PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*Brookside Estate Pty Ltd v Brisbane City Council & Anor* [2019] QPEC 33
PARTIES:	**BROOKSIDE ESTATE PTY LTD (ACN 601 061 821) AS TRUSTEE FOR BROOKSIDE ESTATE TRUST** (appellant) **v** **BRISBANE CITY COUNCIL** (respondent) **and** **TPG DEVELOPMENT 5 PTY LTD (ACN 159 649 420)** (co-respondent)
FILE NO/S:	2023/2018
DIVISION:	Planning and Environment Court
PROCEEDING:	Hearing of an appeal
ORIGINATING COURT:	Planning and Environment Court of Queensland, Brisbane
DELIVERED ON:	25 July 2019
DELIVERED AT:	Brisbane
HEARING DATES:	27, 28, 29, 30 May and 21 June 2019
JUDGE:	R S Jones DCJ
ORDERS:	**1. I will publish my reasons but will refrain from making final orders until I hear further from the parties**
CATCHWORDS:	PLANNING AND ENVIRONMENT – APPEAL – where the respondent approved a subdivision intended to be developed by the co-respondent – where appellant has appealed against that decision – where the notice of appeal raised a number of issues – stormwater – bushfire hazard – traffic – conflict with the Planning Scheme – where central issue was whether proposed development provided sufficient connectivity and integration with surrounding land uses and infrastructure **Legislation** *Sustainable Planning Act* 2009 (Qld) *Planning and Environment Court Act* 2016 (Qld) *Planning Act* 2016 (Qld)

Cases
Ashvan Investments Unit Trust v Brisbane City Council & Ors [2019] QPEC 16
Bell v Brisbane City Council [2018] QCA 84
Dillon v Council of the City of Townsville (1981) 2 APA 134
Gold Coast City Council v K & K (GC) Pty Ltd [2019] QCA 132
Degee & Anor v Brisbane City Council & Anor (1998) QPELR 287

COUNSEL:	Mr A Skoien for the appellant Mr J Ware for the respondent Mr J Houston for the co-respondent
SOLICITORS:	Keypoint Law for the appellant City Legal for the respondent Anderssen Lawyers for the co-respondent

[1] This proceeding is concerned with an appeal against the decision of the respondent to approve a small lot subdivision. As a consequence of my findings set out below, I will publish my reasons but will refrain from making final orders until I hear further from the parties.

Introduction and background

[2] The subject land is described as Lot 2 on Survey Plan 114142 and Lot 21 on Survey Plan 125114 and has, in total, an area of 1.423 ha. The street address of the land is 1022 and 1022A Blunder Road, Doolandella, an outer south-western Brisbane suburb. The land fronts Blunder Road to the west, is largely cleared and is improved by an existing dwelling house and small-out buildings. Directly to the west and north-west is an expansive area of residential subdivision. To the east of Blunder Road and to the north of the land is residential subdivision, however, in this instance, the residential development is effectively divided into a number of pockets separated by fingers of natural vegetation. To the further west is a large area of vegetated land. To the immediate south are two separate parcels of land referred to during the proceeding as Lots 3 and 4.

[3] To the further south, at the intersection of Blunder Road, Crossacres Street and Brookside Street, are a number of existing and planned commercial developments. On the north-eastern corner is a service station and a number of shops including a 7-Eleven convenience shop that is associated with the service station. A McDonalds

drive-through restaurant is also under construction on this site. On the north-western corner is an existing childcare and education centre. During the course of the evidence, reference was made to a potential Woolworths supermarket on the south-western corner of the intersection.[1] However, the likelihood of that development proceeding and, if so, when it might occur, is uncertain. The approval dates back to 2012 and, despite being extended on 12 November 2015, lapsed on 3 February 2018.[2] Despite this, Mr Perkins, the town planner relied on by the co-respondent (TPG), gave evidence that was not challenged to the effect that Woolworths still had an interest in developing this site.[3] A substantial townhouse development exists on the south-eastern corner of the intersection.

[4] To the east is land either developed, in the process of development or planned for future development by the appellant (Brookside). Immediately adjoining the eastern boundary of the land is a site owned by Brookside designated and approved for low density residential use separated by a landscaped buffer area.[4]

The intended development

[5] On or about 25 August 2016, TPG lodged a Development Application with the respondent (the Council) under the provisions of the *Sustainable Planning Act* 2009 (SPA). In summary, the Development Application proposed the reconfiguration of the land into 18 residential lots to be, at least temporarily, serviced by an internal road running along its northern boundary in an east-westerly direction from Blunder Road.[5] More will be said about the access situation below.

[6] A number of submissions were made opposing the proposed development including a submission made by Brookside. Notwithstanding those submissions, on or about 27 March 2018, the Council approved the proposed development limited to 19 lots ranging in area from 301m^2 to 466m^2.[6] The larger and lower lot (Lot 19) at the eastern end of the land was intended to include a building pad. That part of the original proposal (Stage 2) was not a part of the development as approved. The consequence of this is that Lot 19 is now described as a "Balance Lot".

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1 See generally Exhibit 7 at pp 5 and 17; Transcript (T) 3-10 ll 20-45.
2 Exhibit 16.
3 Transcript (T) 3-10 ll 28-45.
4 Exhibit 7, pp 15 and 20.
5 Ibid, p 4.
6 Exhibit 1, volume 2, pp 521 – 526.

[7] At the time of the development application, the land was the subject of *City Plan* 2014 (CP 2014). Under that planning scheme the land was:

(a) Partly within the Emerging Community Zone;
(b) Partly within the Rural Zone;
(c) Within the Doolandella Neighbourhood Plan Area;
(d) Partly subject to the Medium and High Hazard Area Bushfire Overlay map;
(e) Partly subject to the High Hazard Buffer Area Bushfire Overlay; and
(f) Partly subject to the Medium Hazard Buffer Area Bushfire Overlay.

[8] That part of the land where lots 1-18 would be located fell within the Emerging Community Zone. That part of the land generally coinciding with the area of the proposed Lot 19 fell partly within the Rural Zone.[7]

[9] The land was also subject to a number of other overlays, maps and constraints[8] which do not require any detailed consideration to dispose of this appeal.

The grounds of appeal and the real issues in dispute

[10] On 30 May 2018 Brookside filed its notice of appeal. After setting out a number of factual matters, it is asserted against the proposed development that:[9]

> "It has not been demonstrated that the Proposed Development
>
> (a) would not result in adverse stormwater impacts;
>
> (b) would not result in adverse bushfire impacts;
>
> (c) would not result in adverse traffic safety and efficiency impacts; and
>
> (d) would not result in adverse impacts upon the planning for trunk infrastructure (park).
>
> The Proposed Development involves the creation of standard residential allotments without any proposed mix of allotment sizes or potential housing types." (Footnotes deleted)

[11] As a consequence it is then alleged that "*in the circumstances*" the proposed development was in conflict with a number of provisions of the planning scheme.[10]

[12] During the openings of counsel, it was identified that bushfire impacts were no longer in issue and stormwater impacts, insofar as they existed, could be dealt with by way of appropriate conditions of approval and were not of themselves grounds for refusing the application. However, access and road design, planning for trunk infrastructure

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7 Exhibit 4, p 9; Exhibit 7, p 22.
8 Exhibit 7.
9 Grounds of appeal, paras 12 and 13.
10 Ibid, para 14.

(park) and the proposed lot layout and lot sizes remained in dispute.[11] At the heart of Brookside's case was that the proposed development constitutes an out of sequence development and, as a consequence, involves an inefficient use of existing infrastructure and results in an overall unacceptable interference with what would be reasonably expected had the land been developed in conjunction with surrounding land in a logical and sequential manner. Mr Skoien, counsel for the appellant, relevantly said in this context:[12]

> "The case that is made by the appellant finds its genesis in the fact that, quite self-evidently, the proposed development of the subject land is out-of-sequence development. It is not something that is readily able to make use of the infrastructure, the particular road and the like infrastructure, to facilitate its own development. But, again, there's not necessarily anything fundamentally wrong with out-of-sequence development, the appellant says, but what's important is that the development of the subject land out of sequence is then (not) then able to be appropriately tied into development and facilitate integrated and ordered development in due course. That's effectively the proposition that sits at the base of the appellant's case. **In that regard, your Honour, very much (sic) there are four issues that are raised, and it's accepted by the appellant that they overlap**." (Emphasis added)

[13] Those four categories or subcategories could be described as follows:[13]

(i) The proposed development fails to appropriately reflect any appropriate infrastructure planning;

(ii) In reality the proposed temporary access to and from Blunder Road is "*either permanent access or permanent access by another name or temporary access for a period of time that is far longer than it ought to be…*";

(iii) Does not provide for a park which was clearly intended under the planning instruments for this locality; and

(iv) The proposed development for "*very small lot housing*" fails to take into account appropriate planning for the locality.

[14] Pursuant to s 45(2) of the *Planning and Environment Court Act* 2016 (PECA), it is for TPG to satisfy me that Brookside's appeal should be dismissed.

Recent statutory developments

[15] Notwithstanding that the subject Development Application was lodged under the then SPA, it was not in contest that the appeal was one pursuant to s 229 of the *Planning*

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11 Exhibit 2, paras 2-4.
12 T1-35 ll 33-43.
13 T1-35 ll 45-47; T1-36 ll 1-9.

Act 2016 and was to be dealt with in accordance with the legislative scheme provided under that Act. It was unsurprising then that the parties referred me to the recent decision of Williamson QC DCJ in *Ashvan Investments Unit Trust v Brisbane City Council & Ors.*[14] In *Ashvan*, His Honour made a number of observations concerning differences between the *Planning Act* and the SPA. Pursuant to s 326(1) of the SPA, "*the assessment manager's decision must not conflict with a relevant instrument unless… (b) there are sufficient grounds to justify the decision, despite the conflict*". The term "*grounds*" is defined to mean "*matters of public interest*".[15]

[16] Pursuant to s 45(5) of the *Planning Act*, when concerned with a development requiring impact assessment, as is the case here:

> "An **impact assessment** is an assessment that –
> (a) Must be carried out –
> (i) Against the assessment benchmarks in a categorising instrument for the development; and
> (ii) Having regard to any matters prescribed by regulation for this subparagraphs; and
> (b) May be carried out against, **or having regard to, any other relevant matter, other than a person's personal circumstances, financial or otherwise**…." (Emphasis added)

[17] Pursuant to s 60 of that Act it is provided that:

> "**Deciding development applications**
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> (1) This section applies to a properly made development application, other than a part of a development application that is a variation request.
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> (2) To the extent the application involves development that requires code assessment, and subject to s 62, the assessment manager, after carrying out the assessment –
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> (a) Must decide to approve the application to the extent the development complies with all of the assessment benchmarks for the development; and
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> **(b) May decide to approve the application even if the development does not comply with some of the assessment benchmarks; and …**
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> **(c) May impose development conditions on an approval; and**
>
> **(d) May, to the extent the development does not comply with some or all of the assessment benchmarks, decide to refuse the application only if compliance cannot be achieved by imposing development conditions…**" (Emphasis added)

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14 [2019] QPEC 16.
15 *Sustainable Planning Act* 2009 (Qld) Schedule 3.

[18] In *Ashvan*, after noting that the powers conferred pursuant to s 47 of the PECA gave broad discretionary powers to the court, His Honour went on to say that that discretion "*does not require the Court to refuse a development application in circumstances where 'conflict' is established with an adopted planning control and there is an absence of 'sufficient grounds'*".[16]

[19] The Overall Outcomes and Performance Outcomes identified by the traffic engineers are of course relevant "*assessment benchmarks*".[17] As Williamson QC DCJ also observed, the new statutory regime provides for more flexibility in the decision making process in removing as the starting point the obligation to refuse an application in the event of there being conflict with the planning scheme. As his Honour said:[18]

> "Dispensing with the so-called two part test means that non-compliance with assessment benchmarks, which include planning schemes, no longer has assumed primacy in the exercise of the planning discretion… in this way, the discretion conferred by s.60(3) of the PA admits of more flexibility for an assessment manager (or this Court on appeal) to approve an application in the face of non-compliance with a planning document in contrast to its statutory predecessor. This, the Explanatory Notes state, is to allow a '*balanced decision in the public interest*' to be reached, based on an assessment of the merits of an application having regard to established policy and other relevant considerations."

[20] His Honour then went on to say, among other things, that:

- It should not be assumed that non-compliance with an assessment benchmark automatically warrants refusal. This must be established, just as the non-compliance must itself be established.[19]
- The manner in which the balance between rigidity and flexibility is struck in any given case does not lend itself to a general statement of principle, or precise formulation. The planning discretion, and the inherent balancing exercise, is invariably complicated, and multi-faceted. It is a discretion that is to be exercised based on the assessment carried out under s.45 of the PA. It will turn on the facts and circumstances of each case, including the nature and extent of the non-compliances….[20]

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16 *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16 at [41].
17 *Planning Act* 2016 (Qld) s 43.
18 *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16 at [51].
19 Ibid, [53].
20 *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16 at [60].

- The balance between a rigid and flexible approach may more easily be struck where development complies with adopted statutory planning controls. As this Court has recognised, ordinarily, one would need strong reasons for refusing an application, which on its face, was consistent with the adopted planning controls.[21]

[21] I respectfully agree with his Honour's observations. However, they have to be considered having regard to the reasoning of the Court of Appeal in the *Gold Coast City Council v K & K (GC) Pty Ltd.*[22] In that case Sofronoff P (with Fraser JA and Flanagan J agreeing) relevantly said:[23]

> "**At the heart of decisions like these is the acknowledgement that conformity with the Planning Scheme is, *prima facie*, in the public interest**. That approach is consistent with decisions of this Court from the time of the earliest planning legislation. For example, in *Dillon v Council of the City of Townsville*[24] Carter DCJ said that the very *raison d'être* of a Planning Scheme is to *best* serve the needs of a community in a particular area. Most recently, McMurdo JA emphatically restated the principle in *Bell v Brisbane City Council*.[25]
>
> …
>
> There has been a failure by the parties in this case to apprehend and apply the applicable statutory requirements. **It has been established beyond argument that a decision maker must take a Planning Scheme to be an expression of the public interest in terms of land use. The proposition can be put the other way around. It is, in general, against the public interest to approve a development that conflicts with the Planning Scheme. To justify such a development it must be demonstrated that the desired deviation from the Planning Scheme serves the public interest to an extent greater than the maintenance of the status quo**. The public interest that is to be satisfied by the proposed development must be greater than the public interest in certainty that the terms of a Planning Scheme will be faithfully applied. Some such examples appear in the Ministerial Guidelines to which I have referred." (Emphasis added)

[22] In *K &K* it was also said:[26]

> "…The process under s 326(1)(b) does not involve a consideration of the 'competing merit and weight of the grounds relied upon to justify approval'. That was the process required by former legislation, namely the *Local Government Act* 1936 (Qld). Section 17 of the *Local Government Amendment Act* 1975 (Qld) established criteria (for the first time) for a decision to allow a rezoning application. In *William McEwans Pty Ltd v Brisbane City Council*, Carter DCJ said that the decision making process under the *Local Government Act* 1936 (Qld) was a flexible one and that

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21 Ibid, [61].
22 [2019] QCA 132.
23 Ibid, [47] and [67].
24 (1981) 2 APA 134.
25 [2018] QCA 84 at [70].
26 Ibid, [60].

> applicable statutory criteria would vary from case to case. **That is not what s 326 of the SPA requires**."(Emphasis added) (Footnotes deleted)

[23] As I appreciate the reasoning of the Court of Appeal, once the intent and desired outcomes of the planning scheme are sufficiently identified, the starting point is that they represent what is in the best public interest. And, accordingly, any material departure from those desired outcomes or objectives is, prima facie, contrary to the public interest. These principles are not concerned with the construction of legislation such as the SPA or the *Planning Act* but with the construction of the relevant planning scheme itself. The fact that the starting point under the SPA, in the case of conflict, was refusal of the development application is no longer the case since the introduction of the *Planning Act* does not, in my view, derogate in any meaningful way from the observations made by the Court of Appeal emphasised above. What has changed, to use the terminology adopted by Williamson QC DCJ in *Ashvan*, is that non-compliance with the planning scheme does not have the assumed primacy it once had under the SPA.[27]

[24] It is tolerably clear that the outcome of the appeal in *K & K* largely turned on the operation and effect of s 326 of SPA and how that differentiated the approach that was legitimate under previous legislation such as the *Local Government (Planning and Environment) Act* (1990) (LGPEA). Under the LGPEA it was uncontroversial that it permitted a more flexible approach that was not permissible under the SPA because of the operation of s 326.[28]

[25] Since the *Planning Act* came into effect, which no longer has as its starting point that a development that was in conflict with the planning scheme ought be refused, as Judge Williamson QC DCJ observed in *Ashvan*, it permits of a more flexible approach in construing a planning scheme to achieve a "*balanced decision in the public interest*". Or, to adopt the words used by the Court of Appeal when referring to the case *DeGee & Anor v BCC & Anor*,[29] the *Planning Act* permits the balancing of the relevant facts, circumstances and competing interests in order to decide whether a particular proposal should be approved or rejected.

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27 *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16 at [51].
28 See at paras [56]-[60].
29 (1998) QPLER 287: referred to in *K & K* at para [58].

Access and traffic issues

[26] After a more detailed analysis of what the traffic engineers considered relevant, each of them in their joint expert report provided a summary of their conclusions.[30] Mr Williams, the traffic engineer relied on by the Council and TPG, summarised his conclusion in the following way:

> "Mr Williams believes that the development of the Subject Land in the manner as proposed and as had been approved by the Council is acceptable and would **not unnecessarily prejudice the future development of Lot 3 and Lot 4**. He does not believe that any of the issues raised by Mr Douglas are of such a significant nature that the development should be rejected on traffic engineering and transport planning grounds." (Emphasis added)

[27] Following a query from me, Mr Williams expressed the view that the reference to unnecessary prejudice was probably better understood as meaning that the access proposed for the intended development would not unreasonably prejudice the development of lot 3 and/or 4.[31]

[28] Mr Douglas, the traffic engineer relied on by Brookside, summarised his conclusions in the following terms:[32]

> "Mr Douglas considers the proposed development represents an unnecessarily poor traffic engineering and transport planning outcome.
>
> It fails to meet a number of Council's Performance Outcomes and it specifically runs against the orderly, safe and efficient development of the precinct from a vehicular, pedestrian and cyclist standpoint.
>
> In Mr Douglas' opinion the development as proposed **should be rejected on traffic engineering and transport planning grounds**." (Emphasis added).

[29] For the reasons that follow, I agree that as is currently designed, the proposed development ought not be permitted to proceed. However, subject to an appropriate condition concerning access being imposed, an acceptable town planning outcome could be achieved.

[30] It is common ground of the traffic engineers that access to and from Blunder Road, it being a four lane busy arterial road, should be temporary. That intention is made abundantly clear in conditions 37 and 37(a) of the development conditions imposed by Council. Condition 37(a) relevantly provides:[33]

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30 Exhibit 5, p 9.
31 T1-66 ll 30 – 45.
32 Exhibit 5, p 9, paras 5.1 – 5.3.
33 Exhibit 3, volume 2, p 547.

> "Close the temporary vehicular access on the Blunder Road frontage of the site when the permanent access is available to provide access to the development **via Brookside Street and Sallyanne Street. The closure of the temporary access is to be undertaken in accordance with the following requirements…**" (Emphasis added)

[31] Those requirements include the installation of bollards at the Blunder Road frontage to prevent direct vehicular access to and from that road and, associated with that, the removal of the crossover on the Blunder Road frontage of the site and the reinstatement of the concrete verge.

[32] In reality, before the subject land could have access via Brookside Street and Sallyanne Street, road works would have to be carried out on Lot 4 which is immediately to the south of the eastern section of the subject land. As Mr Williams accepted, the development of Lot 4 controls the timing of the closure of the temporary access and that accordingly, "*the timing is completely at the hands of somebody else*".[34] Not surprisingly, this was also a matter of concern to Mr Douglas.[35]

[33] Another issue having negative traffic ramifications identified by both the traffic engineers was that in the event that Lot 3 were developed before Lot 4, the traffic generated from that development would have to utilise the temporary access through the subject land.[36] At the time of the hearing of this proceeding, no application was before the Council for the development of either Lot 3 or Lot 4.

[34] It is convenient at this stage to note two further matters arising from the evidence of the traffic engineers. The first is that Mr Williams accepted that the temporary access solution was not an optimal outcome and is indeed one that will prejudice the efficient development of Lot 4.[37]

[35] The second matter is that while Mr Douglas' opinion was that the proposed access arrangements were sufficient to warrant "*refusal*", it was not that temporary access to Blunder Road of itself was fatal to the proposal.[38] His evidence made it clear that there were three potential alternate internal street layouts which, if provided for, would not then warrant refusal on traffic grounds.

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34 T1-53 ll 25-29.
35 Exhibit 5, pp 3-4, items E and F; Exhibit 12, p 9, para 38(a).
36 Exhibit 12, p 9, para 38(a); Mr Williams evidence at T1-51 ll 1-7.
37 Exhibit 5, p 9, para 5.4; T1-66 ll 30-45.
38 T2-21 ll 40-46.

[36] One solution would be for the road identified in the current proposal be relocated to run along the southern boundary of the land. That would provide extensive potential access to both Lots 3 and 4. Mr Douglas described that option as his "*utopian*" outcome.[39]

[37] Other options identified by Mr Douglas, which while not the most desirable, would be to provide for access to Lot 4 through that part of Lot 19 immediately adjacent to Lot 18.[40] Alternatively, and potentially a better outcome, would be to provide for future road access to Lot 4 by re-aligning the proposed road in a north-south direction opposite the existing pedestrian link to the north.[41] This option would of course require some additional reconfiguring (and possibly loss) of lots and additional roadworks. Neither of those consequences are likely to be desirable insofar as TPG is concerned.

[38] While the imposition of a condition providing for a road connection to Lot 4 will not provide a determinative solution for the timing of the closure of the temporary access, it would go a long way to resolving the "*connectivity*" concerns raised by Mr Douglas. In this context, the three town planners who gave evidence, all agreed that the provision for future road access to Lot 4 was a better town planning outcome than that resulting from the existing proposal.[42]

[39] In the joint expert report of the traffic engineers,[43] Mr Douglas expressed the opinion that, in respect of traffic/road design, the proposal conflicted with various provisions of the planning scheme. He then sets out the fundamental bases for those conclusions in subparagraphs (a) to (h) inclusive of that report.[44]

[40] In respect of those matters, subparagraphs (a), (b), (c) and (g) are concerned with the issue of road connectivity and integration to the south via Lot 4. Subparagraphs (d), (e), (f) and (h) are, while clearly involving the issue of road connectivity to the south, primarily directed to concerns about the timing of the closure of the temporary access to and from Blunder Road. Subparagraph (g) is primarily concerned with pedestrian

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39 T2-34 ll 1-10.
40 Exhibit 12, p 9, paras 43-45.
41 Opposite proposed Lots 16 and 17; See generally T3-21 ll 30-46 and T3-22 ll 1-25.
42 Mr Perkins evidence at T4-19 ll 31-45; Mr Holt evidence at T4-49 ll 28-31; Mr Brown evidence at T4-78 ll 35-47 and T4-79 ll 1-20.
43 Exhibit 5.
44 Ibid, pp 3-4, para 4.1.

and cyclist access to park areas. It is not necessary to go into the evidence of Mr Williams in detail insofar as the issues raised in subparagraphs (d), (e), (f) and (h) inclusive are concerned. That is so because, as already identified, the temporary access issue is not of itself a reason for refusal. In his individual report, Mr Douglas, under the heading "conclusion" stated:[45]

> "The proposed subdivision results in unnecessary staging issues that are likely to:
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> (a) Significantly extend the period over which the temporary left-in, left-out driveway to Blunder Road will be required to service residents on the Subject Land, noting that future residents of any subdivision of Lot 3 will also have to rely on the temporary left-in, left-out driveway to Blunder Road, at least until Lot 4 is developed.
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> (b) Require Lot 4 to be developed to provide the proposed local park that was previously indicated on the Subject Land;
>
> (c) Be quite circuitous and less safe for pedestrians (including children) to access the park, particularly if Lot 4 develops prior to Lot 3; and
>
> (d) Increase the likelihood that such pedestrians will have to walk along the Blunder Road verge which currently does not have a formed footpath and would also require pedestrians to cross the driveways to the commercial centre currently under construction.
>
> **In my opinion, the proposed subdivision therefore does not provide for development to be carried out in an orderly sequence nor is it well integrated with surrounding land uses and infrastructure.**
>
> **The proposed subdivision does not contribute towards a connected and permeable network of roads and walking and cycling routes and it does not provide a high level of internal accessibility nor good connections for local vehicles, pedestrian and bicycle networks**." (Emphasis added)

[41] As already identified, according to Mr Douglas, absent a condition being imposed to provide for future access to the northern boundary of Lot 4, the proposed development ought be refused. In this context, Mr Douglas in particular opines that the existing proposal is in material "*conflict*" with the Overall Outcomes (OO) 3(a), 3(o) and 3(h) of the *Emerging Community Zone Code*[46] and Performance Outcomes (PO) 10 and 11 of the *Subdivision Code* of the planning scheme.[47]

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45 Exhibit 12, paras 38 – 40.
46 Exhibit 9, volume 2, pp 254 – 255.
47 Ibid, pp 314 – 316.

[42] The Overall Outcomes are concerned with well planned, orderly, integrated and connected development having regard to existing land uses and infrastructure (such as roads and existing road networks). PO10 and PO11 relevantly provide:

> "**PO10**
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> Development ensures that the transport network and all its elements is designed to:
>
> (a) have a clear hierarchal structure using the existing network classification;
>
> (b) provide a high level of internal accessibility and good external connections for local vehicle, pedestrian and bicycle networks;
>
> (c) include a minor road network that creates convenient and safe movement between uses and to higher order roads;
>
> (d) contribute to the bicycle network….
>
> **PO11**
>
> Development provides a transport network which has permeability, connectivity and safety for vehicles, pedestrians and cyclists."

[43] Having regard to the evidence of both traffic engineers I am left with little doubt that the development as presently proposed would result in material non-compliance with OO3(h) and PO's 10 and 11 for the reasons identified by Mr Douglas.

[44] In addition to the connectivity and integration problems resulting from the failure to provide a road connection point at the northern boundary of Lot 4, the failure to do so is also likely to delay the closure of the temporary access to Blunder Road. Additionally, the notional relocation of the proposed park to the northern side of Brookside Street tends to emphasise the need for a safer and more convenient internal route to that park for pedestrians and cyclists. Until access through Lots 3 and/or 4 is available to the park, pedestrians and cyclists would be required to travel along the verge of Blunder Road and then Brookside Street.

[45] As already identified, the level of non-compliance with relevant traffic assessment benchmarks would warrant refusal of the current proposal. However, a relevant matter for the purposes of the *Planning Act* would clearly involve the consideration of whether an appropriate condition might not satisfactorily address those areas of non-compliance.[48] On balance, I have reached the conclusion that the imposition of a condition securing access to the northern boundary of Lot 4 would adequately address the area of non-compliance identified.

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48 *Planning Act* 2016 (Qld) s 60(2)(d).

[46] First, such a condition would be more likely to increase the likelihood of bringing forward the closure of the temporary access arrangements. As Mr Williams stated, "*Lot 4, controls that timing*".[49] Associated with that is that, in the event that Lot 3 were developed before Lot 4, the potential for increased traffic volumes utilising the temporary access could be, if not entirely avoided, then at least likely be more short lived. Another associated likely consequence is that internal access for pedestrians and cyclists to the commercial development to the south and any future park would occur sooner than if no such condition was imposed. That is, the use of Blunder Road for access to those facilities would be shortened. A result also considered by Mr Williams to be desirable.[50]

[47] There can be little room for doubt that an access point to Lot 4 is much more likely to provide for orderly development of the remaining undeveloped land.[51] Finally, no traffic matters or reasons exist that would prevent the imposition of such a condition. A matter also accepted by Mr Williams.[52]

[48] Turning to the evidence of the town planners. In respect of OO3(h), Mr Perkins was of the opinion that the proposed development was consistent with that outcome.[53] Mr Holt was of a similar view.[54] However, both Mr Perkins and Mr Holt expressly stated that in respect of the issues raised under those performance outcomes concerning the transport network, they would defer to the traffic engineers.[55] Insofar as there may be tension between the evidence of Mr Douglas and the town planners regarding integration and connectivity of motor vehicle, pedestrian and cycling traffic, I prefer the evidence of Mr Douglas.

[49] To conclude the discussion on this topic I would make three final observations. First, to secure access to the east of the subject land through to Bi Em Street would be entirely consistent with TPG's own Master Plan.[56] Second, it is accepted by Brookside that, with appropriate conditions in place, the temporary access arrangements proposed might not warrant refusal.[57] Lastly, during final submissions,

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49 T1-53 ll 20-24.
50 T1-56 ll 38-47.
51 Exhibit 12, p 9 per Mr Douglas; Mr Williams' evidence at T1-57 l 40-46 and T1-58 ll 1-9.
52 T1-51 ll 1-22.
53 Exhibit 4, para 91.
54 Ibid, para 92.
55 Ibid, paras 109(c) and 110(c).
56 Exhibit 7, p 15.
57 Appellant's written submissions, paras 3.52-3.54.

Mr Houston, counsel for TPG, stated that if I were to determine that road connection to Lot 4 was "*appropriate*", that he had instructions that his client would have no objection to the imposition of an appropriate condition to accommodate that outcome.[58] For the reasons given, I have reached the conclusion that a condition formulated to ensure road connectivity from the subject land to Bi Em Street in the manner contemplated in the TPG Master Plan ought be imposed.

The remaining planning issues

[50] Disagreement existed between Mr Perkins and Mr Holt on the one hand and Mr Brown on the other in respect of a number of the elements of the planning scheme. It is no longer necessary to resolve any dispute between the town planners insofar as stormwater and/or bushfire risk is concerned, as it is accepted that neither individually nor together would those matters necessitate refusal of the proposed development. The remaining issues would then appear to be:

1. The pattern and type of the development proposed including lot sizes;
2. Whether, leaving aside the traffic issues already dealt with, the proposed development constitutes an orderly and sequential pattern of development;
3. Whether, leaving aside road/traffic matters the proposed development provides an appropriate response to other urban utilities including water, sewerage, electricity and telecommunications; and
4. The location of any future parkland.

[51] Insofar as all but the last matter identified above are concerned, having determined the traffic issue in the manner that I have, I do not consider it necessary to deal with the evidence of the planners other than to state that I agree with the evidence of Messrs Perkins and Holt that those objectives of the planning scheme concerning the other remaining matters would be adequately met by the proposal. To the extent that there may be concerns about lot size/density, Mr Brown conceded that these were lower order matters that would not warrant refusal.[59] As Mr Skoien, counsel for Brookside, accepted in closing submissions, the two key issues were "*traffic and park*".[60]

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58 T5-4 ll 27-37.

59 T4-95 ll 29-40. See also, appellant's written submissions, para 3.43 (re housing mix and lot sizes) and T5-11 ll 6-23.

60 T5-11 ll 1-5.

[52] As to the location of a park, the public's expectations would have been informed by the Neighbourhood Plan, the Local Government Infrastructure Plan (LGIP) and the Priority Infrastructure Plan (PIP). Notwithstanding that the structure plan received by the Council on 31 January 2013 which was lodged by Brookside is not a plan that has any statutory force, it would not be unreasonable to expect that that plan might not have also had an effect on the public's expectations. Both the Doolandella Neighbourhood Plan (North and South) identify a future park on the subject land.[61] I would also observe here that notwithstanding the fact that, in the most recent iteration of the Doolandella Neighbourhood Plan, the proposed district park identified on the south-western corner of Crossacre Street and Blunder Road has been deleted, and the location of a future park broadly located on the subject land was retained.[62] In the Infrastructure Plan, an indicative location for a park acquisition is located south of the subject land, broadly speaking, at the intersection of Lots 3, 4 and 9.[63]

[53] Broadly consistent with the park location identified in the neighbourhood plans, the structure plan lodged by Brookside in the furtherance of its proposed development, placed the park at the intersections of lots 2, 3 and 4, but primarily on the subject land.[64]

[54] Of course, the public would recognise that the location of any future park as identified in any of the above mentioned documents was meant to be indicative only. Public expectations would also, in my view, be influenced by adherence to, or departure from those planning documents. As was identified by the Council, there have been a number of material departures from the neighbourhood plans. These include the development of the Doolandella Childcare Centre, the development of the service station and convenience centre on the north-eastern corner of Blunder Road and Brookside Street and the approval for multiple dwellings to the east of the subject land in land previously zoned as rural.

[55] That such flexibility existed was recognised by Mr Skoien in final submissions, where he said in respect of the park:[65]

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61 Exhibit 7, pp 23 and 24.
62 Exhibit 10, p 125.
63 Exhibit 7, p 25; See also Exhibit 10, p 69.
64 Exhibit 7, p 16.
65 T5-18 ll 24-37.

> "Here, for instance, as the appellant suggest (sic), it might be a very sensible outcome for it all to be moved to the eastern end of lot 2, and that might be something that, for instance, a determination of this court could stand in the shoes of the assessment (manager) could (sic) determine as being a location for the park. And that may be able to be used in substitution for what's identified in the planning authority in the neighbourhood planning process.
>
> …
>
> In or around Lot 19. What, in my submission, it doesn't amount to is a developer coming along and saying 'here's a structure plan where we suggest that somebody else should put the park on their land and that's the way we should approach it'. That is not a determination of a location in accordance with development assessment process, in my submission…."

[56] The reference to Brookside's "*suggestion*" is a reference to what was referred to as a "*potential solution*" in Brookside's written submissions when, insofar as the park was concerned, it was submitted:[66]

> "There is, of course, a sensible and rational solution to the issues raised by the Appellant in this appeal, ….
>
> Second, proposed Lot 17, proposed Lot 18 and proposed Lot 19 can be dedicated as local park, being trunk infrastructure, totalling some 5,000m^2. That local park would be immediately connected to the pedestrian and bicycle access to the boarder locality, via the path to Hanley Place, would have a road frontage for its full width, and would ultimately be connected directly to the surround road network via Bi Em Street upon the development of Lot 4.
>
> That dedication would allow Council to make a decision (as planning authority) about whether it wishes to expand the local park (perhaps doubling it in size) when Lot 4 is developed. That dedication would enable the co-respondent to receive credits for the provision of trunk infrastructure in accordance with the Council's long-term planning for that infrastructure.
>
> Whether the co-respondent would make such amendments to the plan of development, or agree to the imposition of conditions to require such amendment, is a matter that only the co-respondent can answer." (Footnotes deleted)

[57] Each of the town planners were in agreement that a local park east of Blunder Road and north of Brookside Street was a desirable planning outcome. The dispute centred around where that park should be located. That question was, to a material extent, to be answered by reference to, in particular, accessibility, area and public expectations. By reference to the neighbourhood plan in particular, Mr Brown was of the opinion that the failure to provide for a park area incorporating at least part of the subject land, constituted a material non-compliance with the *Neighbourhood Plan Code*.[67] Mr Holt and Mr Perkins disagreed.

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66 Appellant's written submissions, paras 3.52, 3.55, 3.56 and 3.57.

67 For example see Exhibit 4, p 54, paras 126-128.

[58] In their joint expert report the town planners identified a number of "Key Issues". Insofar as the park was concerned, they reported:[68]

> "**Provision of Park** – Notice of Appeal Paragraph 12(d) and Paragraph 14(c) - Specific Outcomes SO1 and SO3 of Element 2.4 of section 3.4.5 – Strategic Framework; Notice of Appeal 14(c); (d); (e); (f); (g); Notice of Appeal Paragraph 14(j) – Doolandella Neighbourhood Plan 7.2.4.2.2 Overall Outcomes (3)(a) and (3)(c) – Notice of Appeal.
>
> Paragraph 14(I); Subdivision Code – 9.4.10.2, Overall Outcome (2)(h); 9.4.10.3 Performance Outcomes PO10, PO21 and PO29.
>
> **Relevant Matters** – grounds to justify approval despite any potential conflicts with the planning scheme."

[59] Specific Outcome 1 is designed to ensure that Brisbane has a range of accessible multipurpose community facilities, including parks, which meet the physical, social and cultural needs of the local and wider community. Land use strategies include that developments accord with the social infrastructure identified in priority infrastructure plans, appropriate facilities are located in or near centres and public transport stations or, are encouraged to cluster around existing facilities and link with active travel and public park networks.[69] Specific Outcome 3 is concerned with the need for parks and open space to provide for a diversity of experience. Land use strategies in respect of this outcome include, but are not limited to, ensuring that parks are planned and managed to provide for a diversity of experiences.[70]

[60] Turning then to the Doolandella Neighbourhood Plan, s 7.2.4.2.2 identifies the purpose of the plan and relevantly provides:[71]

> "(1) The purpose of the Doolandella Neighbourhood Plan Code is to provide **finer grained planning at a local level** for the Doolandella Neighbourhood Plan area;
>
> (2) The purpose of the Doolandella Neighbourhood Plan Code will be achieved through Overall Outcomes;
>
> (3) The Overall Outcomes for the Neighbourhood Plan are:
>
> (a) Development creates functional and integrated communities;
>
> …
>
> (c) Open space, parks and recreational facilities meet the needs of the community **and** are located in accessible locations that are well connected within the neighbourhood plan area. …" (Emphasis added)

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68 Exhibit 4, pp 31-32.
69 Exhibit 9, V1, p 54.
70 Ibid, p 55.
71 Exhibit 9, V2, p 281.

[61] Performance Outcome 5 relevantly provides that:[72]

> "Development ensures that:
>
> (a) the centre and adjoining park form a local community focus;
>
> (b) the centre and adjoining park remain as an attractive and safe informal meeting place by promoting high levels of integration between the centre and the park and facilitating pedestrian movement between the two sites."

[62] Acceptable Outcomes include that:[73]

> "Development provides park in the locations identified in Council's Priority infrastructure Plan and
>
> Development involving buildings, pathways, landscaping and car parking areas integrates the centre and park and facilitates casual surveillance of the park by:
>
> (a) maximising buildings fronting the park and providing direct pedestrian connections…"

[63] Turning then to the *Subdivision Code*, s 9.4.10.2 identifies its purpose will be achieved through a number of overall outcomes including that subdivision development be designed to effectively integrate with existing and planned infrastructure and services.[74] One of the elements of the intended development of a highly connected and legible neighbourhood is that parks be centrally located.[75] Performance Outcome 29 has a similar theme in that it is expected that:[76]

> "Development provides land for park purposes which is well distributed and located and is consistent with:
>
> (a) the nature of surrounding parks;
>
> (b) the needs of occupants and visitors;
>
> (c) the safety and connection to the transport network."

[64] An acceptable outcome is that "*development provides land for park purposes which is in compliance with the Park Planning and design code and the Priority Infrastructure Plan*".[77]

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72 Exhibit 9, V2, p 284.
73 Ibid, p 284.
74 Ibid, p 309.
75 Ibid, p 319, PO21(e).
76 Ibid, p 323.
77 Ibid, p 323.

[65] It was Mr Perkins' opinion that the location of the park as proposed by TPG created no meaningful conflict with the relevant planning documents. His basis for that conclusion could be summarised by reference to the following matters:[78]

> "The proposal does not provide land for park purposes but the covering letter to the decision notice…identified that '*Brisbane City Council has levied infrastructure charges for the transport, community purposes and stormwater trunk infrastructure network. The provision charges notice has been attached to the decision notice*' (Subdivision Code PO29).
>
> While the Doolandella Neighbourhood Plan Code indicates a 'Future Park' on the centre of the site, the more detailed, recent and relevant priority infrastructure plan map (and more recently the Local Government Infrastructure Plan map) indicate that the site for Park Acquisition – Indicative Location is not located on the site but is instead on land further to the south where it also corresponds to a higher concentration of land mapped as containing regulated vegetation.
>
> The indicative location of a future park to the south of the site as indicated by the Priority Infrastructure Plan and the Local Government Plan and the Draft Structure Plan is more desirable and logical for the following reasons:
>
> (a) The LGIP location to the south of the subject land is closer to a higher order road and can be designed to provide an appropriate level of road frontage consistent with appropriate principles and would comply with overall outcome (3)(c) of the Doolandella Neighbourhood Plan Code;
>
> (b) The LGIP location could also accommodate the retention of Regulated Vegetation;
>
> (c) **The LGIP location would have the potential to comply with the Desired Standard of Service for Recreation (Urban) whereas the subject site is not big enough with an area of approximately 1.423 hectares and a width of approximately 60 metres**.
>
> (d) The *Neighbourhood Plan Code* identifies that development is to provide park in locations identified in Council's Priority Infrastructure Plan. This outcome acknowledged the potential that more detailed infrastructure planning would supersede park locations shown in the Neighbourhood Plan Code as is the case here." (Emphasis added)

[66] Mr Holt did not express a final view about whether the location for the park proposed by Brookside is in conflict with the planning scheme but nonetheless agrees with the opinions of Mr Perkins. He reports:[79]

> "Mr Holt is of the opinion the development meets the needs of the community expectations of facilitating development within an area that has access to existing or planned open space, parks or recreation facilities. Mr Holt notes the significant growth within the area has increased the amount of people living within the area and highlights the planned park…Mr Holt is also of the opinion each dwelling lot will provide private outdoor open space

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78 Exhibit 4, pp 50-51.
79 Ibid, pp 53-54, paras 124-125.

> which will provide individual open space opportunities for the future residence.
>
> Mr Holt agrees with Mr Perkins that while the Doolandella Neighbourhood Plan Code…indicates a 'future park' on the centre of the site, however the LGIP has progressed to a greater detail to identify and investigate the most practical accessible and functional location for a park within the area on land further to the south where incorporating a higher concentration of existing and map regulated vegetation, provides greater opportunities for connectivity within a central pocket of land either approved for development or planned for development and will provide a greater level of compliance with the Desired Standards of Service for Recreation (Urban) for size and locational requirements for park areas."

[67] Mr Brown disagrees with the opinions of Messrs Perkins and Holt. In his court report, after considering a number of parks in the district he concluded:[80]

> "City Plan 2014 informs community expectations as to the pattern of future development that can be reasonably anticipated. I cannot agree with Mr Perkins… or for that matter the opinions of Mr Holt…that in effect, the provisions of the Local Government Infrastructure Plan in relation to the suitable location for a local recreation park (which is an indicative location only), are to be preferred over the planning for park location within the Doolandella Neighbourhood Plan… I consider that the planning for the locality and the community expectations would be derived from the more detailed provisions of City Plan 2014 – in this case the Doolandella Neighbourhood Plan Code."

[68] While not necessarily agreeing with Mr Brown's opinion that community expectations would be set by the Doolandella Neighbourhood Plan Code location for the park, I am nonetheless able to accept that either by reference to the Neighbourhood Plan or the relevant infrastructure plans, that community expectations would be for a more centrally located park. The infrastructure plans referred to by both Mr Perkins and Mr Holt, while having an indicative location south of that identified in the Neighbourhood Plan, nonetheless identifies a location more central than that proposed.

[69] Adopting the language used in s 45(5) of the *Planning Act*, under the heading "*relevant matters*" the town planners set out their opinions. Insofar as they are concerned with the park, they are:[81]

> "**Mr Perkins opinion**
>
> If there are any conflicts with the planning scheme (noting that Mr Perkins does not consider that there are), he considers that the following represent relevant matters that may justify the approval despite any conflicts:

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80 Exhibit 11, p 4, para 13.

81 Exhibit 4, p 55, paras 129-131.

(a) The approved development represents a logical and appropriate extension to the existing pattern of development and uses in the surrounding area;

(b) The proposed residential subdivision is consistent with community expectations for the site and is consistent with the lot sizes and layouts present in the surrounding area;

(c) The Neighbourhood Plan envisaged that it would be the Priority Infrastructure Plan (now Local Government Infrastructure Plan) that would determine final park locations;

(d) It is apparent that a flexible approach has been adopted in the implementation of the Neighbourhood Plan's figures (a) and (b) as evidenced by a comparison between the outcomes mapped on those figures and those evident on the ground and in current approvals…

Mr Holt's opinion

Mr Holt is of the opinion if the court considers there is a conflict with the applicable Planning Scheme provisions, Mr Holt considered there are sufficient grounds to justify the approval despite any conflicts as follows:

(a) The proposed development integrates with the immediate and surrounding areas and forms a logical use of the land…

(b) ….

(c) The proposed development aligns with community expectations and development outcome that is reasonably expected within an Emerging Community Zone and potential development area in accordance with the Doolandella Neighbourhood Plan;

(d) The Local Government Infrastructure Plan has provided a desired location for a future park and the proposed development will be located within walking distance to that future park.

Mr Brown's opinion

Mr Brown is of the opinion that in a number of respects as outlined within (the) report the proposed development is non-compliant with the applicable Planning Scheme provisions and does not consider that there are relevant matters sufficient to overcome the non-compliance in relation to matters including the lack of provision of park…"

[70] It is tolerably clear that both Mr Holt and Mr Brown addressed the issue of "*relevant matters*" for the purposes of s 45(5) of the *Planning Act* as if they were carrying out a "*sufficient grounds*" exercise for the purposes of the SPA.

[71] On balance, when all relevant matters are taken into account, I am sufficiently satisfied that the location of a park in the area indicted in the TPG Master Plan is an acceptable outcome[82] and would not warrant refusal.

[72] The reasons for reaching this conclusion are as follows. First, the future park is identified in the Neighbourhood Plan as a district park. Under the planning scheme,

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82 Exhibit 7, p 15.

an area of 0.8ha for parks is identified within table 5.4.6.1.1 concerned with the "*land provision standard for the public parks network.*"[83] Under the schedule of works for future trunk infrastructure adopted by the Council on 13 May 2016, an area of 1ha for park purposes is identified for acquisition at a cost of $1,576,592.[84] As Mr Brown appeared to accept, the 0.5ha park area originally contemplated in the Neighbourhood Plan had been overtaken by more contemporary planning objectives.[85]

[73] The location identified in the infrastructure plan is no longer available given the commercial development to the south. The nearest alternate option would therefore be to locate the park either wholly within Lot 3 or wholly within Lot 4 or partly within both. Of itself, the whole of Lot 3 would only be capable of accommodating 0.872ha. In all probability then, it would be more likely than not that any future park close to that identified in the infrastructure plan would be spread over both Lots 3 and 4 or, located wholly within Lot 4.

[74] An equal sharing of the park area over both lots would leave only approximately 4000m^2 of Lot 3 available for its intended land use being for low density residential multiple dwellings.[86] That would not be a desirable planning outcome in my view.

[75] The second matter, which is directly associated with that discussed above, is that if the whole or a major part of the future park was located within Lot 4, that would have a similar impact on the planned use for that lot. Of course the location identified in the proposed development would have the same consequences, however, as both Mr Perkins and Mr Holt recognised, the proposed location would, consistent with what occurred in the Redhead Street residential development, facilitate the integration and retention of the category B regulated vegetation located at the south-eastern portion of Lot 4.[87] This is again a more desirable planning outcome.

[76] Of course, if the park was to be only 0.8ha instead of 1ha the consequences referred to above would be lessened but would not, in my view, have any material impact on the potential negative outcomes to which I have referred. Further, the more

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83 Exhibit 9, V1, p 125.
84 Exhibit 22, p 9.
85 T4-87 ll 27-40.
86 Exhibit 7, p 23.
87 Ibid, p 26.

persuasive evidence on this matter is that contained in the infrastructure plan. As Mr Brown recognised, the 0.8ha area is the minimal requirement.[88]

[77] Consistent with one of the objects of the Neighbourhood Plan concerned with parks, the proposed location would have good access via Brookside Street and Bi Em Street and, in due course, via the extension of Sallyanne Street.[89]Another planning benefit associated with the proposed location of the park is, as Mr Brown accepted,[90] that it would be adjacent to the commercial development on the corner of Blunder Road and Brookside Street. That said, I do not consider that this would result in any benefits concerning surveillance and security.

[78] While not of great weight, as Mr Brown put it, "*a miniscule benefit*",[91] is that locating the park wholly in Lot 4 would require the acquiring authority to only have to deal with one property owner.

[79] It is true, as Mr Skoien pointed out, that the proposed development would place the park even further towards the southern extremity of the likely catchment area.[92] That however has to be seen in context. The proposed location of the park would be only in the order of between 150m and 200m further from the indicative location shown on the infrastructure plans, the Neighbourhood Plan and that part of the subject land to the east identified by Mr Skoien in both his oral and written submissions. That additional distance would have little if any significance for those intending to use the park and arrive by motor vehicle or bicycle. It might be a deterrent to those intending to walk to the park but that also has to be seen in the context of the existing and proposed development in the near locality, including that on the subject land and to the south of Brookside street.

[80] Before concluding my consideration of the location of the park, there are three further matters that I should address. First, at no time did I understand Mr Brown to be critical of the proposed location for the park on the basis of it being in a poor location, or otherwise incapable of meeting the needs of the community. His criticism seemed to be focussed on it not being in line with public expectations.[93] Indeed, during cross-

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88 T4-88 ll 8-17.
89 See Exhibit 7, p 15.
90 T4-93 ll 33-45.
91 T4-89 ll 36-47.
92 See for example Exhibit 7, p 15.
93 See Exhibit 11, p 4, para 13.

examination he agreed that, insofar as the park was concerned, that was his major concern as a town planner.[94] Given that the location of the park in the relevant planning document is indicative only, I do not find this to be a particularly persuasive consideration for two reasons. First, the relatively small shift in the geographical location of the park. Second, and somewhat associated with the first point, given the other developments to which I have referred[95] which are at odds with those plans, I do not consider that the public expectations would be greatly offended by the change in location contemplated.

[81] The second matter is that Mr Brown asserted that there was non-compliance with, in particular, OO3(c) of the Neighbourhood Code.[96] Leaving aside the issue of public expectations, Mr Brown did not say that the proposed park could not meet the needs of the community. Also, for the reasons given, the proposed location would be an acceptable one with connectivity within the plan area. I am not persuaded by Mr Brown's evidence on this topic.

[82] The final matter is that raised by Mr Skoien in final submissions concerning the location of the park on the eastern portion of the subject land. Leaving aside any stormwater damage issues that might arise, there is, as far as I am aware, no evidence in support of that location, save perhaps for the indicative locations in the infrastructure and neighbourhood plans. By that I mean it was not a location advocated for by Mr Brown and nor was it one taken up with Mr Holt. And, when this option was put to Mr Perkins, he clearly had concerns, legitimate ones in my view, about it being a workable solution.[97] On the evidence before me, I do not consider setting aside the proposed Lot 19, even incorporating proposed Lots 15 to 18, would be likely to result in a planning outcome any better than that proposed.

[83] Insofar as there might be a departure from public expectations created by the infrastructure and/or Neighbourhood Plans, I do not consider it to be unacceptably so. That is because, to the extent that there may be any tension in that regard, the more desirable planning outcomes to which I have referred more than offset those expectations.

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94 T4-16 ll 10-47; Exhibit 4, p 40, para 77(b).
95 At para [54].
96 Exhibit 4, paras 126-128.
97 T3-68 ll 1-39.

Conclusion

[84] For the reasons given, subject to an appropriate condition or conditions concerning access to Bi Em Street via Lot 4 being imposed, I do not consider that there are any grounds that would warrant refusing the application. Also, having regard to the reasons given, I do not consider it necessary to deal with the matters discussed by the town planners under the heading "*relevant matters*" in their joint expert report.

[85] Accordingly, I will publish my reasons but will refrain from making final orders until hearing further from the parties.