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**Appeal 2675 of 2009 LM Wigan**

**Objective Reference:** A1762795  
Reports and Attachments (Archives)

**Attachments:** [Attachment 1 - Aerial Map](#)  
[Attachment 2 - JT George Master Plan](#)  
[Attachment 3 - LM Wigan Master Plan](#)  
[Attachment 4 - Report to Council 29 July 2015](#)

**Authorising Officer:** Louise Rusan  
General Manager Community and Customer Services

**Responsible Officer:** David Jeanes  
Group Manager City Planning and Assessment

**Report Author:** Chris Vize  
Principal Adviser Economic Sustainability and Major Projects

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**PURPOSE**

This appeal is referred to the General Meeting for Council to confirm its previous resolutions of 8 October 2014 to settle the appeal on certain parameters and for the matter to be put to the Court for a Consent Order.

The appeal is:

- Appeal 2675 of 2009, involving LM Wigan, is located at 84-122 Taylor Road, Thornlands

The relevant land is shown in **Attachment 1**.

**Application Background**

The original development application involved seeking a preliminary approval to effectively override the planning scheme to establish urban development, comprising residential uses and open space. The application was refused by Council, on the primary basis that it was inconsistent with the zoning of the land, the application did not adequately consider implications on infrastructure and did not provide land in an orderly sequenced development pattern. The refusal was appealed by the applicant.

**Appeal Progress**

One of the major stumbling blocks to the development of this land is the ability to provide sewerage infrastructure to service the development. As a means of addressing this issue, the appellant now proposes larger lot residential development that can be serviced via on-site effluent disposal.

This matter and an appeal on adjoining land (JT George appeal) was brought to Council on 8 October 2014 to determine Council's position on the amended larger lot proposals. At this meeting Council resolved as follows:

1. *Advise the appellants that Council supports the larger lot residential proposals in principle, subject to the following matters being addressed during negotiation:*
  - a) *Provide details for the preliminary approval for material change of use that identifies how the planning scheme is sought to be affected, including details on the proposed uses, their levels of assessment and assessment criteria.*
  - b) *Demonstrate that the proposed residential lots will be sufficient in size to suitably address on-site effluent disposal. This may be dealt with by including this matter as assessment criteria in the plan of development.*
  - c) *Demonstrate that the lot layout and sizes are sufficient to enable habitat enhancement and fauna permeability through the lots.*
  - d) *Demonstrate that the lot sizes are sufficient to achieve a semi-rural bushland setting.*
  - e) *Facilitate an internal road connection between the JT George and the Wigan land.*
  - f) *Design the development to retain open space land within private ownership and management, and incorporate assessment criteria within the plan of development that facilitates this outcome.*
  - g) *Provide an assessment report to establish the impacts of odour from neighbouring poultry farms on the development layout and staging of the development.*

In relation to point (d) above, officers brought the matter to a workshop on 3 December 2014 to decide on the minimum lot size required to achieve a semi-rural bush land setting. This was sought due to the fact that, at around the same time as Council's resolution on these appeals, Council had made certain resolutions about the future intent of the broader area in its draft City Plan. The draft City Plan identified a minimum of 1 hectare lot sizes for this area. At this workshop Council decided that they would support a minimum lot size of 6000m<sup>2</sup> for these appeals.

With these decisions of Council in hand, Council officers continued negotiations with the appellants. The JT George appeal settled by consent on 26 August 2015. A copy of the approved Concept Master Plan in the JT George appeal is included at **Attachment 2**. Whilst the applicant in the Wigan appeal agreed to the 6,000m<sup>2</sup> lot minimum, the proposed plan of development also included a caveat over that issue that was seen by officers as an attempt to apply for smaller lot sizes at a later time. As a result negotiations stalled and the appellant continued through the appeal process with a proposal for 1,800m<sup>2</sup> size lots.

The matter went to mediation on 26 April 2016, where the appellant finally agreed to a minimum lot size of 6,000m<sup>2</sup> (without any caveats that would see a potential reduction in this lot size), with the added request for an extra period of one year for the relevant period.

## Current Proposal

The proposal remains a preliminary approval to override the planning scheme. It does not authorise development to occur; instead it will establish a Plan of Development (PoD) that will be used to assess future development applications and will override the planning scheme to the extent of any conflicts between the two documents. This Plan of Development establishes its own land use precincts that replace the planning scheme zoning, its own tables of assessment to determine levels of assessment for certain uses and its own assessment codes. To obtain the necessary development permits to formally subdivide the land and create new lots the developer will be required to lodge a new detailed application with Council for Reconfiguring a Lot.

At the mediation on 26 April 2016, the appellant requested that officers take the matter to the Council to obtain confirmation that the Council will instruct its solicitors to settle the matter based on the parameters set out in the resolution dated 8 October 2014 (reproduced above). As such there is no updated plan of development to demonstrate the proposal.

In 2014, the appellant provided a plan of development that proposed the following (refer **Attachment 3** for concept master plan):

- A Residential Area, with a prescribed minimum lot size of 6000m<sup>2</sup>;
- The table of assessment for the Residential Large Lot Precinct adopts the current Park Residential Zone table, which is generally intended to accommodate dwelling houses and low-key home businesses;
- An 80 metre wide Environmental Corridor Area running north to south along the waterway and a 30 metre wide Open Space Precinct running along the northern boundary to provide a secondary vegetated corridor; and
- The intent of the Environmental Corridor Area is to be free of development and structures and be rehabilitated to facilitate fauna movement.

### Consideration of Issues

The matters set out by Council in its resolution of 8 October 2014 and subsequent workshop on 3 December 2014, were addressed in the confidential report to Council on 29 July 2015 (refer to **Attachment 4**).

### Co-Respondent's comments

Both appeals involved a co-respondent that was a submitter to the applications. They have advised that they generally agree to the 6,000m<sup>2</sup> size limit but want to be involved with the finalisation of conditions.

### LEGISLATIVE REQUIREMENTS

The appeal is currently listed for review on 27 May 2016. A decision by Council on the conditions will allow the parties to seek a Consent Order from the Court to settle the appeals.

## Risk Management

As always, going to Court is an unknown outcome and there is a risk that, if the matter does not settle on the bases included in this report, the appellant could be successful with the 1,800m<sup>2</sup> size lots in a rural area.

## Financial

Seeking Consent Orders to settle the appeals will mean minimal further legal costs are expended. Should Council decide to amend its position and oppose the appeals, further legal and expert costs will be involved.

## People

Nil.

## Environmental

Conditions are recommended that require enhancement plantings to the development site to establish fauna movement corridors and fauna permeability through the lots. This is considered to be an improved outcome on the existing situation, which comprises predominantly cleared rural land.

## Social

The approval of these proposals will result in a new semi-rural community in this part of the City.

## Alignment with Council's Policy and Plans

It is recognised that the proposal does not align with the current rural zoning in the Redlands Planning Scheme. It would also conflict with the rural zone and Future Urban Growth Investigation Area in the draft City Plan. Nonetheless, Council has this appeal on foot and must weigh up the risks and benefits of all options, as well as taking into account the fact that the neighbouring site was granted a consent order for a 6000m<sup>2</sup> lot residential development as part of the JT George appeal.

The following Groups were consulted in the preparation of this report:

- City Planning and Assessment; and
- General Counsel.

The following options are available to Council:

1. That Council resolves to confirm its resolution of 8 October 2014 to seek settlement of the appeals through a Consent Order of the Court in accordance with the parameters contained within the resolution of 8 October 2014.
2. That Council resolves to seek settlement of the appeal through a Consent Order of the Court in accordance with different or amended parameters.
3. That Council resolves to inform the appellant that it opposes settling the appeal (reasons would need to be established in order to inform the appellants).

## That Council resolves to:

1. **Adopt Option 1 presented in this report; and**
2. **Maintain this report and its attachments as Confidential until the appeal is resolved.**



Attachment 1 – Aerial Map

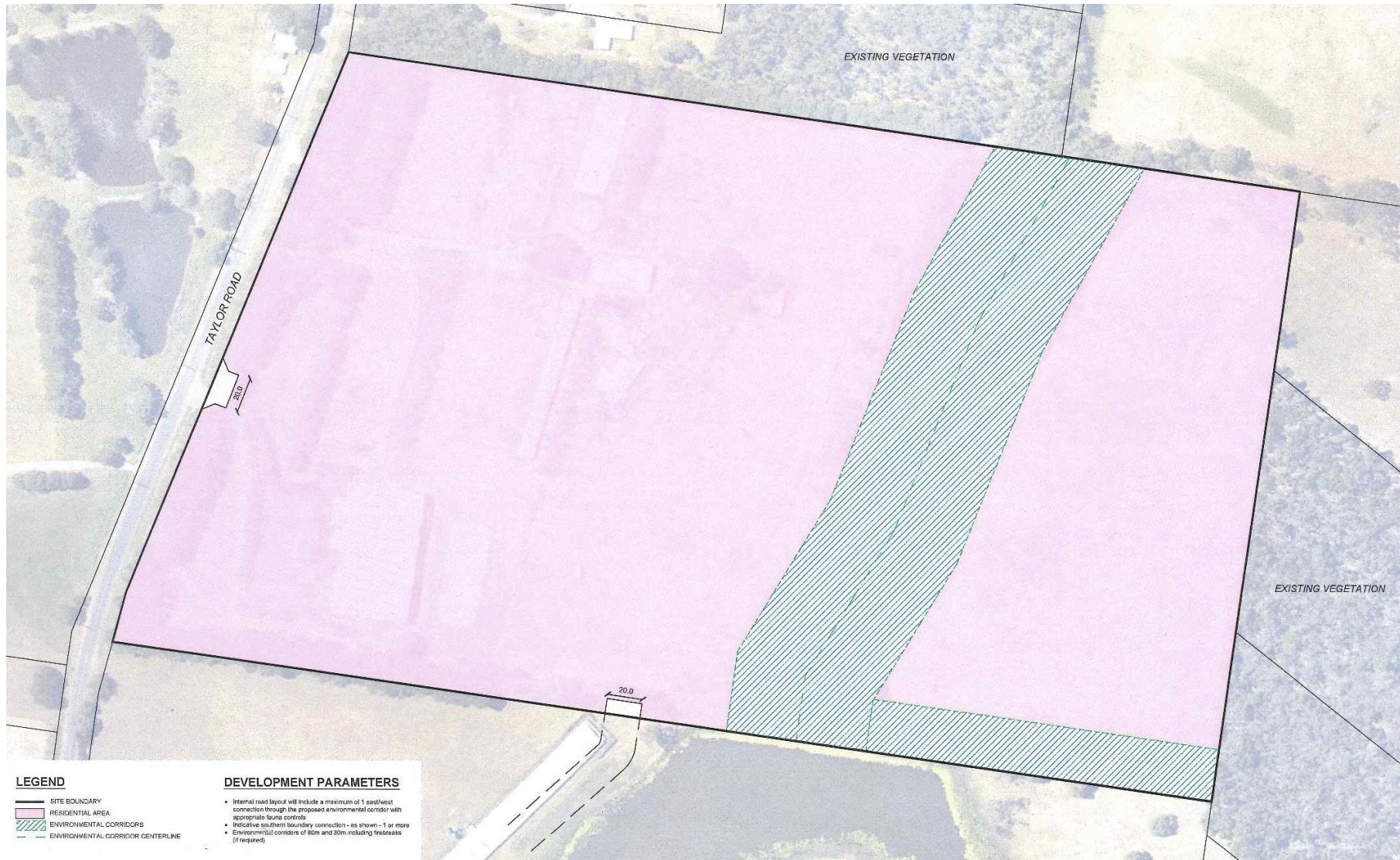


## Attachment 2 – JT George Master Plan





# Attachment 3 – LM Wigan Master Plan



### LEGEND

- SITE BOUNDARY
- RESIDENTIAL AREA
- ENVIRONMENTAL CORRIDORS
- ENVIRONMENTAL CORRIDOR CENTERLINE

### DEVELOPMENT PARAMETERS

- Internal road layout will include a maximum of 1 east/west connection through the proposed environmental corridor with appropriate fauna controls
- Indicative southern boundary connection - as shown - 1 or more
- Environmental corridors of 80m and 30m including treatments (if required)

**APPEALS 1963 J T GEORGE NOMINEES PTY LTD AND 2675 L M WIGAN OF 2009**

<b>Objective Reference:</b>	<b>A189375</b> <b>Reports and Attachments (Archives)</b>
<b>Attachments:</b>	<a href="#"><u>Attachment 1 – Aerial Map</u></a> <a href="#"><u>Attachment 2 – JT George Master Plan</u></a> <a href="#"><u>Attachment 3 – LM Wigan Master Plan</u></a> <a href="#"><u>Attachment 4 – Habitat Overlay</u></a> <a href="#"><u>Attachment 5 – JT George Conditions</u></a> <a href="#"><u>Attachment 6 – LM Wigan Conditions</u></a>
<b>Authorising Officer:</b>	<b>Louise Rusan</b> <b>General Manager Community and Customer Services</b>
<b>Responsible Officer:</b>	<b>David Jeanes</b> <b>Group Manager City Planning and Assessment</b>
<b>Report Author:</b>	<b>Chris Vize</b> <b>Service Manager Planning Assessment</b>

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**PURPOSE**

These appeals are referred to the General Meeting for Council to decide on the conditions to be put to the Court for a Consent Order.

**BACKGROUND**

The two appeals are:

- Appeal 1963 of 2009, involving JT George, is located at 157-195 & 197 Woodlands Drive, Thornlands
- Appeal 2675 of 2009, involving LM Wigan, is located at 84-122 Taylor Road, Thornlands

The relevant land is shown in **Attachment 1**.

**Application Background**

The original development applications involved preliminary approvals to effectively override the planning scheme to establish urban development, comprising residential uses, a neighbourhood centre and open space. Both applications were refused by Council, on the primary bases that they were inconsistent with the zoning of the land, they did not adequately consider implications on infrastructure and did not provide land in an orderly sequenced development pattern. These refusals were appealed by the applicants.

**Appeal Progress**

One of the major stumbling blocks to the development of this land is the ability to provide sewerage infrastructure to service the development.



As a means of addressing this issue, both appellants now propose larger lot residential development that can be serviced via on-site effluent disposal.

The matter was brought to Council on 8 October 2014 to determine Council's position on the amended larger lot proposals. At this meeting Council resolved as follows:

1. *Advise the appellants that Council supports the larger lot residential proposals in principle, subject to the following matters being addressed during negotiation:*
  - a) *Provide details for the preliminary approval for material change of use that identifies how the planning scheme is sought to be affected, including details on the proposed uses, their levels of assessment and assessment criteria.*
  - b) *Demonstrate that the proposed residential lots will be sufficient in size to suitably address on-site effluent disposal. This may be dealt with by including this matter as assessment criteria in the plan of development.*
  - c) *Demonstrate that the lot layout and sizes are sufficient to enable habitat enhancement and fauna permeability through the lots.*
  - d) *Demonstrate that the lot sizes are sufficient to achieve a semi-rural bushland setting.*
  - e) *Facilitate an internal road connection between the JT George and the Wigan land.*
  - f) *Design the development to retain open space land within private ownership and management, and incorporate assessment criteria within the plan of development that facilitates this outcome.*
  - g) *Provide an assessment report to establish the impacts of odour from neighbouring poultry farms on the development layout and staging of the development.*

In relation to point (d) above, officers brought the matter to a Workshop on 3 December 2014 to decide on the minimum lot size required to achieve a semi-rural bush land setting. This was sought due to the fact that, at around the same time as Council's resolution on these appeals, Council had made certain resolutions about the future intent of the broader area in its draft City Plan. The draft City Plan identifies a minimum of 1 hectare lot sizes for this area. At this Workshop Council decided that they would support a minimum lot size of 6000m<sup>2</sup> for these appeals.

With these decisions of Council in hand, Council officers continued negotiations with the appellants.

## **ISSUES**

### **Current Proposals**

For both appeals, the proposals remain preliminary approvals to override the planning scheme. They do not authorise development to occur; instead they establish Plans of Development (PoD) that will be used to assess future development applications and will override the planning scheme to the extent of any conflicts between the two documents.

These Plans of Development establish their own land use precincts that replace the planning scheme zoning, their own tables of assessment to determine levels of assessment for certain uses and their own assessment codes.

JT George (157-195 & 197 Woodlands Drive, Thornlands)

The appellant has provided a plan of development that proposes the following (refer **Attachment 2**):

- A Residential Large Lot Precinct, with a prescribed minimum lot size of 6000m<sup>2</sup>;
- The table of assessment for the Residential Large Lot Precinct generally adopts the current Park Residential Zone table, which is generally intended to accommodate dwelling houses and low-key home businesses. One exception is the inclusion of Aged Persons and Special Needs Housing as code assessable for a maximum of 200 beds;
- A 1 hectare area on the corner of Woodlands Drive and Taylor Road in the Neighbourhood Centre Precinct, which is intended to accommodate farmer's markets;
- The table of assessment for the Neighbourhood Centre Precinct identifies the following uses as code assessable:
  - a market (which is defined in the PoD as sale of goods to the public primarily from temporary structures); and
  - shops (as a permanent use) up to a maximum 400m<sup>2</sup> gross floor area.
- A 60 metre wide Open Space Precinct running north to south along the waterway and a 30 metre wide Open Space Precinct running along the northern boundary to provide a secondary vegetated corridor; and
- The intent of the Open Space Precinct is to be free of development and structures and be rehabilitated to facilitate fauna movement.

LM Wigan (84-122 Taylor Road, Thornlands)

The appellant has provided a plan of development that proposes the following (refer **Attachment 3**):

- A Residential Area, with a prescribed minimum lot size of 6000m<sup>2</sup>;
- The table of assessment for the Residential Large Lot Precinct adopts the current Park Residential Zone table, which is generally intended to accommodate dwelling houses and low-key home businesses; and
- An 80 metre wide Environmental Corridor Area running north to south along the waterway and a 30 metre wide Open Space Precinct running along the northern boundary to provide a secondary vegetated corridor.
- The intent of the Environmental Corridor Area is to be free of development and structures and be rehabilitated to facilitate fauna movement.

### **Consideration of Issues**

The matters set out by Council in its resolution of 8 October 2014 and subsequent workshop on 3 December 2014, have been addressed as follows for each appeal:

Subject matter	Response
a) Details of the preliminary approvals, including tables of assessment and assessment criteria	<p><u>JT George &amp; LM Wigan</u></p> <p>Information has been provided by both appellants and forms part of the recommended approval package.</p>
b) Sufficient lot size to address on-site effluent disposal	<p><u>JT George &amp; LM Wigan</u></p> <p>In both appeals, the appellants have amended their proposals to identify a minimum lot size of 6000m<sup>2</sup>. This is achieved through identifying 6000m<sup>2</sup> as a probable solution and overall outcome in the zone code, and making reconfiguring a lot (ROL) to create lots less than 6000m<sup>2</sup> impact assessable.</p> <p>Council's hydraulic expert has confirmed that 6000m<sup>2</sup> is more than adequate to provide sufficient area for individual on-site effluent disposal.</p>
c) Sufficient lot size to address habitat enhancement and fauna permeability	<p><u>JT George &amp; LM Wigan</u></p> <p>The 6000m<sup>2</sup> minimum lot size is considered to be sufficient to allow fauna movement through the lots, in conjunction with two primary fauna movement corridors within the Open Space/ Environmental Corridor Precincts.</p> <p>In both appeals, it is recommended that a rehabilitation management plan be provided as part of a subsequent application to identify enhancement plantings to the ecological corridor areas.</p>
d) Sufficient lot size to achieve a semi-rural bush land setting (Workshop confirmed minimum 6000m <sup>2</sup> lot size)	<p><u>JT George &amp; LM Wigan</u></p> <p>As discussed at point (c), the proposals have been amended to specify a minimum lot size of 6000m<sup>2</sup>. A condition is recommended to add a further means of ensuring this minimum lot size is achieved.</p>
e) Internal road connection between JT George and LM Wigan land	<p><u>JT George &amp; LM Wigan</u></p> <p>Both proposals identify an indicative connection between the two development sites, which are aligned. A condition is recommended to ensure that this intention is carried through by both developments in subsequent development applications.</p>
f) Retain open space in private ownership	<p><u>JT George &amp; LM Wigan</u></p> <p>Both proposals seek to maintain the fauna corridor areas in private ownership. A condition is recommended to ensure that this intention is carried through by both developments in subsequent development applications.</p>
g) Provide assessment report to address odour from neighbouring poultry farms	<p><u>JT George</u></p> <p>The appellants are proposing to vary the poultry overlay code to make a dwelling house self assessable where it complies with an air quality report approved as part of an ROL. It is noted that this does not vary the overlay spatially, nor change the assessment criteria for the</p>



Subject matter	Response
	<p>subsequent ROL. The appellant has then suggested a condition that requires the air quality report as part of the subsequent ROL. It is considered that this is a suitable way to address the issue, as it does not change Council's ability to assess any future applications against the poultry overlay and ensure that any created lots are afforded suitable amenity. The change simply removes an unnecessary "second" assessment of this issue at the dwelling house stage.</p> <p><u>LM Wigan</u></p> <p>The appellants are not proposing to amend the poultry overlay affecting the property, which will mean that it must be addressed as part of any future development application. In saying that, the following is noted:</p> <ul style="list-style-type: none"> <li>• The poultry overlay over the Wigan land results from three poultry shed locations.</li> <li>• Two of the poultry shed locations are on the George's land, and will therefore be removed over time as the land develops. Therefore the poultry issue is appropriately dealt with through sequencing of development.</li> <li>• The third poultry shed location no longer exists, and the use has been abandoned, with the sheds having been removed at least before 2006. This is confirmed through review of aerial photographs and evidenced by a statutory declaration from the owners of that land dated 7 June 2005.</li> </ul>

## Assessment matters

### Neighbourhood Centre Precinct

While the George proposal does involve a Neighbourhood Centre Precinct, it is recognised that the intention of this precinct is not to open up the full range of centre/ commercial uses. It is proposed that this precinct accommodates a farmer's market and a small scale shop use. All other commercial and retail uses will be impact assessable in this precinct. In addition, this precinct's assessment code identifies criteria that specifically focus the outcomes towards achieving a market space, while discouraging other forms of commercial development. This will ensure the development of this precinct does not prejudice the City's centres hierarchy.

The assessment code also identifies that the markets are intended to operate on Thursday to Sunday. The code identifies the following operating hours:

- Thursday and Friday – 8:30am to 6:00pm
- Saturday and Sunday – 6:00am to 6:00pm

Concerns are raised with the finishing times for Thursday and Friday being during peak hour afternoon traffic. A condition is therefore recommended that requires an amendment to the PoD to identify a finishing time of 4:00pm on Thursday and Friday in the probable solution. An amendment is also recommended to the Specific Outcome to better represent what is sought as an outcome in this regard.

This market space is considered to be a positive part of the development, which allows reuse of the existing poultry sheds. Furthermore, at one hectare in size, the precinct will not prejudice its future use for rural residential purposes, should the markets cease to operate.

### Ecological Corridors

The development proposals include two key ecological corridors through the sites; one running north-south, the other running east-west. The corridors are appropriately aligned between the two sites. For the east-west corridor both proposals identify a 30 metre wide section, giving a total width of 60 metres, which connects the north-south corridor to existing habitat to the east. The north-south corridor has a 60 metre width on the George land and an 80 metre width on the Wigan land. This difference in width is in order to respond to the Habitat Protection Overlay, which identifies a more significant corridor on the Wigan land as it adjoins a core habitat area to the north. The overlay is shown at **Attachment 4**.

### **Areas of Disagreement with the appellants**

The following matters are recommended as conditions of approval, but have not been agreed by the appellants. The proposed conditions packages are included at **Attachments 5 and 6** for reference.

#### George

- Neighbourhood Centre Precinct Code – As discussed, a change to the PoD is recommended to establish operating hours that do not interrupt peak hour traffic flow on weekdays.
- Aged Persons and Special Needs Housing Code – The appellant seeks 50% site coverage as a probable solution. Council officers recommend a change to the PoD to identify 40% site coverage, which is consistent with the Residential Large Lot Precinct and the Dwelling House Code. Greater site coverage for this development type has the potential to impact on the anticipated amenity of this area. It is recognised that an applicant has the opportunity to demonstrate compliance with the relevant specific outcome(s) as part of future applications.

#### Wigan

- Residential Area Code – The appellant seeks a probable solution that identifies a minimum lot size of 6000m<sup>2</sup>, “or as approved by the Council subject to the availability of suitable infrastructure”. This additional portion to the probable solution is considered to pre-empt a performance assessment by Council and is vague in terms of what “suitable infrastructure” is and what the basis is for Council considering it to be suitable. While a condition will require a minimum 6000m<sup>2</sup> lot size, it is considered important to ensure that the PoD and the conditions do not conflict and allow ambiguity in assessment of future

applications. It is therefore recommended that the PoD be amended to remove this additional element to the probable solution.

- Rehabilitation and Bushfire Management Plan – The appellant does not agree to the condition requiring this rehabilitation plan to be provided as part of the first development application. The appellant argues that this will be relevant to any assessment of future applications anyway. However, those applications will be piecemeal and assessed only on the aspects applied for at the time, whereas this condition requires an overall rehabilitation plan for the entire site, which will then be used as the overarching tool for future applications over different parts of the site. It is therefore recommended that the condition be retained.

### **Co-Respondent's comments**

Both appeals involve a co-respondent that was a submitter to the applications. They have advised the following in a letter to Council:

- They have not received any meaningful engagement from the appellants.
- Their agreement to the variations to the application is premised on the right to a final review of the application and conditions and that there is a clear minimum lot size of 6000m<sup>2</sup>.
- They reserve their position on the application until they have had an opportunity to review the final applications and conditions.

## **STRATEGIC IMPLICATIONS**

### **Legislative Requirements**

The JT George and LM Wigan matters are currently listed for review on 29 July and 22 July 2015 respectively. A decision by Council on the conditions will allow the parties to seek a Consent Order from the Court to settle the appeals.

### **Risk Management**

The appellants must subsequently seek the views of the co-respondent to the appeals. This co-respondent may or may not agree to the approach and proposed conditions.

### **Financial**

Seeking Consent Orders to settle the appeals will mean minimal further legal costs are expended. Should Council decide to amend its position and oppose the appeals, further legal and expert costs will be involved.

### **People**

No comment.



## Environmental

Conditions are recommended that require enhancement plantings to the development site to establish fauna movement corridors and fauna permeability through the lots. This is considered to be an improved outcome on the existing situation, which comprises predominantly cleared rural land.

## Social

The approval of these proposals will result in a new semi-rural community in this part of the City.

## Alignment with Council's Policy and Plans

The intent to provide a semi-rural residential development in this precinct is generally consistent with the draft City Plan, though it is noted that the minimum lot size of 6000m<sup>2</sup> is less than the 1 hectare lot size specified in the draft City Plan for the rural residential precinct.

## CONSULTATION

The intent to provide a semi-rural residential development in this precinct is generally consistent with the draft City Plan, though it is noted that the minimum lot size of 6000m<sup>2</sup> is less than the 1 hectare lot size specified in the draft City Plan for the rural residential precinct.

## OPTIONS

The following options are available to Council:

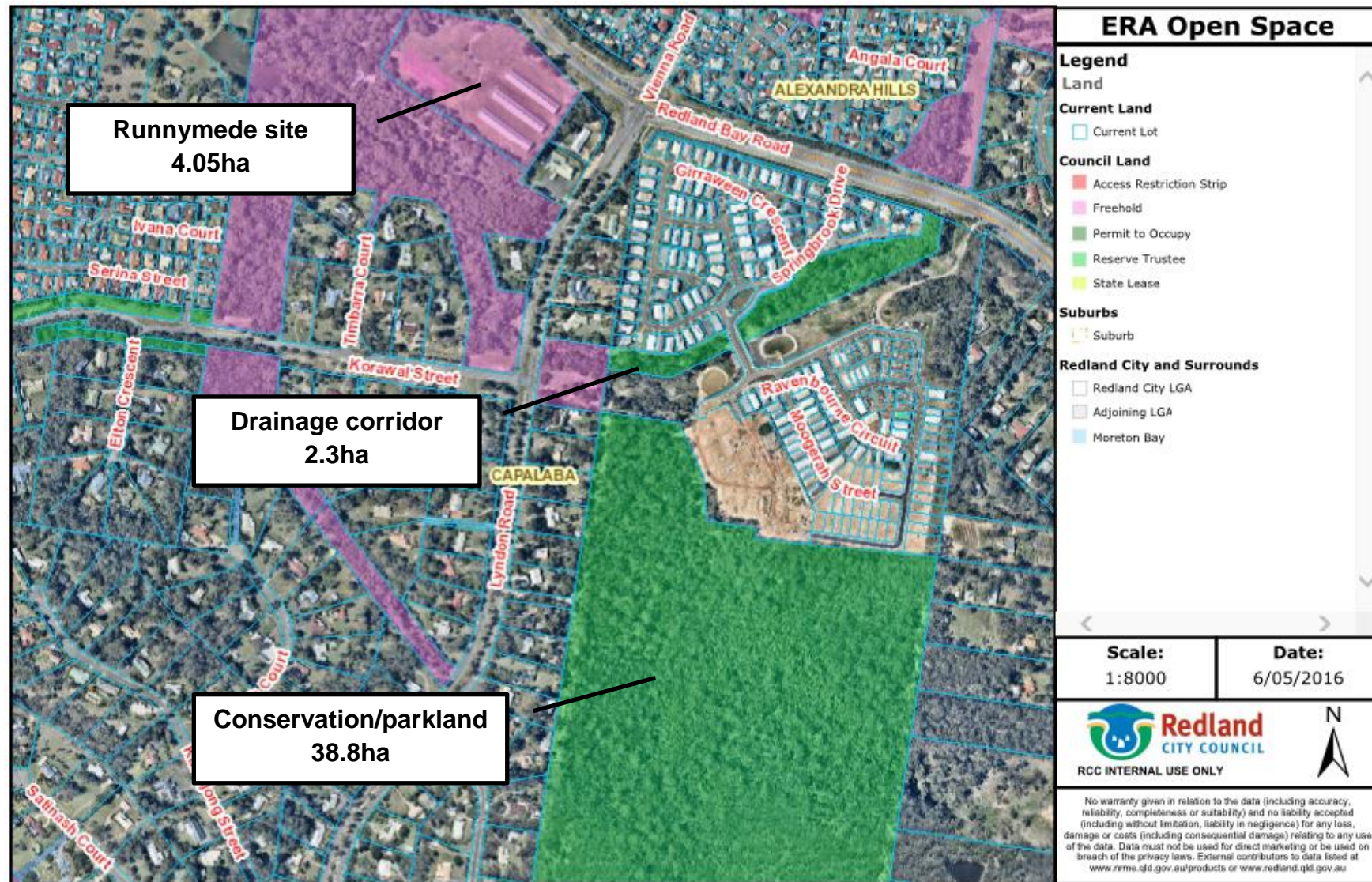
1. That Council resolves to seek settlement of the appeals through a Consent Order of the Court in accordance with the conditions contained within Attachments 5 and 6.
2. That Council resolves to seek settlement of the appeals through a Consent Order of the Court in accordance with different or amended conditions.
3. That Council resolves to inform the appellants that it opposes the appeals (reasons would need to be established in order to inform the appellants).

## OFFICER'S RECOMMENDATION

That Council resolves to:

1. **Adopt Option 1 presented in this report; and**
2. **Maintain this report and its attachments as Confidential until the Appeal is resolved.**

CONFIDENTIAL ATTACHMENT: ERA Open Space



This document is classified **CONFIDENTIAL** and as such is subject to s.171 Use of information by councillors, s.199 Improper conduct by local government employees and s.200 Use of information by local government employees of the Local Government Act 2009