

APPEAL CA11075/17 Nerinda Pty Ltd v Redland City Council & others (MCU013296)

Objective Reference:	A2707421 Reports and Attachments (Archives)
Authorising Officer:	Louise Rusan General Manager, Community and Customer Services
Responsible Officer:	David Jeanes Group Manager, City Planning and Assessment
Report Author:	Emma Martin Senior Appeals Planner, Planning Assessment

PURPOSE

This matter is referred to the General Meeting of Council to advise that an application for leave to appeal and a draft notice of appeal has been lodged with the Queensland Court of Appeal (QCA) against the decision of Judge Morzone QC DCJ dated 6 September 2017 to allow the Queensland Planning and Environment Court (QPEC) appeals 4940/15, 2/16 and 44/16 (Lipoma Pty Ltd & Ors v Redland City Council & Nerinda Pty Ltd [2017]). These appeals relate to the application for Reconfiguring a Lot (1 into 2 lots) and Preliminary Approval pursuant to s242 of SPA for a mixed use development that incorporates both residential and centre uses as well as a large greenspace precinct at 128-144 Boundary Road, Thornlands.

BACKGROUND

Nerinda Pty Ltd (the applicant for MCU013296) has lodged an application for leave to appeal and a draft notice of appeal to the Court of Appeal against the decision of Judge Morzone QC DCJ dated 6 September 2017.

Applications for leave to appeal are heard simultaneously with notices of appeal. This means the Court will first determine whether the appellant (Nerinda Pty Ltd) has grounds to appeal the decision. If the Court finds there are grounds it will then consider those grounds and decide the appeal.

Pursuant to rule 749 of the *Civil Uniform Procedure Rules 1999*, any party whose interests are directly affected is automatically a party to an appeal to the Court of Appeal. Consequently Council is an automatic party to the appeal because it took an active role in the original appeal and in doing so declared its interests in the matter. Relevantly, Council's resolution to undertake a review of the centres hierarchy further demonstrates Council's interest.

STRATEGIC IMPLICATIONS

Legislative Requirements

The Queensland Court of Appeal has set a timeline under *Practice Direction 3 of 2013*. The timetable requires that the appellant file submissions by 20 November 2017 and any respondents file submissions by 11 December 2017.

Risk Management

Financial risk is discussed under the Financial heading below.

Financial

All options will incur some Court expenses. In relation to options 1 and 2 the appointment of Counsel to attend Court on behalf of Council will have an associated cost, however this is likely to be [REDACTED]. In relation to option 3, as presented at the 18 October 2017 General Meeting, the likely cost of briefing a Q.C. and a junior barrister to present Council's views in Court is in the region of [REDACTED].

People

It is anticipated that there will be no relevant impact.

Environmental

It is anticipated that there will be no relevant impact.

Social

It is anticipated that there will be no relevant impact.

Alignment with Council's Policy and Plans

The proposed development, the subject of the appeal, conflicts with the Redlands Planning Scheme however these conflicts were considered during the original assessment of the application and Council determined that sufficient grounds existed to justify approval (notwithstanding the decision of the Court). Relevantly, this included evidence that there was an unmet community need for the development.

CONSULTATION

The planning assessment unit consulted with the General Counsel Group and external Counsel.

OPTIONS

Option 1

That Council resolves to make a submission to the Queensland Court of Appeal outlining Council's position on the Judgment.

Option 2

That Council resolves to adopt the position and submissions of the Appellant.

Option 3

That Council resolves to advise the Court that Council has no interest in appealing the original decision and accepts the decision of the Planning and Environment Court, notwithstanding Council's position in that case.

CONCLUSION

In considering the appropriate course of action in this appeal Council should have regard to the following relevant points:

- Despite the final ruling, the Judgment of Judge Morzone QC DCJ accepts that there is a significant need for the development in the community interest;

- Council also recognised the significant community need for the development by approving the original application, defending this decision in the substantive appeal and by resolving to review its centres hierarchy;
- This appeal is a timely means to address this need; and
- As a model litigant Council should ensure they behave in a consistent manner when handling litigation.

On this basis and although Council is unlikely to face criticism if it were to adopt option 1, it is the recommendation of officers that Council resolve to adopt option 3 and draft submissions to the QCA outlining its position.

OFFICER'S RECOMMENDATION

That Council resolves to:

- 1. Make a submission to the Queensland Court of Appeal outlining Council's position on the Judgment; and**
- 2. Maintain this report as confidential.**