and social activities and promote the physical, cultural and social wellbeing of the community. Community facilities involve a range of uses, including a sporting club. The loss of part of the subject land from the pool of available sport and recreation land in Brisbane does not advance the desired planning outcome. It is discordant with it. However, there is no clearly identifiable conflict. Brisbane will continue to have a broad range of community facilities that meet the planning objective.
- [127] Ms Johnstone, Mr Morris and Mr Read also allege conflict with a number of provisions in s 3.4.5, element 2.4 of the Strategic framework, particularly specific outcome SO1 and land use strategies L1.3 and L1.5, specific outcome SO2 and land use strategy L2.2 and specific outcome SO6. They also allege conflict with specific outcome SO31 and land use strategy L31 in s 3.6.3, element 4.2 of the Strategic framework.
- [128] Specific outcome SO1 and land use strategies L1.3 and L1.5, specific outcome SO2 and land use strategy L2.2 in s 3.4.5, element 2.4 of the Strategic framework related to protecting land allocated for community facilities. As was acknowledged by the

Council, the land is allocated for sport and recreation, not community facilities. As such, there is no clearly identifiable conflict with these provisions.

- [129] Specific outcome SO6 seeks Brisbane have enhanced sport and recreation facilities. Similarly, specific outcome 31 seeks Brisbane's existing sporting and recreational facilities are enhanced and land use strategy L31 requires development to maximise the use of existing sport and recreation facilities including through the development of compatible mixed uses. There is no clearly identifiable conflict with these provisions. As was appropriately conceded by the Council, specific outcome SO6 in s 3.4.5, element 2.4 of the Strategic framework and specific outcome SO31 and land use strategy L31 in s 3.6.3, element 4.2.

Conclusion regarding the appropriateness of the proposed use in the Sport and recreation zone?

- [130] For the reasons provided above, Lennium Group has not demonstrated that the proposed development is an appropriate use of land in the Sport and recreation zone.

Is there a tension between the heritage provisions and the sport and recreation provisions?

- [131] Lennium Group submits that the Council's submissions with respect to the heritage and land use issues completely ignore the obvious tension that exists between those two "threshold" issues. It submits the tension arises because it is difficult to maintain the cultural heritage significance of the land while also respecting the intention in City Plan that the land be maintained as private sport and recreation land used for bowls or otherwise re-used for an alternative sport and recreation use. Lennium Group submits the tension can only be avoided if the Association continues to operate as a bowling club on all of the land, using the facilities that currently exist on the land. Lennium Group says the cultural heritage requirements would prevent use of the land for some alternative sport and recreation or community facility use. As such, it submits the Council's approach to the requirements of City Plan would sterilise future use of the MacGregor Green.
- [132] Section 326(1)(c)(ii) of the *Sustainable Planning Act 2009* admits of the possibility of approving a development application in conflict with a relevant instrument where the conflict arises because of a conflict between two or more aspects of any one relevant instrument and the decision best achieves the purposes of the instrument. This provision is not engaged in this case.
- [133] Mr Perkins, the town planner retained by the Council, gave an example of reuse of a bowling green at Bardon Bowls in a manner that, if adopted on the subject land, might comply with both the land use and the heritage requirements of City Plan. At the Bardon Bowls club only one green is maintained for formal use for bowls. The other green provides open space for a range of social or recreational activities associated with the club. There is no evidence that such a use would be precluded on the subject land. It is not relevant that it might not prove to be the most profitable commercial use of the subject land having regard to the price Lennium Group has elected to pay for the MacGregor Green prior to obtaining a development approval.

Does the proposed development adequately cater for stormwater?

- [134] Ms Johnston and Mr Read allege conflict with overall outcomes (2)(a), (b), (c), (e) and (f) and performance outcomes PO1, PO2, PO3, PO4, PO6, PO7, PO9, PO10 and PO11 of the Stormwater Code. The issue raised by those provisions is fairly summarised in the agreed list of issues. It is alleged that the proposed development fails to adequately cater for additional stormwater from the proposed development, changes in existing stormwater detention and the existing flooding problem in the locality. Ms Johnston and Mr Read allege the failure creates unacceptable adverse impacts with respect to public health and safety and will cause property damage and nuisance.
- [135] Ms Johnston and Mr Read also allege conflict with performance outcomes PO7 and PO8 of the Flood overlay code. In addition, Mr Read alleges that the proposed development does not achieve a lawful point of discharge, as does Mr Morris. Mr Read and Mr Morris also express concern about the loss of stormwater detention and the potential for downstream flooding.
- [136] The Council does not rely on stormwater or flooding issues to contend for refusal.
- [137] Lennium Group and Mr Read called evidence from water resource engineers Mr Roads and Mr Clark respectively.
- [138] The land is not itself subject to flooding. However, as the MacGregor Green is depressed approximately 0.24 metres below the surrounding ground level with a deeper drain around its edge, it collects stormwater during rain events. It has the potential to store approximately 340 cubic metres of rainfall runoff. The proposed development does not retain the MacGregor Green depression.
- [139] The locality suffers from localised flooding. The area surrounding the land drains to a low point in Lake Street. The lowest point in Lake Street is approximately 12.43 metres AHD. Other than in extreme flood events, the adjacent rail embankment, with a crest level of approximately RL 14 metres AHD, prevents overflow from the Lake Street depression to the downstream side of the rail line. A single 1 300-millimetre diameter pipe underneath the rail embankment provides the only mechanism for water to drain from the Lake Street depression. As such, the depression in Lake Street effectively acts as a detention basin with outflow capacity limited by the 1 300-millimetre diameter pipe until the rail embankment is overtopped.
- [140] The experts agree that the extent of inundation of the Lake Street depression is a factor of the overall volume of runoff from the upstream catchment during a storm event, the peak flow during the same storm event, and the capacity of the 1 300 millimetre pipe.
- [141] There are approximately 16 residential lots within the Lake Street depression. The experts agree that most would expect some yard flooding during small events. Two would be inundated to above floor level and several (at least seven) garages or carports or enclosed areas under high-set houses would be inundated by the 5% annual exceedance probability (“AEP”) flood. A further two residences would be inundated above floor level by the 1% AEP flood under existing conditions.

- [142] There is disagreement between the experts about compliance with City Plan. It is informed by a difference in opinion about:
- (a) whether the proposed development fails to deal with the broader issues such as potential increases in rainfall intensity as said to be required by the Flood overlay code and the State Planning Policy July 2017;
 - (b) the cumulative impact on properties in and around the Lake Street depression;
 - (c) the absence of a legal point of discharge;
 - (d) reliance on the Barclay Green for storage;
 - (e) the extent of the assumed upstream catchment; and
 - (f) the appropriateness of the modelling methodology adopted by Mr Roads.
- [143] Mr Clark accepted during cross-examination that if his concerns about the last four issues are satisfactorily resolved, his other concerns, including those about compliance with the Stormwater code, the Flood overlay code and the State Planning Policy, fall away.

Is there a lawful point of discharge?

- [144] The proposed development seeks to discharge some stormwater to Querrin Street and the balance via stormwater pipes to School Road. Mr Clark accepts that both of these are legal points of discharge. However, he takes issue with the way in which the proposed development diverts part of the overland flow from the upstream catchment around the edge of the built form proposed to be constructed on the MacGregor Green and onto the Barclay Green.
- [145] Under the existing conditions, some of the stormwater from upstream flows overland onto the MacGregor Green. Some flows onto the Barclay Green. Mr Clark accepted that the conveyance of some of the stormwater from the upstream catchment across the Barclay Green of itself does not create an issue, provided there is no worsening that will cause an actionable nuisance.
- [146] Mr Clark's concerns were twofold. First, he did not know whether the owners of the separately titled land that comprises the Barclay Green consent to additional overland flow over the Barclay Green. Second, Mr Clark was concerned that an increase in overland flow onto the Barclay Green may result in the discharge to School Road flowing onto the property to its immediate west in School Road, rather than into the School Road kerb and channel as it presently does.
- [147] The first concern can readily be addressed. The development application was made with respect to all lots presently occupied by the Association. As such, a condition could be imposed requiring an easement be granted over the titles on which the Barclay Green is constructed to ensure there is no obstruction to the detention function of that land or to overland flow. Mr Clark acknowledged that such a mechanism would satisfactorily address this concern.
- [148] As for the second concern, Mr Clark demonstrated no direct knowledge of water going down through the Barclay Green and into the property to the west of the Barclay Green. His concern is based on modelling results that show that the property to the

west would be subject to flooding. Mr Clark says this demonstrates the property will be inundated by both a build up from the Lake Street depression and by overland flow directly from the Barclay Green. This suggestion was first made during cross-examination. Mr Clark made no mention of it in the joint expert report, nor in his individual report and, of significance, Mr Clark did not demonstrate a proper foundation for his opinion. The modelling results do not demonstrate the cause of the flooding to the property to the west. The results are equally consistent with the inundation being caused only by a build up from the Lake Street depression.

- [149] I do not accept Mr Clark's opinion about the potential impact on the property to the west. Having regard to Mr Clark's demeanour and his evidence during cross-examination, Mr Clark struck me as a witness who was only too ready to adopt inconclusive facts and modelling outcomes as confirmation of his pre-conceived theory that the proposed development would have unacceptable impacts on flooding in the locality, including because of cumulative impacts. His, perhaps unwitting, bias in favour of that theory appeared to be informed by the fact that in or about 2008 he lived in a house on the corner of Lake and Querrin Streets. During cross-examination Mr Clark admitted that the inundation to Lake Street was a significant part of his decision to move out of that particular property in about 2012.
- [150] In any event, Mr Clark ultimately conceded that this concern was capable of resolution through detailed design at the operational works stage or by imposition of a condition requiring any increased overland flow to be directed towards School Road rather than to the properties to the west. I agree.

Is there inappropriate reliance on the Barclay Green for storage?

- [151] Mr Clark's concern with respect to the reliance on the Barclay Green for storage does not relate to the proposed development. It relates to the potential impact of the future removal of the storage capacity available in the Barclay Green.
- [152] The potential future re-development of the Barclay Green is not relevant to whether the proposed development will have an unacceptable stormwater and flooding impact.

Is there a material error in the extent of the upstream catchment assumed in the modelling?

- [153] Mr Roads opines that the upstream catchment area adopted for the modelling is likely to provide a conservatively large catchment area that drains to the land and that the results of the modelling are therefore appropriate. Mr Clark disagrees. He opines that the underestimate of the catchment has implications for the design of the proposed development, particularly as it relates to the proposed upgrade to the eastern retaining wall and its replacement with a 1.8-metre-high fence. He says that the new fence diverts flow around the proposed development that would otherwise fall to the development, and that the extent of the flow to be diverted is greater than that modelled by Mr Roads. According to Mr Clark, specific measures need to be incorporated in the design to cater for the flows associated with a more significant catchment. Mr Clark also opines that an assessment of potential adverse impacts on the upstream properties needs to be carried out.
- [154] Mr Roads and Mr Clark each produced a map indicating what they regarded as the likely direction of stormwater flows for those properties bounded by Querrin Street, Park Road, School Road and the eastern boundary of the land.

- [155] Mr Clark's catchment map indicates that all of the stormwater from all lots upstream of the land flow towards the middle of the land. The map was apparently produced based on topographic maps and "*site observations during storm events*". The "*site observations*" detailed by Mr Clark relate to the direction of stormwater flow on the downstream side of 25 Querrin Street and on the downstream side of 27 to 29 Querrin Street.
- [156] Mr Clark's observations about the downstream side of 25 Querrin Street accord with Mr Roads' detailed analysis of the direction of flow of water. To the extent that Mr Clark's observations with respect to the drain on the downstream side of 27 to 29 Querrin Street revealed an error in Mr Roads' initial analysis, Mr Roads revised his analysis to reflect Mr Clark's observations.
- [157] In justifying his opinions regarding the balance of his catchment, Mr Clark makes no reference to observations specific to any of the lots that he says drain to the middle of the subject site. Instead he identifies three matters that underpin his catchment.
- [158] First, while piped drainage connections for the roofs of buildings are present on both Querrin Street and School Road, the design event for overland flow is an event that exceeds roof water drainage system capacity. He says once roofwater overflows, it will drain to the low point between Querrin Street and School Road. Mr Clark provides no explanation of the basis for that opinion.
- [159] Second, Mr Clark says the detail level and survey plan provided by Lennium Group shows two, 325 diameter stormwater connections annotated "*outlet unknown*" on the upstream side of the blockwork wall along the eastern boundary of the land. While he acknowledges that the connections may have some capacity to convey stormwater, he says that cannot be relied on. Mr Clark provides no explanation why they ought not be.
- [160] Third, Mr Clark notes that the blockwork wall on the eastern side of the current bowling club is a barrier to overland flow. He says that overland flow will begin to pond at the low point behind the blockwork wall during a storm event. He says it will not be able to drain to the north to Querrin Street as the topography is higher at the northern end of the wall. He also says it is not possible for the ponded water to drain to the south to School Road as there is a solid brick fence preventing any flow to School Road at that location. This means the overland flow will overtop the wall in large events. Even accepting that to be so, the extent of impact will depend on the extent to which overland flow from other lots drain to that point. As I have noted in paragraph [158] above, Mr Clark provides no explanation for his assumption that all water from all of the lots drains to the middle of the eastern boundary of the land.
- [161] Mr Roads' catchment map is more detailed. It provides a lot by lot analysis of the direction of drainage of each property upstream of the land. It takes account of factors within each lot that would cause part of the stormwater to flow in one direction and part in another direction. Mr Roads' map is supported by photographs of the locations of gully pits, buildings and retaining walls that affect the direction of drainage on each of the properties.
- [162] Mr Roads notes that most of the lots on Querrin Street and School Road drain to the adjacent street either via stormwater pipes or overland flow. He shows the locations where the stormwater pipes connect to each road for each property. Mr Roads also notes that most of the lots have retaining walls, gutters or the building itself that would

direct both yard runoff and overflowing roof runoff to the adjacent street. Mr Roads' analysis also demonstrates that to the extent there is overland flow draining to downstream properties, that flow is diverted back to the adjacent road before it reaches the subject land.

- [163] Mr Roads' analysis was subjected to thorough testing through cross-examination by Mr Read. Mr Roads provided a well-reasoned and credible explanation for each of his assumptions and about why any erroneous assumptions, such as reliance on the foul water line, does not undermine his overall analysis. I accept his explanations. For the reasons expressed above, I prefer the evidence of Mr Roads with respect to the extent of the upstream catchment.
- [164] In any event, even if I assumed that Mr Clark's catchment area was correct, as Mr Roads explains in his second supplementary report, the design of the proposed fence along the eastern boundary could be modified during the operational works stage to mitigate any increased ponding that would otherwise occur on the upstream lots and thereby satisfy the requirements of the Stormwater code. Mr Clark conceded as much during cross-examination.

Was the modelling methodology adopted by Mr Roads appropriate?

- [165] In the joint expert report, Mr Clark agreed that the models developed by WRM as part of the WRM Flood Assessment Report dated 27 April 2018 and submitted during the development application process provide useful tools for the assessment of the drainage characteristics at the land. He also agreed that the flood modelling provides a reasonable representation of the flooding behaviour. Mr Clark's agreement was subject to three qualifications. The first related to the percentage of impervious area adopted for the catchment hydrological modelling. Mr Clark considered the extent of land assumed to be impervious should be higher. The second related to Mr Clark's opinion that the upstream catchment modelled to drain to the development site was underestimated. The third related to the extent to which the proposed development was demonstrated to be appropriate given it involved a detention dominated system.
- [166] Mr Roads provided a detailed and cogent response to these criticisms, explaining why he regarded the modelling to be comprehensive and appropriate to represent the impacts of the proposed development. In his supplementary report, Mr Roads addressed each of Mr Clark's criticisms. Mr Roads provided a further detailed explanation of the modelling methodology employed.
- [167] With respect to Mr Clark's first qualification, Mr Roads mapped the actual impervious area of the catchment. The results show that the percentage impervious values adopted in the WRM Flood Assessment Report are in reasonable agreement with the actual percentage impervious values. Mr Roads also provided a sensitivity analysis on this issue. It demonstrates that the WRM Flood assessment report was not sensitive to an increase in the adopted hydrology model percentage impervious value.
- [168] During cross-examination Mr Clark conceded that the sensitivity analysis demonstrated that his concerns with respect to impervious areas resulted in effectively no change to the modelled outcome.
- [169] With respect to Mr Clark's second qualification, Mr Roads defined the upstream catchment with additional rigour. He used the available topographic (LiDAR) data

from the Department of Natural Resources and Mines flown in 2014, which he supplemented with detailed survey data and verified with photographs taken during a site visit. This more rigorous analysis showed the upstream catchment area adopted for the WRM flood assessment to be conservatively large.

- [170] In his supplementary report, Mr Clark levelled further criticisms with respect to the catchment and provided his own catchment map. For reasons already provided in paragraphs [153] to [164] above, I am satisfied that the upstream catchment area adopted for the WRM flood assessment and the consequent modelling results are appropriate.
- [171] In response to Mr Clark's third qualification, Mr Roads updated the model and ran the updated model for various AEP events for durations between 10 minutes to 360 minutes. The results of the 42 storm events investigated predict that the proposed development would increase peak water levels by one millimetre for seven events, decrease peak water levels by up to two millimetres for 12 events and remain the same for 23 events. The model results also predict that the proposed development would not impact on peak flood discharges downstream on the rail line.
- [172] During cross-examination, Mr Clark accepted that the margin for error in this sort of model is more than a millimetre. He also accepted that results that show some worsening or some improvement that are within the margin of error of the model effectively show a neutral result.
- [173] In light of those concessions by Mr Clark, I accept Mr Roads' opinion that his additional modelling demonstrates that the proposed development would have an inconsequential impact on peak flood levels within the Lake Street depression.
- [174] Having demonstrated all of Mr Clark's criticisms to be ill-founded, Mr Roads' analysis was the subject of yet further criticism by Mr Clark in his supplementary report. In that report, Mr Clark suggests there is a technical limitation to the methodology. I reject Mr Clark's further criticism. It strikes me as disingenuous for four reasons.
- [175] First, the criticism of the model levelled by Mr Clark in his supplementary report was not raised in the joint expert report. To the contrary, as I have already observed in paragraph [165] above, in the joint expert report Mr Clark accepted the model was a useful tool for the assessment of the drainage characteristics at the land and that the flood modelling provides a reasonable representation of the flooding behaviour.
- [176] Second, Mr Clark was provided with the hydrology and hydraulic models prepared for the WRM Flood Assessment Report, as well as the report itself, on 30 April 2018. He could have used those models to perform his own modelling. There is no indication that he did so.
- [177] Third, on 10 October 2018 Mr Clark received the updated flood models, including the sensitivity modelling results, that informed Mr Roads' supplementary report. He could have used these updated models (or the original models) to assess the additional issue he now raises. There is no indication that he did so.
- [178] Fourth, disclosure provided by Mr Read included a letter that indicated that Mr Clark had performed his own hydrological modelling of the catchment using different

software. His preliminary estimate of the 1 in 100 year AEP (1% AEP) peak flood level was about five millimetres lower than Mr Roads' estimate.

- [179] Mr Clark, Ms Johnston, Mr Morris and Mr Read raised a number of additional concerns with respect to the evidence of Mr Roads and the issue of stormwater and flooding. They submit that Mr Roads' reliance on the old foul water line running through the catchment as a "*trunk*" line is flawed. As I have mentioned in paragraph [163] above, Mr Roads explained why any assumptions he made in that respect did not affect his underlying analysis of the upstream catchment. In short, Mr Roads' analysis factored in all of the water that might otherwise be carried by the foul water line. Similarly, Mr Roads provided a credible explanation as to why any error in his assumptions about downpipes that discharge to ground and his assumptions about the two properties on Park Road did not affect the efficacy of his catchment analysis. I accept his evidence.
- [180] With respect to the residents' concerns about poor management of discharge from the proposed tanks, Mr Roads explained that in all of the modelling runs undertaken, the proposed tanks did not overflow during the storm event. He explained that the tanks were sufficient to store even a hundred year one-hour rainfall event. I accept the explanations provided by Mr Roads.

Would approval of the proposed development conflict with the Stormwater code?

- [181] As I noted at paragraph [134] above, the allegations of conflict raised by Ms Johnston and Mr Read require consideration of whether the proposed development would adequately cater for additional stormwater from the proposed development, changes in existing stormwater detention and the existing flooding problem in the locality. For reasons provided in paragraphs [135] to [180] above, I am satisfied it would.
- [182] Overall outcome (2)(a) of the Stormwater code requires development to achieve acceptable levels of stormwater run-off quality and quantity by applying water sensitive urban design principles as part of an integrated stormwater management framework. The allegation of conflict with this overall outcome was raised by Mr Read. Having regard to the case presented by him, and its focus on the quantity of stormwater, it is reasonable for Lennium Group to have assumed that the allegation of non-compliance related to whether the development achieves acceptable levels of stormwater quantity. For reasons provided already in paragraphs [135] to [180] above, I am satisfied the proposed development complies with this provision. I reject Ms Johnston's submissions that there is non-compliance because of a failure to demonstrate reuse of water and a failure to provide details of a filtration system for the detention tanks in order to demonstrate compliance. Overall outcome (2)(a) does not require demonstration of these matters and, as such, they do not give rise to a clearly identifiable conflict.
- [183] The absence of an assessment of water sensitive urban design principles, as referred to by Ms Johnston, also does not evidence a clear conflict with overall outcome (2)(b) of the Stormwater code. That provision contains requirements about protection of public health and safety, as well as protection from damage or nuisance caused by stormwater flows.
- [184] I am satisfied there is no clearly identifiable conflict with overall outcome (2)(c) of the Stormwater code. Ms Johnston and Mr Read's submissions with respect to conflict advance no sensible basis for finding conflict. The provision relates to impact

to natural catchment hydrological processes. The land is not located in a catchment that has natural catchment hydrological processes.

- [185] Performance outcome PO7 of the Stormwater code calls for the development design to reduce property damage and provide safe access to the land during a defined flood event. For reasons already provided, I am satisfied that the proposed development complies with this requirement. In addition, I do not accept that the mapping of 11 Querrin Street as subject to overland flow and the location of carparks below ground level, of themselves, found a clearly identifiable conflict with this provision.
- [186] With respect to performance outcome PO9 of the Stormwater code, I do not accept that a building site cover of 47 per cent and the absence of provision for stormwater reuse founds a clearly identifiable conflict with this provision. The provision requires development to be designed to manage run-off and peak flows. It does so.
- [187] Performance outcome PO11 of the Stormwater code requires development provide for the orderly development of stormwater infrastructure within a catchment. The proposed development has been designed having regard to the existing capacity of the stormwater infrastructure within, and external to, the subject land, including the absence of any planned stormwater upgrades for the pipe under the railway line. The Council's decision not to upgrade the infrastructure does not prevent the proposed development demonstrating compliance with this provision.
- [188] For the reasons provided in paragraphs [135] to [187] above, I am satisfied the proposed development would comply with overall outcomes (2)(b), (e) and (f) and performance outcomes PO1, PO2, PO3, PO4, PO6, PO7, PO9, PO10 and PO11 of the Stormwater code.

Would approval of the proposed development conflict with the Flood overlay code?

- [189] Ms Johnston and Mr Read allege conflict with performance outcomes PO7 and PO8 of the Flood overlay code and the purpose of the code generally.
- [190] The subject land is not in an area to which the Flood overlay applies. As such, the Flood overlay code does not apply. I reject the evidence of Mr Clark about its application.
- [191] In any event, even if it were to apply, for reasons already provided in paragraphs [135] to [180] above, I am satisfied the proposed development complies with performance outcomes PO7 of the Flood overlay code and the purpose of the code generally.
- [192] Performance outcome PO8 of the Flood overlay code does not apply. The development is not for filling or excavation nor is it in an area affected by creek or waterway flooding. Any filling or excavation associated with the ultimate use of the land would be the subject of a separate development application for operational works.

Conclusion re stormwater and flooding issues

- [193] For the reasons identified in paragraphs [135] to [192] above, I am satisfied that Lennium Group has demonstrated that the proposed development would not result in any unacceptable impact in terms of stormwater and flooding.

Is the built form acceptable?

- [194] Ms Johnston, Mr Morris and Mr Read contend that the built form of the proposed development warrants refusal. The Council says that built form issues are matters that could be addressed by way of conditions.
- [195] In support of their contentions, the residents, particularly Ms Johnston, rely on a plethora of provisions. Before turning to consider each of them, it is apposite to note the observations of His Honour Judge Williamson about such practices. In *Bilinga Beach Holdings Pty Ltd v Western Downs Regional Council & Anor*²², His Honour noted that it is becoming an all too common practice for parties to allege conflict with a significant number of provisions of a planning scheme. He expressed the view that the practice should be deprecated as it does not assist in the efficient conduct of litigation, let alone facilitate the just and expeditious resolution of the real issues in dispute. He noted that a provision such as s 326 of the *Sustainable Planning Act 2009* will only be engaged where conflict with a planning scheme is plainly identified. Oblique or tangential conflict is insufficient. Further, conflict with a planning document is not established by sheer weight of numbers, nor is the significance, or importance, of any alleged conflict enhanced by weight of numbers. I agree with the sentiments expressed by His Honour Judge Williamson.
- [196] The planning provisions of primary importance in this case are those related to the heritage issue and the land use issue. The Council is to be commended for focussing on those issues. Unfortunately, Ms Johnston, Mr Morris and Mr Read not only allege conflict with a significant number of planning scheme provisions, they rely on some that have no apparent bearing on the outcome of this appeal. For example, it is difficult to understand how it could be suggested that the proposed development conflicts with the purpose and overall outcomes of the Low-medium density residential zone code, including those for the 3-storey precinct, when the subject land is not located in the Low-medium density residential zone.

The built form of the proposed development

- [197] The proposed development is three storeys in height. It has a building length of between 32 and 33 metres. It has a site cover of 47 per cent. Leaving aside the basement, the balance of the building has:
- (a) a front setback of six metres to the front wall;
 - (b) a side setback to the eastern boundary of 3.073 metres to a single storey component and 8.028 metres to that part of the building that is three storeys in height;
 - (c) a side setback to the western boundary of 10.250 metres; and
 - (d) a rear setback of six metres.
- [198] There is 12.519 metres separation from the three-storey component of the building and the wall of the multiple dwelling to the east and 13.098 metres separation to the adjoining two storey house to the west.

²² [2018] QPEC 34, [46] – [53].

- [199] The proposed development provides 235 square metres of deep planting along the rear boundary of the proposed multiple dwelling site, adjacent the Barclay Green. The planting is partly within the private open space area of the ground level units.

What are the allegations of conflict?

- [200] Ms Johnston, Mr Morris and Mr Read allege a decision to approve the built form of the proposed development would conflict with:
- (a) s 9.3.14.2(2)(e) and (2)(h)(v) and performance outcomes PO1, PO5, PO6, PO8, PO14, PO27, PO28, PO35 and PO43 of the Multiple dwelling code;
 - (b) s 6.2.1.2(2)(a) and (c) and (3)(c)(ii), and overall outcomes (5)(a), (b) and (c) and (8)(a), (b) and (e) of the Low-medium density residential zone code;
 - (c) overall outcome (5)(a) and (d) of the Sport and recreation zone code; and
 - (d) specific outcome SO4 and land use strategies L4.2 and L4.3 in s 3.7.6 Element 5.5 – Brisbane’s Suburban Living Areas.
- [201] A number of the allegations of conflict are premised on the basis that the proposed development exceeds the acceptable outcomes in the Multiple dwelling code. I do not accept that exceedance of an acceptable outcome of itself founds conflict or that it is legitimate to regard departure from the acceptable outcome as necessarily indicating non-compliance with the code.²³ Section 5.3.3 of City Plan stipulates that development that complies with the performance or acceptable outcomes where prescribed complies with the purpose and overall outcomes of the code. Although the proposed development is impact assessable under City Plan, it is difficult to see why the Multiple dwelling code should be interpreted differently in the context of impact assessment.²⁴

Would approval of the proposed development conflict with the Multiple dwelling code?

- [202] Ms Johnston submits the proposed development conflicts with overall outcome (2)(e) of the Multiple dwelling code as it is not located within the three-storey precinct of the Low-medium density residential zone and is inconsistent with the current heritage, sport and recreation zoning. She submits the proposed development does not “*protect*” view corridors and will see the loss of significant green space and views of the heritage place from Querrin Street. Ms Johnston also submits the proposal appears to pop up one metre above the defined ground level, presenting as a four-storey building contrary to acceptable outcome AO5 and performance outcome PO5 of the Multiple dwelling code. Similar submissions were made by Mr Morris.
- [203] Mr Read submits the site coverage at 47 per cent exceeds the maximum of 45 per cent and the length of approximately 31 metres exceeds the maximum of 30 metres without significant articulation.
- [204] I do not accept that the proposed development presents as a four-storey building. I am assisted by the visual representation in Exhibit 1 in this respect. It contains photographs of the existing street view proximate the subject land, as well as visual

²³ *SDW Projects Pty Ltd v Gold Coast City Council* [2006] QPEC 74; [2007] QPELR 24, 30.

²⁴ See *United Petroleum Pty Ltd v Gold Coast City Council & Anor* [2018] QPEC 8; [2018] QPELR 510, [118].

representations of the proposed development that assists in understanding the bulk, scale and form of the proposed development.

- [205] In any event, the submissions of Ms Johnston, Mr Morris and Mr Read are of little assistance in determining whether the proposed development complies with overall outcome (2)(e). The provision does not seek to protect view corridors or green space. Rather, it calls for consideration of whether the bulk, scale, form and intensity of the proposed development integrates with either the existing or planned neighbourhood structure and whether it is consistent with the location and street context of the land and its proximity to activity centres and public transport.
- [206] The predominant land use in the area is residential. There is a mix of detached houses and multiple dwelling buildings. The built form varies from one to three storeys, with a variety of housing types, size and eras of construction. The extent of site coverage of that built form is evident from the aerial photos. The Visual Analysis Report that was lodged with the development application contains photographs of the surrounding development and the street context. Those photographs accord with what I viewed on a site inspection.
- [207] To the immediate north of the subject land, with frontage to Querrin Street, is a one-two storey, post-war multiple dwelling. To the northeast and northwest are three and two storey post war multiple dwellings. Adjoining the subject land to the east is a two-storey multiple dwelling. Adjoining the site to the west is a one or two storey character pre-1947 dwelling house. Immediately adjacent the proposed multiple dwelling, on the subject land, is the clubhouse and the Barclay Green that form part of the Yeronga Bowls Club.
- [208] The land is within 250 metres walking distance of the Yeronga train station and 220 metres from a bus stop. It is also within 400 metres walking distance of the District centre zone along Fairfield Road (to the west of the Yeronga train station). That centre provides a range of retail and commercial services, including shops, offices and food and drink outlets. The land is also within 280 metres of a site, on the corner of Lake Street and Killarney Street, which is in the District centre zone. That land contains multiple dwellings that are reflective of its Low density and character residential zoning under the superseded Brisbane City Plan 2000.
- [209] Further to the east of the land is Yeronga Primary School, Yeronga State High School and Yeronga Memorial Park.
- [210] In terms of the intended neighbourhood structure, the immediate surrounding area is in the Low-medium density residential zone (2 or 3 storey mix zone precinct). The overall outcomes for that zone and precinct admit of the possibility of low-medium rise, low-medium density residential buildings of three storeys in height where located within easy walking distance of a public transport node.
- [211] Having regard to the matters identified in paragraphs [206] to [210] above, and the illustration of the proposed development in Exhibit 1 as compared to photographs of development in the area, I am satisfied that the proposed development complies with overall outcome (2)(e).

- [212] Ms Johnston alleges conflict with Overall outcome (2)(h)(v) of the Multiple dwelling code. That provision requires development to be of a height that is appropriate to the strategic and local context, and to meet community expectations.
- [213] Ms Johnston submits the proposed development is inconsistent with the Low-medium density residential zone code as the development exceeds the maximum allowable site cover, exceeds the maximum allowable building length under acceptable outcome AO14 or performance outcome PO14 or acceptable outcome AO15 or performance outcome PO15 of the Multiple dwelling code. She submits that given the size of the combined lots, the development will result in the single largest building in the area, dwarfing the adjoining heritage place and the surrounding houses and townhouses or units. She submits the proposed development appears to pop up one metre above the defined ground level, presenting as a four-storey building contrary to acceptable outcome AO5 or performance outcome PO5. Again, many of Ms Johnston's submissions do not assist in determining compliance with this provision. They refer to matters that do not found a clear conflict.
- [214] Having regard to the illustration of the proposed development in Exhibit 1 as compared to photographs of development in the area, and the matters identified in paragraphs [206] to [210] above:
- (a) I do not accept that the proposed development will dwarf the adjoining heritage place and surrounding development, or that the proposed development will present as a four-storey building; and
 - (b) I am satisfied that the proposed development is of a height that is appropriate to the strategic and local context.
- [215] If the land was in the 2 or 3 storey mix zone precinct of the Low-medium density residential zone, I would also be satisfied that it meets community expectations. However, given the land is located in the Sport and recreation zone, I am not satisfied the proposed development meets community expectations. There is conflict with the provision to that extent.
- [216] Performance outcome PO1 requires development to have a site area and frontage width that is sufficient to, amongst other things, accommodate the scale and form of multiple dwelling buildings, having regard to site features.
- [217] Ms Johnston and Mr Morris submit the proposed units exceeds two storeys on the western boundary to the pre-1946 character house. They submit the maximum allowable height across the land should be 9.5 metres and either one or two storeys to ensure a sensitive transition to the adjoining heritage place and adjoining character home. Given the size of the combined lots, they say the proposed development will be out of scale and will dwarf the adjoining heritage place and the surrounding houses and townhouses or units. Ms Johnston repeated her submission regarding the presentation of the proposed development as a four-storey building.
- [218] Lennium Group submits the proposed development satisfies acceptable outcome AO1 (being the only acceptable outcome for performance outcome PO1) because it satisfies the maximum building height (three storeys and 11.5 metres), minimum site area (600 square metres) and minimum frontage (15 metres).

- [219] I do not accept that the proposed development satisfies acceptable outcome AO1. The parameters referred to by Lennium Group relate to land in the Low-medium density residential zone. The land is not in that zone. The acceptable outcome does not contain requirements for land in the Sport and recreation zone.
- [220] Similarly, I do not accept the submissions of Ms Johnston and Mr Morris. The “*maximum allowable height*” to which they refer correspond to the height specified for the Low density residential zone and the Character residential zone.
- [221] Compliance with the performance outcome is to be ascertained by having regard to the development as judged against the performance outcome itself. I am not satisfied that the site area is sufficient to accommodate a multiple dwelling of the scale and form proposed having regard to the heritage features of the land. Were it not for the important heritage component on the land, being the MacGregor Green, I would be satisfied there was compliance with performance outcome PO1.
- [222] Performance outcome PO5 requires development to be of a bulk and scale that is consistent with the intended form and character of the local area. The associated acceptable outcome specifies a building envelope within which the development is to be contained.
- [223] Lennium Group submits that the proposed development meets all of the requirements of acceptable outcome AO5, being the only acceptable outcome for performance outcome PO5. It says it complies with the maximum building height, front, rear and side boundary setbacks, car parking, boundary setbacks and building separation (with no requirement for building height transitions). It says the dimension of the separation between the proposed development and the multiple dwelling to the east (required to be 12 metres to comply with acceptable outcome AO5) is 13 metres and therefore satisfies the requirement of AO5 and performance outcome PO5(d) that building separation be sufficient to “*to ensure impacts on residential amenity and privacy are minimised*”.
- [224] Ms Johnston simply submitted that she noted Lennium Group’s admission regarding non-compliance. It is not clear what she is referring to.
- [225] I accept the proposed development complies with the requirements of acceptable outcome AO5, other than the specification for maximum building height. For reasons already explained in paragraph [219] above, I do not accept it complies with that requirement. However, I do not regard the height of the proposed development to be unacceptable. As such, I am satisfied that the proposed development complies with performance outcome PO5.
- [226] Performance outcome PO6 requires development to have a building height that is consistent with the streetscape local context and intent for the area.
- [227] Lennium Group submits that the proposed development satisfies acceptable outcome AO6.1 with regard to maximum building height (being three storeys and less than 11.5 metres). It also submits it satisfies acceptable outcome AO6.2 in that none of the proposed development will have a building height greater than 9.5 metres or two storeys within 10 metres of the western boundary adjoining land containing a dwelling house. For reasons already explained in paragraph [219] above, I do not accept these submissions.

- [228] Leaving aside submissions that I have already rejected in paragraph [214] above, Ms Johnston alleges conflict on the basis that the proposed development fails to protect views of the heritage place from Querrin Street. Mr Morris makes the same submission. While this may be relevant to compliance with the Heritage overlay code, I do not accept this founds a clearly identifiable conflict with performance outcome PO6.
- [229] Having regard to the matters identified in paragraphs [206] to [210] above, and the illustration of the proposed development in Exhibit 1 as compared to photographs of development in the area, I am satisfied that the proposed development is of a height that is consistent with the streetscape local context.
- [230] Ms Johnston and Mr Read submit there is conflict with performance outcome PO8 because balconies and windows overlook adjoining homes and the Yeronga Bowls Club and need to have fixed screening.
- [231] Lennium Group submits that the proposed development satisfies the requirement with respect to building separation in acceptable outcome AO8.1(a). In any event, it submits the proposed development complies with performance outcome PO8 as it:
- (a) is consistent with the form and character intent for the local area, being land in the Low-medium density residential zone, 2-3 storey mix precinct;
 - (b) will protect residential amenity, given the open spaces of Querrin Street and Yeronga Bowls Club to the north and south, respectively, and the extensive setbacks to adjoining built form (to the east and west); and
 - (c) provides visual privacy to reduce the need for visual screening as a result of the large setbacks to the east and west (being more than 8 metres and more than 10 metres, respectively, within the site itself).
- [232] I accept Lennium Group's submissions. Further, and in any event, the concerns of Ms Johnston and Mr Read could be dealt with by way of conditions.
- [233] Performance outcome PO14 and the associated acceptable outcome are concerned with the proportion of buildings to open space and landscaping on a site. The proposed development has a site cover of 47 per cent when calculated by reference only to those lots on which the multiple dwelling is proposed to be located (i.e. excluding the lots on which the Yeronga Bowls Club is to be retained).
- [234] Ms Johnston and Mr Morris submit that the exceedance of the acceptable solution of 45 per cent is unacceptable. They submit it underestimates the significant additional built structure associated with the detention tanks, the underground driveway and the transformer box that will further contribute to the excessive bulk and scale of the building. Mr Read submits the exceedance is unacceptable given the length of the building is greater than 30 metres and there is no significant articulation at 15 metres.
- [235] The lack of articulation of the building is concerning. However, having regard to the Landscape Concept Package, I am satisfied the proposed development complies with the performance outcome. The proportion of buildings to open space is sufficient to provide landscaping that contributes to the modulation of the building and address the other outcomes sought in the performance outcome.

- [236] Performance outcome PO27 and the associated acceptable outcomes contain standards for communal space.
- [237] Ms Johnston submits that the communal open space and deep planting areas are not calculated separately for the purposes of acceptable outcome AO27 or performance outcome PO27. This submission lacks clarity.
- [238] Ms Johnston also submits that minimal communal open space is provided along the eastern side set-back, and no community recreational facilities for the units are included such as seating, vegetable garden, pool or barbeque. I reject these submissions. They are not supported by the evidence. The landscape concept plans indicate an intention to include barbeque facilities, and fixed and loose seating.
- [239] The proposed development complies with acceptable outcome AO27.1 to AO27.9. It provides communal open space of seven per cent of the site area. It is consolidated in one useable space at ground level along the eastern side of the proposed multiple dwelling. Part of it is open to the sky, and some is covered by arbours. The landscape concept plans depict an intent to include both hard and soft landscaping, including deep planting and a sub-tropical shade tree. There is a covered area with toilet facilities. The covered area is no more than 25 per cent of the communal open space.
- [240] Performance outcome PO28 and the associated acceptable outcomes relate to the provision of private open space.
- [241] Lennium Group accepts that unit 10 does not meet the acceptable outcomes for private open space as it is located on the ground floor and only has an area of 12 square metres. However, unit 10 adjoins the landscaped trellis above the void of the driveway ramp. As such, the use of the private patio area (of similar size to patios of other ground floor units) will adjoin, and enjoy, a pleasant, open landscaped area. Such open space, in either patios or balconies, is both attractive and functional and satisfies performance outcome PO28.
- [242] Ms Johnston submits that unit 5 also does not meet the minimum requirement in the acceptable outcomes. Her submission is not supported by the evidence. The plan to which she refers clearly depicts private open space of 35 square metres for unit 5.
- [243] Performance outcome PO35 and the associated acceptable outcomes address the issue of overlooking. Ms Johnston alleges non-compliance on the basis that no screening has been included on any habitable adjoining windows in the proposed plans. To the extent that the proposed development does not comply with the acceptable outcomes due to lack of screening, this could be the subject of a condition and is not a basis for refusal.
- [244] Ms Johnston also alleges conflict with performance outcome PO43. It relates to refuse and recycling collection and storage facilities.
- [245] Ms Johnston submits that rubbish collection is likely to have adverse impacts on the adjoining two-storey character home, as it will occur on multiple days per week in the driveway located in the side set-back to the west. She submits bin storage is similarly located in the front and side setback on the adjoining western side boundary, which she says is publicly visible and obtrusive. She submits it is unacceptable and contrary to the Refuse planning scheme policy. Ms Johnston says the location is *“likely to be smelly for them and inconvenient for residents of the apartment complex*

who have to trek out into the driveway to access a rubbish bin". She submits that the fact that the proposed development does not provide enough space for a rubbish truck to pick up the waste underground, as required, has been a problem in all versions of the proposed development.

- [246] Ms Johnston did not tender a copy of the Refuse planning scheme policy. Further, she does not identify the basis of her submission that refuse collection underground is "*required*". In any event, I do not accept her submissions. There is 2.2 metres between the back of the store and the western boundary. The plans for the proposed development show the refuse and recycling collection storage facilities are located in a storage area with a raised planter over the store. Other proposed landscaping will ensure the storage area is unobtrusive. I do not accept that the location is unduly inconvenient to residents.
- [247] The traffic experts agree that the proposed development is acceptable with respect to the location of refuse storage and collection. Their evidence was unchallenged.
- [248] I am satisfied that the proposed development complies with performance outcome PO43.

Would approval of the proposed development conflict with the Low-medium density residential zone code?

- [249] Ms Johnston, Mr Morris and Mr Read allege conflict with s 6.2.1.2(2)(a) and (c) and (3)(c)(ii) and overall outcomes (5)(a), (b) and (c) and (8)(a), (b) and (e) of the Low-medium density residential zone code. In broad terms, those provisions require development to be of a height, bulk, scale and form that:
- (a) is tailored to the land's specific location and the characteristics of the site;
 - (b) responds to the nature of adjoining dwellings and to existing and intended uses and built form in adjoining zones; and
 - (c) responds to local characteristics, such as protection of view corridors, reinforces a green landscape character and responds to the surrounding character and architecture by having a smaller building envelope.
- [250] The subject land is not included in the Low-medium density residential zone. Neither the residents nor Lennium Group address the basis on which they say the code applies. Oddly, having alleged conflict with it, Ms Johnston submits that the Low-medium density residential zone code is not relevant. Ms Johnston provides no explanation as to why she maintains there is a clear conflict with the code when she says it does not apply.
- [251] To the extent that Ms Johnston and Mr Morris raise issues that they say demonstrate non-compliance, they do so by reference to non-compliance with acceptable outcomes in the Multiple dwelling code and on the basis that the proposed development will overshadow the Barclay Green and, as such, may adversely impact the remaining bowling green.
- [252] Mr Read submits the proposed development removes the significant view corridors from Querrin Street and School Road. He says gardens and two bowls greens are currently visible from both directions. In the developed state, only one green will be

visible from School Road. No gardens will be visible and there will be no view corridor from Querrin Street.

[253] I have already addressed the allegations regarding the Multiple dwelling code above.

[254] On the issue of overshadowing, Mr Morris submits the photographs provided by him demonstrate the extent of shade cast from the north, as does the aerial photograph provided by Lennium Group. He suggests that his lived experience and his evidence does not accord with the shadow diagrams provided by Lennium Group. While I can appreciate the evidence of Mr Morris and what he was attempting to demonstrate, his analysis is too simplistic. I accept the shadow diagrams provided by Lennium Group. They show that there will be impact on the Barclay Green. I accept the evidence of the town planners that the impact will be negligible.

[255] Whether or not the code applies, were it not for the conflicts with the Sport and recreation zone code and the Heritage overlay code, for the reasons identified in paragraphs [197] to [204] and [206] to [210] above, the form of the proposed development would be appropriate in this location. Its height and setbacks are appropriate. I am also satisfied that the extent of landscaping does not warrant refusal.

Would the built form of the proposed development conflict with the Sport and recreation zone code?

[256] Ms Johnston, Mr Morris and Mr Read allege conflict with overall outcomes (5)(a) and (d) of the Sport and recreation zone code. Those provisions require development to:

- (a) minimise any adverse impacts on the amenity of an adjacent area; and
- (b) respond to land constraints, mitigate any adverse impacts on environmental values and address other specific characteristics, as identified by overlays affecting the land or in codes applicable to the development.

[257] The residents allege conflict with overall outcome (5)(a) on the basis that the destruction of the Yeronga Bowls Club is not an important or positive contribution to Brisbane's liveability and that there is no need for the proposed development. These allegations bear no resemblance to the requirements of overall outcome (5)(a). They do not establish a clearly identifiable conflict.

[258] For reasons already identified in terms of the acceptability of the height, setbacks and site cover of the proposed development and my findings with respect to the alleged shadow impact, I am satisfied that the proposed development will not have any unacceptable adverse impacts on the amenity of the adjacent residential area or the adjoining Yeronga Bowls Club.

[259] With respect to overall outcome (5)(d), the submissions of the residents focus on the heritage impact. I have already addressed the unacceptability of that impact. The proposed development does not appropriately address the characteristics of the land associated with its status as a heritage place and its cultural heritage significance.

Would the built form of the proposed development conflict with the Strategic framework?

[260] Ms Johnston, Mr Morris and Mr Read allege conflict with specific outcome SO4 and land use strategies L4.2 and L4.3 in s 3.7.6 Element 5.5 – Brisbane's Suburban Living

Areas. Specific outcome SO4 describes features that typically define the local character of a suburban living area dominated by detached housing. Land use strategies L4.2 and L4.3 provide planning goals consistent with maintaining a neighbourhood character reflective of a low-density residential environment.

- [261] These provisions appear to have no bearing on the outcome of this appeal. Section 5.3.3(1)(d) of City Plan only requires assessment against the planning scheme “*to the extent relevant*”. The existing neighbourhood character does not reflect that described in land use strategy L4.2, nor is it defined by those features said to be “*typical*” in specific outcome SO4.
- [262] Further, and in any event, The residents allege conflict on the basis of non-compliances with the Multiple dwelling code and the heritage status of the land. These matters do not establish a plainly identifiable conflict.

Conclusions regarding built form

- [263] For the reasons identified above, I am not satisfied that the built form of the proposed development of itself warrants refusal.

Is refusal warranted by other issues raised by the residents?

- [264] Mr Morris submits that another basis for refusal is the impact the increased traffic will have on pedestrian safety. He submits that approximately 40 additional cars will use Querrin Street most week days. He says this will generally result in 40 movements out and 20 movements returning, with a total of 40 traffic movement on Querrin Street that otherwise did not exist. He submits that the movements in the morning will likely be concentrated between 7 am and 9 am and in the afternoon between 3 pm and 6 pm. He says this will increase the risk for pedestrians crossing Querrin Street and therefore traffic treatments should be installed to reduce this risk to pedestrians. He submits the proposed development will detract from the aesthetics or amenity of the surrounding area and, as such, conflict with performance outcome PO19(d) of the Transport, access, parking and servicing code.
- [265] This issue was the subject of unchallenged evidence of Mr Holland and Mr Trevilyan, the traffic engineers retained by Lennium Group and the Council respectively. They agreed the likely traffic generation would be in the order of 100 vehicles per hour. The experts also agreed that the traffic from the proposed development “*is a very low increase in the volume of traffic and would not lead to any concern in relation to the identified pedestrian safety issues*”. I accept their evidence.
- [266] I accept the unchallenged conclusion of the traffic engineers that “*the proposal would be satisfactory from a traffic engineering perspective*”.

Are there sufficient grounds to justify approval of the development application?

- [267] Lennium Group submits that there are sufficient grounds to justify approval of the development application. The sufficiency of grounds relied on by Lennium Group are to be judged having regard to the nature and extent of the conflict with City Plan.

What is the nature and extent of the conflict?

- [268] The approach of this court in assessing the nature and extent of any conflict is well documented in previous decisions of this court, as well as decisions of the Court of Appeal.²⁵
- [269] Lennium Group submits that any conflict with City Plan arising from either heritage issues or sport and recreation issues would not be considered to be major.
- [270] With regard to heritage, Lennium Group submits that even if there is some interference with the heritage values of the land by the redevelopment of the MacGregor Green, it is apparent that the proposed development would not interfere with the predominant heritage significance of the Association as an ongoing, functioning bowling club (with the clubhouse and the Barclay Green). I do not accept these submissions. They are premised on an assumption that the heritage significance of the land is the ongoing use of the Association. I reject that premise for reasons already provided.
- [271] The MacGregor Green was the first element of the club to be developed in 1913. In circumstances where the statement of significance explicitly refers to both the operation of the sporting facility on the same site since 1913, and the fact that the Yeronga Bowls Club is important as an example of a sporting and social facility that has operated in Yeronga since prior to World War One, the MacGregor Green is of cultural heritage significance. It is the only physical element of the land that existed prior to World War One that remains intact today.
- [272] The proposed development substantially departs from the statement of significance for this heritage place. Approval of the proposed development would have an unacceptable impact on the cultural heritage significance of the heritage place and would, consequently, conflict with the Heritage overlay code.
- [273] As I have noted in paragraph [17] above, the Heritage overlay code seek not only to ensure that the cultural heritage significance of a place is protected, it also seeks the protection of the heritage place itself. The MacGregor Green occupies a very substantial part of the heritage place. It is not only the proportions of this green that make the fabric significant. It holds particular cultural significance. Its demolition results in conflict with the code's requirements with respect to protection of the heritage place.
- [274] The inclusion of the land within the Heritage Overlay has the result that the proposed development is subject to one of the few codes of City Plan that applies to individual sites. The intent to protect and conserve heritage places is clearly site specific. A decision to approve the proposed development would conflict with that site-specific planning intent.
- [275] For the reasons provided in paragraphs [271] to [274] above, the conflict occasioned by the heritage issue is significant.

²⁵ See, for example, *Weightman v Gold Coast City Council & Anor* [2002] QCA 234; [2003] 2 Qd R 441; *Woolworths Limited v Maryborough City Council (No 2)* [2005] QCA 262; [2006] 1 Qd R 273, 286; *Gillion Pty Ltd v Scenic Rim Regional Council & Ors* [2013] QPEC 15; [2013] QPELR 711 and *Zappala Family Co Pty Ltd v Brisbane City Council & Ors* [2014] QCA 147; (2014) 201 LGERA 82.

- [276] With respect to the conflicts occasioned by the proposed land use, Lennium Group submits that the Sport and recreation zone designation of the land is most likely reflective of the historic use of the land by the Association. It submits that there would be no stimulus to the planning authority to reconsider that designation of the land as long as the Association continues in operation.
- [277] There is no evidence that demonstrates the zoning reflects the historic use of the land, as opposed to a town planning desire to maintain all privately-owned sport and recreation zoned land for use for that purpose. The Council's position in this appeal suggests the latter.
- [278] As I have noted in paragraph [109] above, it is important that land zoned "*Sport and Recreation*" is well located and accessible. Such land plays an important social and community role for the Brisbane public. It is a finite resource.
- [279] In the Joint Expert Report of Town Planners, Mr Ovenden explains that the planning principle of maintaining a balance of zones is a fundamental aspect of town planning. It underpins the Strategic framework themes at the heart of the issues in this appeal. Mr Ovenden says achieving the appropriate balance in the allocation of zones is a key sustainability measure, facilitating a settlement pattern that enables land use to be distributed in a way that maximises the benefits to the community, including convenient access to services and facilities. He says conversely an imbalance in the allocation of zones can cost the community and potentially deprive residents of convenient access to services and facilities. I accept Mr Ovenden's opinion in this respect.
- [280] In this case, the proposed development obliterates the sport and recreation use over about half of the land, in circumstances where Lennium Group has not demonstrated that the land is absolutely no longer required.
- [281] Having regard to the matters addressed in paragraphs [58] to [125], [278] and [279] above, I regard the conflict to be significant.

Are there grounds sufficient to justify approval despite the nature and extent of conflict?

- [282] Lennium Group has nominated a number of grounds that it submits are capable of overcoming conflict with City Plan. They can be summarised as follows.
- (a) First, the proposed development would enable the Association to dispose of the MacGregor Green in a manner which provides for the ongoing commercial operation of the Association.
 - (b) Second, the proposed development would enable the Association to enhance its facilities and continue to provide sport and recreation services to the public.
 - (c) Third, the proposed development would provide a benefit to the community in terms of the preservation of the cultural heritage significance of the land.
 - (d) Fourth, the proposed development would deliver on an infill development opportunity with a density and form consistent with adjoining and nearby multiple dwellings. It achieves an outcome that is sympathetic to the established streetscape, character and amenity of Querrin Street and the wider locality. It will help to achieve a balanced mix of housing density and dwelling types in Yeronga. Its siting close to Yeronga train station and bus routes along

Fairfield Road, Park Road and Ipswich Road offers a high level of convenience for future residents.

- (e) Fifth, the inclusion of the land in the Sport and recreation zone is out of date.
- (f) Sixth, there is a planning need for the proposed development in the location of the subject land.

[283] With respect to the first and second grounds, for the reasons provided in paragraphs [73] to [75] and [95] to [107] above, I am not satisfied that the evidence supports Lennium Group's position.

[284] The third ground relied on by Lennium Group is also not supported by the evidence. For the reasons set out above with respect to the cultural heritage issue, approval of the proposed development would in fact have unacceptable historical and heritage architecture impacts.

[285] As for the fourth ground, the locational and built form aspects of the proposed development relate to matters of planning scheme compliance. While the proposed development would constitute infill development, the planning scheme indicates the intended location for such development. Units are contemplated in the Low-medium residential zone. They are not contemplated in the Sport and recreation zone.

[286] The location of the proposed development close to facilities such as train stations or bus routes is of little significance as a ground to overcome conflict in circumstances where the land is included in the Sport and recreation zone. Mr Ovenden agreed in cross examination that the land would be well serviced by public transport for sport and recreation purposes.

[287] Further, consistent with the evidence of Mr Norling (which is discussed further below), there are sufficient multiple unit dwellings located proximate to local infrastructure and services.

[288] Lennium Group's fifth ground falls away in circumstances where Mr Ovenden conceded that the "*City Plan zoning of the land has not been overtaken by events*". He recognised that City Plan is a contemporary planning instrument. Cross-examination of Mr Ovenden established that his suggestion that the zone reflected the status quo was without merit. The "*ground*" loses further traction in circumstances where the evidence does not demonstrate that the land is absolutely no longer required as a community, sport or recreational facility and Lennium Group has failed to demonstrate that the community is adequately serviced by sport and recreation facilities.

[289] Lennium Group's final ground is that there is a need for the proposed development. It submits it is an economic need, a community need and a planning need. The only need expert to give evidence in the appeal was Mr Norling, the economic consultant retained by the Council.

[290] Lennium Group relies, in part, on the evidence of Mr Norling. In his report, Mr Norling opined "*there is a strong level of community and economic need for additional Multiple Dwellings to be developed in the Yeronga area.*" While Lennium Group adopts that evidence, it rejects Mr Norling's conclusion that there is no

planning need for the land to be developed for the purposes of multiple unit dwellings. It says his conclusion is flawed.

- [291] Lennium Group submits the existence of a planning need is evidenced by:
- (a) the location of the subject land in a Future Growth Node under City Plan;
 - (b) the designations of surrounding land (and land generally in the locality) in the Low-medium density residential zone;
 - (c) the existing mix of two and three storey residential dwellings surrounding the land and in the locality;
 - (d) the compatible re-use of the land (previously required by the Yeronga Bowls Club) for an attractive and sensitive three storey multiple dwelling; and
 - (e) the conclusion, to be gleaned from Mr Norling's evidence, that there is a need for further multiple dwellings in Yeronga (as a Future Growth Node) that cannot be accommodated by the current capacity for supply of multiple dwellings.
- [292] There is a dispute between the town planners about whether the land is in a Future Growth Node under City Plan. Strategic Framework Map 3 is Brisbane Selected Transport Corridors and Growth Nodes Strategic Framework Map. It contains an indication of Future Growth Nodes. The map is not cadastral. Either way, it is apparent from land use strategy L1.3 under Element 5.8 of the Strategic framework that Future Growth Nodes are intended to be the subject of a future neighbourhood plan, or a comprehensive planning process that involves a local area and precinct approach, community consultation and consideration of the planning matters consistent with the scope of a neighbourhood plan prepared by the Council. As such, in isolation this factor does not establish a planning need.
- [293] The matters referred to in sub-paragraphs [291](b) to [291](d) are also not indicative of a planning need in circumstances where the land was not included in the Low-medium density residential zone.
- [294] Finally, the evidence does not support Lennium Group's submission, noted in sub-paragraph [291](e) above, that a planning need can be gleaned from Mr Norling's evidence. In his individual report, Mr Norling concluded that there was no planning need for the land to accommodate multiple dwellings. He opines that City Plan has more than sufficient capacity to accommodate demand for about 40 years and it has not identified the land as intended to accommodate multiple dwellings.
- [295] Mr Norling's conclusion was expressed on the basis that the catchment, in which the land is located, has the capacity to develop 2 225 further multiple unit dwellings. This is the equivalent of about 40 years supply of multiple unit dwellings; a supply which is well beyond the life of the current City Plan and the next planning scheme.
- [296] Lennium Group submits that Mr Norling's opinion is founded on five key errors.
- [297] The first error alleged by Lennium Group relates to Mr Norling's reliance upon statistical areas identified by the Queensland Government Statistician Office for the purpose of population projections in the locality. Lennium Group submits that Mr

Norling has treated the projections as driving town planning, rather than town planning driving the predictions.

- [298] The second alleged error is Mr Norling's reliance upon erroneous population growth rates projected by the Queensland Government Statistician Office to identify the projected level of demand for new dwellings to 2036. The alleged error appears to relate to the fact that the statistical area used by Mr Norling includes other localities, namely Yeerongpilly and Tennyson.
- [299] The third alleged error is Mr Norling's use of a 25 per cent discount rate to be applied to potential development or re-development of land in the Yeronga statistical area.
- [300] The fourth error alleged by Lennium Group is Mr Norling's reliance upon just three large developments as a source of supply. That supply equates to more than three-quarters of Mr Norling's predicted supply.
- [301] The fifth alleged error is Mr Norling's failure to give any real consideration to the designation of Fairfield, Yeronga and Yeerongpilly as Future Growth Nodes under City Plan at the time of the preparation of his report and the fact that his conclusions do not cater for the change to City Plan which has identified Yeerongpilly as a Growth Node (rather than a Future Growth Node) under City Plan. Lennium Group submits this has particular relevance to Mr Norling's reliance upon the supply expected to come from the Yeerongpilly Green development, which Mr Norling relies upon to deliver more than half of the supply of multiple dwellings to service any demand.
- [302] I do not accept that Mr Norling's use of Yeronga statistical area 2 is a basis on which I should reject his opinions. The opinion is not founded on a purely mathematical calculation. In drawing conclusions from that data, Mr Norling has brought his experience to bear. He acknowledged that caution must be adopted in using the statistical areas at the level that he has used them. I am not persuaded that he did not apply the appropriate degree of caution in his use of that data, particularly given he accepts that there is an underlying demand for additional multiple dwellings in Yeronga. He accepts that it is a popular place to live.
- [303] When cross-examined about his demand analysis and the growth rates adopted, Mr Norling provided a credible explanation for his reliance on growth rates higher than that experienced over the last ten years. It takes into account its application to an elevated population. I accept Mr Norling's explanation.
- [304] Mr Norling explained that in considering the demand for multiple dwellings, he took into account that City Plan seeks greater density near transport.
- [305] The other focus of the cross-examination of Mr Norling related to his analysis of the supply under City Plan. His analysis was based on information contained in Table 4 of his report. The cross-examination does not persuade me to reject Mr Norling's opinions. Mr Norling confirmed that, even removing all of the supply noted in this table from his calculations, there would still be 30 years of supply available to the market; and even if available supply was 30 years not 40 years, Mr Norling was of the opinion that there would still be no planning need for the proposed development.
- [306] I do not accept that Mr Norling's adoption of a general discount of 25 per cent for potential development or re-development of land in Yeronga statistical area 2 is erroneous or without foundation.

- [307] Some of the land in Table 4 may have difficulty achieving the extent of development assumed due to development constraints such as flooding. However, on the flip side, some of the houses included in both Mr Norling's Table 4 and included in the Heritage overlay could potentially be developed for multiple unit dwellings. Not all houses in the overlay are pre-1946 homes or possess the requisite traditional character. Further, even where a dwelling may possess traditional character, there is sometimes potential for further development on the relevant land at the rear.
- [308] Mr Norling allowed for a 25 per cent discount. I am satisfied with his explanation as to its basis and consider it to be appropriate in this location. I place little store in the fact that he adopted a different discount figure in an analysis about the supply of land in a different part of Brisbane. The differences only seek to highlight that Mr Norling has brought his experience to bear. He provided a plausible explanation of the reasons for the differences.
- [309] I also do not accept that Mr Norling's evidence should be rejected because of his reliance on three developments to provide 1 675 dwellings. The developments are yet to come to fruition. However, there is no evidence to suggest that Mr Norling's assumptions about them are flawed.
- [310] In any event, Mr Norling's consideration of available "*supply*" did not allow for the increased density of residential development that may occur in any of the growth nodes within his identified catchment area. As was explained by Mr Norling, if his analysis was changed to reflect the designation of Fairfield, Yeronga and Yeerongpilly as a Future Growth Node under City Plan and Yeerongpilly as a Growth Node, this would result in greater supply than had been predicted by him.
- [311] In the circumstances, I do not accept Lennium Group's submission that Mr Norling has overstated the level of supply that could be provided by development or redevelopment of land in Yeronga.
- [312] There is no evidence that City Plan has made insufficient provision, in either Yeronga or more generally, for development of the type proposed. Mr Ovenden agreed with that proposition in cross-examination. City Plan is only four years old. It has been prepared with a 20-year horizon.
- [313] I accept Mr Norling's opinion that there is no evidence of any unsatisfied demand on the part of City Plan for land sufficient to accommodate 30 units that is not being met by City Plan in its present form.
- [314] In the circumstances, no planning need for the proposed development has been demonstrated.
- [315] Lennium Group has not demonstrated that there are sufficient grounds to warrant approval of its proposed development in light of the identified conflict with City Plan.
- [316] Even if I were to accept that the proposed development provides benefits as suggested by Lennium Group, I am not satisfied that approval of the proposed development strikes an appropriate balance given the nature and extent of the conflicts.

Conclusion

- [317] Lennium Group has not discharged the onus. The appeal is accordingly dismissed.