


From: 
To: garth.nolan@dndmip.qld.gov.au
Cc: [Jamaica Hewston](#)
Subject: Draft Noosa Shire Scheme - Social Housing
Date: Monday, 11 November 2019 4:36:20 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)
[2019 11 11 Noosa Significant Changes Submission.pdf](#)
[Ltr 190520 - Coles Group - Submission to New Noosa Plan.pdf](#)

Hi Garth, I have been provide your contact details by a colleague.

I am writing to draw your attention to the Draft Noosa Planning scheme. The Council is proposing a requirement to request developers of future high density residential designations at both Noosa Civic and Noosa Bowls Club site (owned by Coles) to dedicate 10% of housing stock to a social housing provider at no Cost to the provider or Council.

The Council has not provided any policy basis, cost impact assessment or logic as to the requirement for such infrastructure and how it will work in practice. Additionally, the clause seems to circumvent the whole PEA - Trunk infrastructure Framework that has taken over a decade to develop and that provides certainty for future development planning. The very reason for Trunk infrastructure Planning was to avoid adhoc infrastructure requirements from Authorities without proper justification and costing. Asking a developer to provided 10% housing stock at no cost is a significant imposition on any development, particularly on top of existing infrastructure requirements.

I have attached our submissions to the Draft Noosa Scheme and would appreciate your oversight in regard to Council's current position on Social Housing and the progression of their scheme through the Plan Making process.

As you will see from our submissions we are not opposed to Social Housing but are seeking commercial mechanisms to achieve such outcomes rather than the blunt use of the "Dedication method" proposed by Council.

Please feel free to contact me should you require further clarification on the matter.

Kind Regards





Coles Group Property Developments Limited

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cid:image004.png@01D3F27C.EB65A510



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RTI RELEASE

11 November 2019

Mr Brett de Chastel
Chief Executive Officer
Noosa Council
PO Box 141
TEWANTIN QLD 4565
E: nnpsubmissions@noosa.qld.gov.au

Dear Mr de Chastel,

Submission on 'Significant' Changes to draft New Noosa Plan - 99 Noosa Drive, Noosa Heads

This submission has been prepared by Coles Group Property Development Limited on the 'significant' changes to the draft *New Noosa Plan*, which are currently on public notification until 11 November 2019.

Coles Group Property Development Limited (**Coles Group**) are the landowner of Noosa Bowls Club, located at 99 Noosa Drive, Noosa Heads (Lot 3 on RP884396).

We support the recognition of Noosa Junction as a Major Centre and associated zoning and understand that the significant changes that have been made do not alter this. We stand by the recommendations made in our original submission and would encourage Council to revisit these.

Whilst Coles Group is supportive of providing greater housing diversity, which includes smaller forms of accommodation and social housing to support key workers and smaller family units, we hold concerns about the draft wording of PO19 of the High Density Zone Code, which states (our emphasises added):

PO19

For development on Lot 3 RP884396, Noosa Heads or a site with a frontage to Walter Hay Drive, Noosaville:

- a) a contribution shall be made towards the social housing needs of the Noosa community;*
- b) the contribution mentioned in (a) above, shall be one in every 10 dwellings is **dedicated to a registered** housing provider at no cost to the provider **or Council**; and*
- c) the contributed dwellings shall be distributed evenly across the development.*

Editors Note- Social housing is owned and run by the government or a not-for-profit agency for people on low incomes or with special needs.

In its current format, the draft PO requires or could be interpreted to require that all social housing be dedicated to a registered social housing provided at no cost to the provider or Council. This wording is unnecessarily restrictive, and could in fact limit Councils ability to achieve its desired outcome.

The requirement to dedicate the dwelling(s) does not provide Council the flexibility to accommodate the broad range of social housing models that currently exist or may be established in future. The intent of PO19, which is to make a contribution to the social housing needs of Noosa would still be achieved without the requirement to dedicate. That is, the dwelling can be retained in private ownership and be managed by a social housing provider.

Alternatively, there may be instances where Council makes a part contribution to social housing, with this determined on a case-by-case basis. The draft wording of PO19 does not provide this flexibility and therefore we recommend that the wording be modified.

For the reasons stated above, we request that PO19 be amended as follows, with new text in blue and deleted text in ~~strikethrough~~:

PO19

For development on Lot 3 RP884396, Noosa Heads or a site with a frontage to Walter Hay Drive, Noosaville:

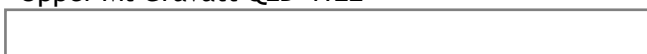
- a) a contribution shall be made towards the social housing needs of the Noosa community;*
- b) the contribution mentioned in (a) above, shall be one in every 10 dwellings is dedicated to a registered housing managed and operated by a registered social housing provider at no cost to the provider or Council; and*
- c) the contributed dwellings shall be distributed evenly across the development.*

Thank you for this opportunity to comment on the draft *New Noosa Plan*. We trust the basis for submission and the recommended changes are favourably considered by Noosa Council. We welcome the opportunity to discuss any aspect of the submission with you or provide any additional information or clarification that may be required.

Yours sincerely,



Coles Group Property Developments Limited
L1/96 Mt Gravatt- Capalaba Rd
Upper Mt Gravatt QLD 4122



20 May 2019

Mr Brett de Chastel
Chief Executive Officer
Noosa Council
PO Box 141
TEWANTIN QLD 4565

Dear Mr de Chastel,

Submission on New Noosa Plan - 99 Noosa Drive, Noosa Heads

This submission has been prepared by Coles Group Property Development Limited on the *New Noosa Plan*, which is currently on public notification until 20 May 2019.

Coles Group Property Development Limited (**Coles Group**) are the landowner of Noosa Bowls Club, located at 99 Noosa Drive, Noosa Heads (Lot 3 on RP884396). The site is located within the heart of Noosa Junction, in close proximity to a range of services and amenities and is directly adjacent Pinaroo Rotary Park (refer **Figure 1**).

The site is zoned 'Community Services' under the *Noosa Plan 2006* and is proposed to be zoned part 'High Density Residential', part 'Major Centre' and part 'Recreation and Open Space' under the *New Noosa Plan*. Coles Group generally support the direction of the *New Noosa Plan* and specifically the rezoning of the site.

Whilst there is general support for the *New Noosa Plan*, there are a few matters which we suggest could be improved upon. The suggested changes and the rationale in support of these are set out in this submission. A summary of recommendations is contained at the end of the submission.

Coles Group welcomes the opportunity to make a submission for Council's consideration and is available at Council's convenience to discuss any aspect of the submission or provide any additional information or clarification that may be required.

1. Centres Hierarchy

The *New Noosa Plan* establishes an activity centres hierarchy aimed at creating a network of vibrant activated centres with good accessibility and connectivity, high amenity and a unique sense of place. Each centre is to have a defined role and function, with a retail core supported by commercial and community uses.

Noosa Junction has been elevated to a Major Centre and is now intended to service a sub-regional catchment. This change is strongly supported and reflects the importance of Noosa Junction as a unique high amenity centre, which offers diverse business, employment and residential opportunities. Reflective of its status, an explicit retail cap is not prescribed. Again, this approach is supported.

Figure 1 – Aerial of site



2. Development Controls

The *New Noosa Plan* imposes several specific, prescriptive built form parameters for future development within Noosa Junction, which fetter the ability of Noosa Junction to achieve its intended role and function in the centres hierarchy:

To achieve its intended role and function and make development within Noosa Junction a more attractive proposition we recommend the following aspects be reconsidered:

- **Building Height** – PO16/AO16 prescribes a building height in Noosa Junction of 12 metres and no more than three storeys from any elevation. It is noted that there are instances where heights of up to 4 storeys can be achieved within 12m and therefore we recommend that the performance outcome should remove reference to the number of storeys.

The limitation on the acceptable height of 12m within a Major Centre does not recognise that additional height can be accommodated on larger sites. We would encourage the acceptable outcome to allow additional height where this setback from the parapet, thereby ensuring a 'human scale' at the street frontage.

Additional building height on the site is also encouraged as it allows for the more efficient use of land, enables development to be stacked to enhance activity, defines and holds the street edge without the loss of human scale, enables efficiencies through scale to deliver mixed use development, and increases the on-site residential population required for an activated and safe

centre. Additional building height also provides greater opportunity to deliver affordable housing as it can offset the upfront costs in providing this.

- **Site Cover and Plot Ratio** – The new planning scheme attempts to regulate bulk and scale through site cover and plot ratio controls. The site cover controls in the High density residential precinct is limited to 40% of the site area. This site cover is considered very conservative and does not reflect a high density residential environment. We recommend that this control be removed or the site cover increased to 60%.

Plot ratio as a means of regulating bulk and scale is no longer considered best planning or design practice and discourages the innovative and efficient use of land. Plot ratios 1.9:1 appear highly conservative. These should either be increased or removed, with built form outcomes controlled by height, setback and site cover controls.

2. Social Housing

Coles Group supports the inclusion of higher density living in mixed- use developments as a way of providing housing choice and diversity and more importantly creating activated and safe publicly accessible spaces with opportunities for day and night time casual surveillance. Coles Group also support Council's intention to deliver greater housing diversity, which includes smaller forms of accommodation and social housing to support key workers and smaller family units.

However, Coles Group does not support the requirement imposed by PO19 of the High Density Zone Code for one in every 10 dwellings to be dedicated to a registered housing provider at no cost to the provider or Council for social housing.

There are other mechanisms available to Noosa Council to encourage the provision of social housing and smaller accommodation forms. Mechanisms which provide a true incentive to developers to deliver this type of housing product, such as reducing development assessment fees and infrastructure charges or allowing bonus height and plot ratio to create efficiencies and economies of scale for development which provide the one in 10 dedication. The fees and charges reductions have proven very successful in other jurisdictions at encouraging these types of outcomes and should be explored.

Examples of affordable housing schemes that do not involve the dedication of one in 10 as social housing include:

- **Brisbane Housing Company:** Set at 74.9% of the market rent, Brisbane House Company (BHC) offers an alternative to social housing and aims to keep rent at an affordable level. BHC assesses the household income of applicants to find homes that households can afford. Affordability is calculated by bench marking 30% of house income plus Commonwealth Rent Assistance and match this figure to the rent for available apartments.
- **Nightingale Model:** The Nightingale model aims to deliver sustainable, affordable, liveable homes that connect its residents with the community and has been developed for use by architects and others to deliver triple bottom line apartments at cost. The model is a replicable platform conceived in Melbourne by Breathe Architecture with the support of the Robin Boyd foundation. The definition of affordable housing is housing that should only cost you 30% of your household income. One of the key tenets of Nightingale Housing however is financial sustainability. They want to help provide access to high quality sustainable housing to all and do this by undertaking

development in an innovative way that strips out costs, and then fixes prices of product going forward.

- The 'Opening Doors' program in Western Australia has proven highly successful. This shared home ownership program allows eligible applicants through a shared mortgage with the State Government. The upfront costs of buying a property and the monthly loan repayments are significantly lower, with the State Government contributing 30% towards the cost of the home. Whilst it would require careful consideration, in the context of Noosa, the Infrastructure Charges associated with the unit could be used to offset the cost of the dwelling or used to fund a shared ownership program.

3. Infrastructure Provision

Coles Group acknowledges its responsibility to deliver the road and public park (community) infrastructure on the site. We understand that the *New Noosa Plan* identifies a new link road connecting Noosa Drive to Lanyana Way. New green space in the form of a public park is also identified as being required on the site.

We understand that the park is a piece of community infrastructure that will service the district and will have wider benefits that extend beyond the site. For this reason, it is appropriate that this be identified as trunk infrastructure for which an infrastructure offset can be granted.

Whilst a new road through the site will be necessary, we are of the opinion that the location, design and specifications of this road should be determined at detailed design stage and not specified in the *New Noosa Plan*.

4. Dwelling Size Restrictions

Table 5.5.5 identifies that a multiple dwelling with a gross floor area (GFA) exceeding 90m² are subject to Impact Assessment. This level of assessment actively discourages housing diversity by providing an unnecessary impediment to the delivery of larger housing types required by larger sized households.

The 90m² restriction removes flexibility to respond to market demand over the life of the planning scheme. We note that at 90m² the dwellings will be too small to accommodate a three bedroom product or a comfortable two bedroom apartment.

It is the strong view of Coles Group that the size of the dwellings delivered should be determined having regard to consumer demand and not be restricted by the planning scheme. It is therefore requested that the 90m² restriction be removed to provide flexibility and enable a broader cross section of the community to be accommodated in a range of housing types. If this is unacceptable, we request that 90m² be an average size to allow a greater mix of sized product in a development, for example ranging from 60m² to 120m² but achieving an average of 90m² across the site.

5. Minimum Lot Size

The Reconfiguring a Lot Code identifies a minimum lot size of 400m² for land zoned Major Centre, with a minimum frontage of 15.

The site has an opportunity to accommodate a broad range of housing types, including shop-top housing on smaller lots. This typology typically involves buildings with a relatively narrow frontage. In

addition to offering an alternate product, this typology provides a fine grain retail experience and offers a variation in built form architectural styles that is highly consistent with the desired style referenced in Figure 6.4.1.4 of the *New Noosa Plan*.

An example of the building typology that could be successfully adapted for the site includes SOHO (Small Office Home Office). As shown in **Figure 2** these developments provide for an activated ground floor with residential located above. These can be accommodated on small lots, with frontages ranging from 5m to 8m.

To facilitate this style of development, we request that the acceptable outcome remove reference to the minimum lot size and instead rely on a performance outcome that seeks functional and efficient lot sizes that reflect the intended character of the area.

6. Level of Assessment

A market is identified as Impact Assessable on the site in both the High Density Residential and Major Centre zone. We request that this level of assessment be changed on the site to:

- Accepted Development where not involving building work or operational work; and
- Code Assessable where involving building work or operational work.

A market provides an excellent means of activating a space which would otherwise be vacant. The site is an appropriate location for a temporary market, which would facilitate community interaction and support local businesses and start-ups.

The Bowls Club has ceased operation and will be redeveloped in future. Changing the level of assessment will allow a temporary market to operate during this period. This use would ensure the site remains activated, whilst providing for positive social and economic benefits.

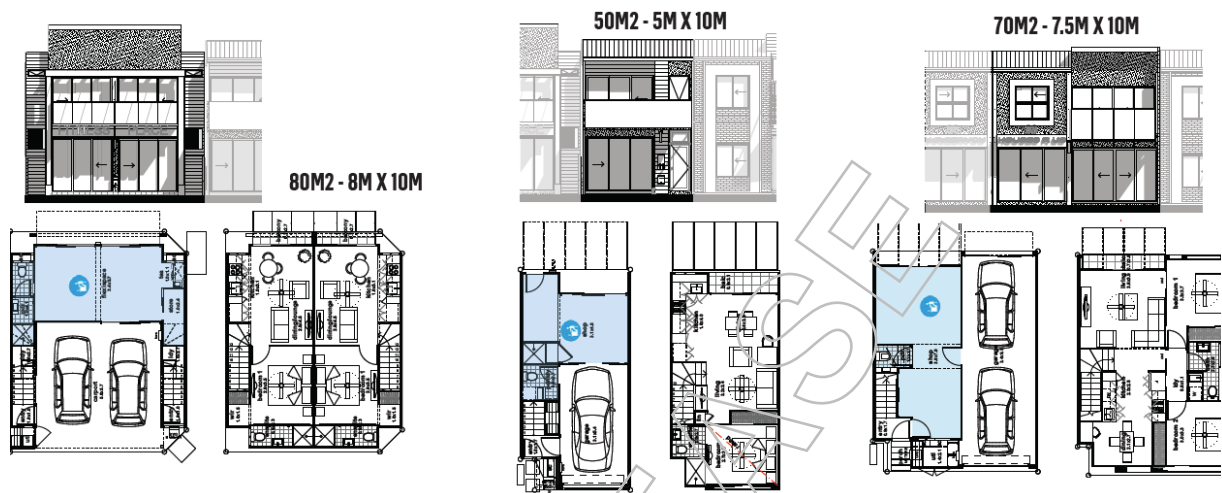
Figure 2 – The Nest, Fitzgibbon



Picture 1 – Street Perspective



Picture 2 – Cross Sections



Picture 3 – Floor Plans

RECOMMENDATIONS

Having regard to matters outlined above, Coles Group requests the following amendments to the *New Noosa Plan*:

- The reference to three storeys should be removed given a height in metres is specified. The acceptable outcome for building height should be increased, where the additional height is setback and not readily visible from the street;
- Remove the 40% site cover control for the High Residential Zone, as it applies to the site or increase to 60% to better reflect the high-density outcome sought.
- Discard plot ratio as a planning control;
- Delete PO19 of the High Density Zone Code to remove the requirement to dedicate one in 10 dwellings for social housing. Instead, allow bonus height or plot ratio where social housing is provided or implement an infrastructure charges reduction for social and affordable housing to encourage delivery of these housing types on appropriately located sites;
- The public park required on the site should be identified as trunk infrastructure for which an infrastructure offset can be granted. The specifications of the road should be determined at detailed design stage and not specified in the *New Noosa Plan*;
- Remove the maximum 90m² dwelling restriction to provide flexibility and enable a broader cross section of the community to be accommodated in a range of housing types or amend it from a maximum to an average; and
- Remove the numeric lot size and frontage requirements on the site to facilitate fine grain shop-top housing typologies that provide for greater variation in form.

Thank you for this opportunity to comment on the *New Noosa Plan*. We trust the basis for submission and the recommended changes are favourably considered by Noosa Council. We welcome the opportunity to discuss any aspect of the submission with you or provide any additional information or clarification that may be required.

Yours sincerely,

[Redacted]

Coles Group Property Developments

[Redacted]

L1 96 Mt Gravatt Capalaba Road
Upper Mt Gravatt, QLD, 4122

RTI RELEASE

From: [Meaghan Dwyer](#)
To:
Subject: RE: Draft Noosa Shire Scheme - Social Housing
Date: Wednesday, 11 December 2019 8:57:00 AM
Attachments: [DSDMIP letter - .pdf](#)
[image004.png](#)
[image005.png](#)
[image006.jpg](#)
[image007.jpg](#)
[image008.png](#)

Good morning

Please find attached a letter from the Executive Director, Planning and Development Services in the Department of State Development, Manufacturing, Infrastructure and Planning in response to your email.

Regards

Meaghan

Meaghan Dwyer

Correspondence Coordinator

Office of the Deputy Director-General

Planning Group

Department of State Development,
Manufacturing, Infrastructure and Planning

P 07 3452 6774

E meaghan.dwyer@dsdmip.qld.gov.au

Level 13, 1 William Street, Brisbane QLD 4000

PO Box 15009, City East QLD 4002

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From: <coles.com.au>

Sent: Monday, 11 November 2019 4:35 PM

To: garth.nolan@dsdmip.qld.gov.au

Cc: Jamaica Hewston <Jamaica.Hewston@dsdmip.qld.gov.au>

Subject: Draft Noosa Shire Scheme - Social Housing

Hi Garth, I have been provide your contact details by a colleague.

I am writing to draw your attention to the Draft Noosa Planning scheme. The Council is proposing a requirement to request developers of future high density residential designations at both Noosa Civic and Noosa Bowls Club site (owned by Coles) to dedicate 10% of housing stock to a social housing provider at no cost to the provider or Council.

The Council has not provided any policy basis, cost impact assessment or logic as to the requirement for such infrastructure and how it will work in practice. Additionally, the clause seems to circumvent the whole PEA - Trunk infrastructure Framework that has taken over a decade to develop and that provides certainty for future development planning. The very reason for Trunk infrastructure Planning was to avoid adhoc infrastructure requirements from Authorities without proper justification and costing. Asking a developer to provided 10% housing stock at no cost is a significant imposition on any development, particularly on top of

existing infrastructure requirements.

I have attached our submissions to the Draft Noosa Scheme and would appreciate your oversight in regard to Council's current position on Social Housing and the progression of their scheme through the Plan Making process.

As you will see from our submissions we are not opposed to Social Housing but are seeking commercial mechanisms to achieve such outcomes rather than the blunt use of the "Dedication method" proposed by Council.

Please feel free to contact me should you require further clarification on the matter.

Kind Regards

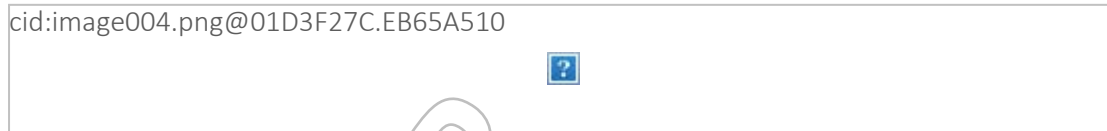


Coles Group Property Developments Limited

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cid:image004.png@01D3F27C.EB65A510



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Department of
**State Development,
Manufacturing,
Infrastructure and Planning**

Our ref: DEPC19/875

11 December 2019



Coles Group Property Developments Limited
L1 96 Mt Gravatt Capalaba Road
UPPER MOUNT GRAVATT QLD 4122

Email:

Dear

Thank you for your email of 11 November 2019 to Mr Garth Nolan, Manager – Planning, Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) about the draft Noosa planning scheme (the draft planning scheme).

I understand that you are concerned about the draft planning scheme's requirement for the developer of future high-density residential development at the former Noosa Bowls Club site (owned by Coles). Specifically, the draft scheme amendment proposes to dedicate 10 per cent of housing stock to a social housing provider at no cost to the provider or the Noosa Shire Council (the council). I understand this requirement is reflected within performance outcome (PO) 20 of the High-density zone code of the draft planning scheme.

I note your concern that the requirement appears to circumvent the trunk infrastructure framework and may be a significant imposition on development.

As you may be aware, the draft planning scheme was subject to a state-interest review to ensure it complies with the *Planning Act 2016*, State Planning Policy 2017 (SPP), South East Queensland Regional Plan 2017 (*ShapingSEQ*) and other state-interests prior to public notification. The state-interest review included consideration of the draft zone codes, including the High-density zone code. The state-interest review was completed in January 2019 and the draft planning scheme was approved to proceed to public notification.

I understand that you made a submission to the council on the draft planning scheme, including your concerns about PO20. The council is required to consider all properly

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made submissions and must prepare a written consultation report addressing the submissions. This report must be made available on the council's website.

The council is also required to notify persons who made a properly made submission on how the council has dealt with the submission before they request approval from the Planning Minister to adopt the proposed amendment.

It is my understanding that the council will soon resolve to give the draft planning scheme to the Planning Minister for approval to adopt. The Planning Minister will consider the legislative requirements and those set out in the Minister's Guidelines and Rules in reviewing the draft planning scheme, including PO20, and in making his decision about whether the council may proceed to adopt the planning scheme.

If you require any further information, please contact Mr Garth Nolan, Manager – Planning DSDMIP on (07) 5352 9710 or SEQNorthSARA@dsdmip.qld.gov.au, who will be pleased to assist.

Yours sincerely



Anna McGrath
Executive Director
Planning Group

RTI RELEASED

From: [redacted]
To: [Kerry DOSS](#)
Cc: [redacted]
Subject: Draft Noosa Plan
Date: Tuesday, 7 January 2020 12:59:29 PM
Attachments: [Briefing Note Kerry Doss - 7 January 2020.pdf](#)
[Noosa Business Centre Character and Framework Plan - Feb 2019.pdf](#)
[Noosa Business Centre Character and Framework Plan - November 2019.pdf](#)
[QIC Noosa Civic V Noosa Shire Council 16 December 2016.pdf](#)
[QPWS secondary emergency access.pdf](#)
[Draft Koala Habitat Areas December 2019.pdf](#)
Importance: High

Hi Kerry

Happy New Year! You may recall we spoke in late 2018 and again in May 2019 regarding the proposed new Noosa Plan.

Since this time, we have engaged with Noosa Council regarding the proposed plan and made submissions during both rounds of community consultation. We understand the Council have or will shortly submit the final version of the plan to the State for it's final State interest check.

We still have concerns with key elements of the plan that are of State significance due to the resultant impact on the intentions of the SEQ Regional Plan for the MRAC at the northern end of the Sunshine Coast, being the Shire Business Centre.

Please find attached briefing note for your review. I would like to come and meet with you at your earliest convenience to discuss this with you further.

Kind regards

[redacted]

[redacted]

Stockwell

RTI REEL

BRIEFING NOTE

TO Director General, Planning – Kerry Doss

DATE 7 January 2020

RE State Interest in the Noosa Business Centre and the New Noosa Plan

ACTION REQUIRED Request a meeting with the Director General, Planning – Kerry Doss

SUBMITTED BY
Stockwell on behalf of owner Stockwell Noosa Civic Pty Ltd

Dear Kerry,

You may recall we spoke in late 2018 and again in May 2019 regarding the proposed New Noosa Plan, which was subsequently released for public consultation in May, with a further version containing substantial amendments in November 2019. We understand the plan has been or will shortly be submitted for the final State interest check prior to adoption by Council.

Our concerns around future development of the NBC remain, which includes a number of issues which are of significant interest to the State and contrary to the intentions set out within the *ShapingSEQ South East Queensland Regional Plan 2017* with regard to Major Regional Activity Centres (MRAC).

As the only MRAC in Noosa, the NBC has been identified within the SEQ Regional Plan as a regionally significant centre which is therefore highly accessible and contains concentrated business, services and facilities for employment, research and education, as well as higher density residential development.

Our key items of concern with the draft Plan that are of State significance are:

- Elevation of Noosa Junction to MRAC status, equal with the NBC and contrary to SEQ Regional Plan intentions;
- Maximum floor space limits to Retail, Showroom and Village Mixed Use Precincts contrary to the level of demand advised by Council's expert in the Planning and Environment Court which will affect the ability of the Centre to perform as intended under SEQ Regional Plan;
- Changed level of assessment to Impact Assessment for any new development in accordance with the new Plan in Village Mixed Use and Business Park which provides unnecessary obstacles for business to establish at the NBC and contrary to the SEQ Regional Plan;
- Revising the northern parcel of the site from the initially contemplated High Density Residential to Recreation and Open Space, compromising the ability of the Centre to meet the demand for improved housing diversity in Noosa in line with the Queensland Housing Strategy; and

- Catering for the provision of social housing by removing the mandatory requirement to dedicate one in 10 dwellings in the High Density Residential Precinct for social housing; rather than providing for affordable housing by way of incentives which could include additional building height/yield along with reduced development application fees and infrastructure charges.

BACKGROUND

1. In 1997, Noosa Council identified the need and the location for a new Shire Business Centre in their Strategic Plan. The role of the Centre was to broaden the economic base and provide needed retail and employment opportunities for the local community.
2. Stockwell delivered the first stage of the Shire Business Centre in 2006, comprising:
 - a. 18,000sqm retail centre known as Noosa Civic, anchored by Woolworths and Big W;
 - b. 7,000sqm Noosa Civic Emporium (large format retail (LFR) / retail showroom precinct);
 - c. 2,000sqm Noosa Civic Business Park (professional office/suites).
3. As part of this development, the State provided \$87 million to build an extension of the Sunshine Motorway through the site into Noosa which is now reflected within the ShapingQLD South East Queensland Regional Plan 2017¹. Stockwell supported this by providing a further \$24 million for additional road works and land contributions in the area. The infrastructure spending has been in the form of both private and public investment, both to service the existing development and to provide for future development comprising of:
 - Dedication of approximately 11ha of land as public open space by Stockwell;
 - Dedication of approximately 12ha of land as public open space by others;
 - Duplication of Eenie Creek Road Stage 1 by Stockwell;
 - Construction of Eenie Creek Road Stage 1 from Eumundi- Noosa Road to Reef Street by Council ;
 - Construction of Eenie Creek Road Stage 2 from Reef Street to Languna Drive by Council;
 - Construction of Eenie Creek Road Stage 3 by Council;
 - Construction of Walter Hay Drive extending the Sunshine Motorway from Emu Mountain Road to Eenie Creek Road by Stockwell and the State Government;
 - Dedication of 6ha of NBC land for the construction of Walter Hay Drive;
 - Construction of bike and pathway network linking the NBC to the local network by Stockwell and Council;
4. In 2012, Stockwell sold Noosa Civic and the site for the Shire Business Centre to QIC;
5. In 2016, QIC were unsuccessful in their bid to gain approval, by way of the P+E Court, for the next stage of Noosa Civic providing a further 22,230sqm of retail floorspace including two further supermarkets and an additional discount department store. Council's expert, Gavin Duane acknowledged the need for additional retail to service the local community with a total additional floorspace of 15,000-16,000sqm as compared to the 22,000sqm proposed by QIC (and supported by Ian Shimmin), as extracted from the Court Decision below:

[78] Mr Duane and Mr Shimmin agreed in their joint report that there was a community need for an additional DDS (Target) and supermarkets (Coles and Aldi) together with a complementary range of speciality shops. [83] However, Mr Duane considered that a smaller

¹ Figure: 15: Key freight routes, ports and RECs - ShapingSEQ August 2017, p59

scale development than that proposed was appropriate. Under the heading “The Economic Need for the Proposed Development in the Shire Business Centre” it was stated:[\[84\]](#)

“Outcome: It is agreed that there is a need for an additional DDS, supermarkets and speciality retail stores to serve the needs of trade area residents, and to curtail the level of escape spending and therefore the requirement to travel for regular needs. Shimmin says this, in turn, can be seen to have both personal benefits to consumers, and environmental/health benefits to the public at large, and therefore result in enhanced community wellbeing. There is disagreement around the size of the appropriate expansion of the centre, **with Duane believing a smaller scale development at around 15,000-16,000sq.m** as compared with 22,000sq.m is the more appropriate level of expansion.”

The judge concluded that there was sufficient land within the SBC for both the expansion of the retail element along with commercial non-retail uses as contemplated by the planning scheme.

[132] I have found this to be a finely balanced case. There is a clear community need for an additional discount department store and at least one major supermarket tenant and some more speciality shops and other uses. The site is clearly a logical one and there is sufficient land available to accommodate both the expansion of the shopping centre and other commercial non-retail uses. A development of the type proposed is also not, on its face, entirely inconsistent with the planned “mixed use” for the SBC and would be a significant generator of employment and may also simulate and accelerate other commercial development within the centre.

6. In 2016, Noosa Council prepared and made public a Discussion Paper as the first stage in preparing their new Noosa Plan. The intent was to provide early opportunity for land owners and community input.
7. Council, in responding to submissions on the discussion paper, proposed to review the expert evidence and the current provisions to consider whether a varied approach is warranted – noting that planning a way forward for the centre would ideally involve discussion with the land owner. However, the paper was written at a point when Noosa Council and QIC (as owner) were in dispute about the development application for the next stage of development, and the discussion did not eventuate.
8. In August 2017, the ShapingSEQ South East Queensland Regional Plan was published which designates the NBC as a Major Regional Activity Centre (MRAC), the only such centre located north of the Principal Regional Activity Centre (PRAC) in Maroochydore and the MRAC in Nambour.
9. At October 2018, Stockwell entered into an unconditional contract to purchase the Shire Business Centre land, including Noosa Civic, from QIC. This purchase settled in August 2019.
10. On 14 February 2019, Noosa Council endorsed the Draft New Noosa Plan for the purposes of Community Consultation. The deadline for response submissions to the Draft Plan closed on 20 May 2019. The draft New Noosa Plan sought to achieve a mixed use centre delivered through a series of precincts to reflect the desired role and function of the centre.

The New Noosa Plan differs from the current Noosa Plan with changes to the structure, zones and land use definitions, some of which directly impact the Noosa Business Centre (NBC) and are contrary to the intentions set out within the *ShapingSEQ South East Queensland Regional Plan 2017* concerning MRAC designated centres.

11. Stockwell made submissions to Noosa Council regarding the draft plan, and in particular those aspects that limit future growth, development and investment confidence, and ultimately threatens

the commercial viability of the NBC and detracts from the prior MRAC specific investment and intent of **major economic enabling infrastructure** committed by the State and Stockwell. These key areas of concern include:

- a. Elevating Noosa Junction to a MRAC and equal highest level of Centre and changing the level of assessment for Village Mixed Use and Business Precincts within the NBC to Impact rather than Code, despite the NBC being the only designated MRAC under the SEQ Regional Plan 2017;
 - b. Limiting future retail growth within the NBC through provision of a maximum retail floor space limit to existing Retail and Showroom Precincts, and the new Village Mixed Use precinct which greatly restricts the centre's ability to expand and adapt to meet evolving market demands, despite advice provided by Council's expert economist Gavin Duane in the [2016 Court appeal](#)² as part of a 2018 report for Council during the preparation of the new Noosa Plan, identifying a need for up to 16,000sqm of retail floor space within Noosa. No similar retail floor space limits are imposed on the Noosa Junction; (which further reinforces our concerns above);
 - c. Revising the northern parcel of the site from the initially contemplated High Density Residential to Recreation and Open Space, which compromises the ability of the Centre to meet the demand for affordable housing in Noosa and deliver key worker accommodation in line with the Queensland Housing Strategy and maintain the MRAC status through the provision of a true mixed-use Centre. Potential bushfire risk for this parcel can be addressed through secondary emergency egress along the existing Energex easement through the National Park and connecting with Eenie Creek Road;
 - d. Catering for the provision of social housing by removing the mandatory requirement to dedicate one in 10 dwellings in the High Density Residential Precinct for social housing; rather than providing for affordable housing by way of incentives which could include additional building height/yield along with reduced development application fees and infrastructure charges.
- 12.** Draft South East Queensland Koala Habitat Mapping changes out for consultation by the State in December has removed the habitat mapping from the Business Centre, recognizing the physical constraints from the existing road infrastructure and urban area, and in line with the development contemplated under SEQRP and the Noosa Plan (current and proposed).

Stockwell has engaged with Noosa Council throughout the consultation process for the draft Plan, however these fundamental concerns regarding the ability of the Centre to perform in accordance with its role in the SEQ Regional Plan remain. We understand from our discussions with Council that Gavin Duane prepared an assessment in 2018 that reinforced the extent of retail supported at the Noosa Business Centre of the order of 15,000sqm however Council adopted 7,500sqm without any further justification.

² http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/OPEC/2016/69.html?context=1:query=noosa%20civic:mask_path=

RECOMMENDATIONS

Stockwell requests a meeting with the State as soon as possible to discuss these key areas of the New Noosa Plan which are of State significance concerning MRAC related major economic enabling infrastructure investment and the intended role and function of the NBC under the SEQ Regional Plan 2017. These are:

- a. Ensure that the NBC retains its primacy within the hierarchy of centres within Noosa Shire by elevating the NBC to a Principal Regional Activity Centre (PRAC) reflective of its role as a MRAC under the SEQ Regional Plan 2017;
- b. Remove the maximum retail floor space limits on new (within the VMU) and existing (within the Retail and Showroom Precincts) retail gross floor area to enable the centre to expand and adapt to meet evolving market demands which is supported by the evidence as provided in the 2016 court appeal and again in 2018 by Council's expert economics consultant, Gavin Duane.
- c. For consistent levels of assessment in comparison to surrounding precincts and the Noosa Junction, revert the category of assessment for the NBC Village Mixed Use and Business Park precinct to code assessment where development is in accordance with the Plan; and
- d. Reinstate the provision for high density residential use in the northern portion of the site to facilitate the delivery of affordable housing for Noosa residents (including key workers including hospital, essential services and tourism) and maintain the function as the MRAC for this region of the Sunshine Coast.






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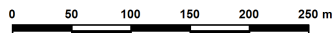
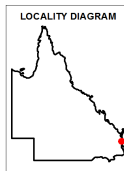
- *Draft Character and Framework Plan, Noosa Business Centre (February 2019)*
- *Draft Character and Framework Plan, Noosa Business Centre (November 2019)*
- *QIC Noosa Civic v Noosa Council – December 2016 Decision*
- *QPWS Letter of Support regarding emergency vehicle access dated 5 December 2019;*
- *Draft SEQ Koala Habitat Mapping December 2019*

Draft Koala Habitat Area



DRAFT Koala Habitat in South East Queensland

-  Lot and Plan
-  Cadastral Boundaries
-  Local Government Boundaries
- Koala habitat areas**
-  Koala habitat areas
-  Locally refined koala habitat areas



This product is projected into GDA 1994 Queensland Albers

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Note - These maps are not regulatory. Regulatory maps and requirements can be downloaded from the DES website. Further information in relation to regulatory requirements for development and planning activities should be sought from the relevant Local Government Authority or the Department of Environment and Science.

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Context

This report provides a map of the draft koala habitat in your selected area of interest.

Note this map is for information purposes only and is valid for the public consultation period up to 22 December 2019.

Assessment Area Details

Below is an overview of the area of interest with respect to draft koala habitat area.

Area of interest:

Lot: 3 Plan: SP246584

Size:

31.73ha

Amount of koala habitat area:

No koala habitat areas

No locally refined koala habitat areas

Local Government Area(s):

Noosa Shire

To request a review please visit

<https://environment.des.qld.gov.au/wildlife/animals/living-with/koalas/mapping/seq-koala-habitat-mapping>

RTI RELEASE



Department of
Environment and Science

Thursday, 5 December 2019

Mr Les Hawkes
Senior Associate
The Consultancy Bureau Pty Ltd
PO Box 142
NORTHGATE QLD 4013

Dear Les

The Queensland Parks and Wildlife Service & Partnerships (QPWS), South East Queensland Region – Sunshine Coast Area, is pleased to endorse the Stockwells - Noosa Civic in its proposed emergency access construction off Eenie Creek Road to improve emergency vehicle access for fire management.

As discussed during site visit on the 22nd November 2019, QPWS is planning to complete a planned burn within the National Park on the corner of Eenie Creek Road and Walter Hay Drive with the assistance of Stockwell's utilising local RFS crews. This burn will be completed in line with other QPWS priority planned burns when suitable condition permit.

Stockwell has negotiated with Energex for additional maintenance of the power line corridor running through the National Park as part of the Noosa Civic's annual Bushfire Preparedness Program. This corridor falls within the Queensland Electricity Supply Industry (QESI) Environmental code of practice for the maintenance of electricity corridors on QPWS managed estate. Energex is required to notify QPWS of the planned maintenance program through an approved Environmental Work Plan (EWP).

Should you require any further information, please contact me on 07 54596131 or email stephen.price@des.qld.gov.au

Yours sincerely



Stephen Price
Acting Regional Director South East Region
Queensland Parks and Wildlife Service and Partnerships
Department of Environment and Science

Level 6
12 First Avenue Maroochydore
Queensland 4448 Australia



QIC Noosa Civic Pty Ltd v Noosa Shire Council & Ors [2016] QPEC 69 (16 December 2016)

Last Updated: 27 January 2017

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *QIC* **← Noosa Civic** **→ Pty Ltd v Noosa Shire Council & Ors**
[2016] QPEC 69

PARTIES: **QIC** **← NOOSA CIVIC** **→ PTY LTD**
(appellant)
and
NOOSA SHIRE COUNCIL
(respondent)
and
LEND LEASE REAL ESTATE INVESTMENTS LIMITED
GPT RE LTD
LEND LEASE FUNDS MANAGEMENT LIMITED
(first, second and third co-respondents by election)

FILE NO/S: 4159/2015

DIVISION: Planning and environment

PROCEEDING: Appeal

ORIGINATING COURT: Planning and Environment Court of Queensland, Brisbane

DELIVERED ON: 16 December 2016

DELIVERED AT: Brisbane

HEARING DATE: 8, 9, 11, 12, 22, 23, 24, 25 and 26 August 2016 and 1 December 2016

JUDGE: Jones DCJ

ORDERS:

1. **The appeal is dismissed**
2. **I will hear from the parties (if necessary) as to any consequential orders**

CATCHWORDS:

APPEAL AGAINST REFUSAL OF DEVELOPMENT APPLICATION – appeal against a refusal by the respondent of a development application for a Development Permit for a Material Change of Use – where proposed development included major retail and supermarket development and associated speciality uses – where proposed development extension of an existing full line supermarket shopping centre – where proposed development predominately contained in respondent's Business Centre Zone and partly within the Open Space Conservation Zone

CONFLICT WITH PLANNING SCHEME – where intended use within land identified for non-retail uses – where intended uses for Employment (technology based R&D Business offices and civic) – Employment (business and offices) and Open Space (environmental drainage) – where intended land use said to be in material conflict with intended use for the land under the respondent's planning scheme

CONFLICT – where proposed development said to be in conflict in respect of other matters including traffic and visual amenity

ECONOMIC NEED – where evidence that there was community need for such development – where economic evidence that a surplus of land suitable for business development existed within the respondent's local government boundaries – where evidence established not only need for retail development but that proposed site was the most logical site within the respondent's local government boundaries

Sustainable Planning Act 2009

Australian Capital Holdings Pty Ltd & Ors v Mackay City Council & Ors [2008] QCA 157

Beck v Atherton Shire Council (1991) QPLR 56

City Area Leases Ordinance 1936 v Axiom Pty Ltd (1986) 66 ACTR 1

Elan Capital Corporation Pty Ltd & Anor v Brisbane City Council & Ors (1990) QPELR 209

Grosser v Gold Coast City Council [2001] QCA 423; [2001] 117 LGERA 153

Leda Holdings Pty Ltd v Caboolture Shire Council (2006) QCA 271

Lockyer Valley Regional Council v Westlink Pty Ltd & Ors [2012] QCA 370



Weightman v Gold Coast City Council (2003) Qd R 441

Woolworths Ltd v Maryborough City Council (No 2) [2006] 1 Qd R 273 CA

Zappala Family Co Pty Ltd v Brisbane City Council [2014] QCA 147; [2014] 201 LGERA 82

COUNSEL: Mr M Hinson QC with Mr J Houston of counsel for the appellant
Mr C Hughes QC with Messrs M Williamson and M Batty of counsel for the respondent



SOLICITORS: Allens Linklaters for the appellant
Wakefield Sykes Solicitors for the respondent
Mr R Bowie and Ms A J McDonnell of Minter Ellison for the co-respondents by election

[1] This proceeding is concerned with an appeal by QIC  **Noosa Civic**  Pty Ltd (“the appellant”) against a decision by the Noosa Shire Council (“the respondent”) refusing an application for a Development Permit for a Material Change of Use and an application for a Development Permit for a Material Change of Use for Road, a Development Permit for Operational Work (interference with vegetation) and a Development Permit for Operational Work (interfering with quarry material on state coastal land above the high water mark). For the reasons set out below, the orders of the Court are:

1. The appeal is dismissed; and

2. I will hear from the parties (if necessary) as to any consequential orders.



The proposal

[2] The proposed development is intended to extend an existing retail development known as “ **Noosa Civic** ”. The existing centre is situated to the northwest of the proposed development and is comprised of a discount department store (“DDS”) (Big W), a Woolworths supermarket and numerous specialty shops and uses including fashion, fresh food, gifts and houseware, showrooms and a gymnasium.[1] Not surprisingly, a significant carpark area also services the existing centre.

[3] The proposed development includes a DDS (Target), a major supermarket (Coles), a subordinate supermarket (Aldi), together with 50+ specialty shops and other uses. Unlike the situation on the existing shopping centre, where most of the specialty uses are retail oriented, the mixed uses proposed are more varied. They include commercial uses, more sophisticated entertaining and dining, childcare, education, wellbeing and an “undefined use” (temporary markets).[2] Again, a significant area was to be set aside for carparking.[3] However, unlike the existing situation, there will be extensive carparking below floor level and a more sympathetically landscaped carpark area, particularly to the north which is intended to be used for open markets and other public uses from time to time. In total some 1,000 car spaces need to be provided.

[4] During the cross-examination of Mr Sheehan, the architect relied on by the appellant, the following proposition was put:[4]

“...of course, the form of this development follows its function as a modern mall-based shopping centre with a DDS anchor, a couple of supermarkets, three mini majors, 11 kiosks, cafes and restaurants and some 44 specialty shops; correct?”

[5] Mr Sheehan agreed with that proposition. He also agreed that in total the proposed development resulted in a “roofed area” of 35,059m². [5] Another significant feature of the proposed development is a partly covered walkway which would connect it to the existing shopping centre. In total there is a total floor area of retail space of 22,230 m². The proposal also includes the upgrading and reconfiguration of about 640 m² of the  Noosa Civic  centre.

Minor change

[6] During the course of the proceedings, the appellant filed an application seeking to have changes to the proposed development determined to be minor for the purposes of the Sustainable Planning Act 2009 (SPA). The application was not opposed.

[7] The changes involved insignificant internal arrangements,[6] were clearly minor and the relief sought was granted. The appeal of course proceeded on the basis that the proposed development was as amended.

The general location and land use designations

[8] The subject site comprises part of Lot 3 on SP246584 and parts of road reserves set aside for extensions of Hoffman Drive and Walter Hay Drive. That part of Lot 3 intended to be occupied by the proposed development is 28.94 hectares while the road reserve intended to be included is about 938m². As already indicated, the proposal lies slightly to the south and to the east of the existing shopping centre, and is separated from that development by a finger of open space.[7] The site is

located south of Noosaville and Noosa Waters and, broadly speaking, would be bounded to the east by Walter Hay Drive. The proposed combined shopping centres would be effectively encircled by Walter Hay Drive.[8]

[9] To the south of the subject site is an extensive area of natural lowland forest bordering Eenie Creek. East is the North Weyba section of the Noosa National Park and Lake Weyba which again is dominated by heavy, largely undisturbed vegetation. To the west, northwest and north is the Noosaville industrial precinct which is concentrated along Eumundi Road, Rene Street and Lionel Donovan Drive. The Noosa Waters Canal Estate is situated further to the north and beyond that are the urban residential areas including Noosaville.

[10] Particularly significant features of the proposed development are that it is predominately contained in the respondent's Shire Business Centre Zone and also falls partly within an area of land zoned Open Space.[9]

[11] In the joint expert report of the town planners, the following description was provided:[10]

"The subject site is included in two zones under the planning scheme. It is predominately contained in the **Shire Business Centre Zone**, but partly within the **Open Space Conservation Zone**...

The planning scheme provides for certain zones to incorporate precincts. The Shire Business Centre Zone incorporates a series of Precincts in accordance with Map SBC at Schedule 4 to the planning scheme. The proposal is located on that part of the subject site which includes the following precincts.

...

- (a) Precinct B1 – Business (Retail Centre and Business);
- (b) Precinct B2 – Business (Car Parking and Offices);
- (c) Precinct E1 – Employment (Technology Based R&D Business Offices and Civic);
- (d) Precinct E2 – Employment (Educative and Environmental R&D Business and Offices);
- (e) Precinct E6 – Employment (Business Offices and Transit);

...

- (g) Precinct OS3 – Open Space (Preservation and Visual Amenity);
- (h) Precinct OS7 – Open Space (Environmental Drainage).

..."

[12] The proposed development not only occupies the entirety of the precinct designated “E1 – Employment (technology based R&D business offices and civic)” but also, by virtue of the necessity to relocate a section of Hoffman Drive, will encroach to a material extent, into the precinct designated “E7 – Employment (business and offices)”. There is also an inconsequential encroachment into the western extremity of E6. Further, because of the proposed pedestrian connection between the two centres, the pedestrian walkway would be over and/or through the precinct designated “OS7 – Open Space (environmental drainage)”.^[11] A part of the proposed shops including part of the DDS, would also encroach into the southern part of OS7. These encroachments are discussed in more detail below.

The issues in the appeal

[13] Pursuant to orders made by Judge Everson DCJ on 19 February 2016, the issues in the appeal were:

- The grounds of refusal stated in the Decision Notice issued by the respondent on 25 September 2015;
- The grounds of appeal in paragraphs 19 to 29 of the Notice of Appeal;
- The further grounds, as particularised on 21 December 2015 by Lend Lease Limited;
- The further and better particulars notified by the respondent on 24 December 2015;
- Particulars provided by the appellant on 27 January 2016 concerning paragraph 29 of its Notice of Appeal;
- Further and better particulars notified by Lend Lease Limited on 29 January 2016.

[14] Following the identification of these issues, numerous reports by various experts were tendered. Issues addressed included water quality, sewerage infrastructure, visual amenity, traffic, retail and non-retail supply and demand and, of course, town planning.

[15] According to the town planners relied on by the parties (Mr Reynolds relied on by the appellant, Mr Schomburgk by the respondent and Ms Vigar by the co-respondents by election), the issues could be categorised as follows:^[12]

(a) The planning intent for the site, locality and Shire contained in the planning scheme and the South East Queensland Regional Plan 2009 (ss 6 and 7);

(b) Development of the Shire Business Centre as a mixed use centre with non-retail diversification and employment growth;

(c) Retail impacts and the need for the proposal;

(d) The design, form, layout and character of the proposal;

(e) Traffic impacts of the proposal;

(f) and (g) Sufficient grounds.

[16] At the end of the day, the water quality and sewerage infrastructure issues fell away and the disputes concerning the traffic engineers were materially reduced. Accordingly, the live disputed issues before me were visual amenity, traffic, and town planning including the community need for the proposed development and the limited need or demand for non-retail commercial land.

[17] During the opening of Mr Hinson QC, senior counsel for the appellant, he described the critical issue in the appeal in the following terms:^[13]

“The critical issue in this case your Honour is land use and it’s the (contention) of the other parties that because E1 on the Shire Business Centre map is shown with an employment designation – we are proposing a retail development... so that’s the critical issue; it’s about land use intent. Our case, in a very brief nutshell, is that there is a demonstrated and agreed need for additional retail development. The non-retail economic experts will tell your Honour that the need for commercial space within Noosa over the next 25 years, that is up to 2014, is up to 20,000 square metres and that there is something like four times that amount of space in the Shire Business Centre amply to be utilised for such uses in the future. **So the appellant’s case says that, yes we’re proposing retail in a part of the shire business site intended for employment, but we’re responding to a community need. There is no need for commercial or office space, and, if the Council wants to maintain ultimately this mix of uses with more commercial and retail there is ample land for that purpose for many, many years, given the level of demand for commercial office space...**” (Emphasis added)

[18] Mr Hughes QC, senior counsel for the respondent, also saw the critical issue in the appeal being the extensive land use conflict with the respondent’s planning scheme. Mr Hughes QC summarised his client’s position in the following terms:^[14]

“Your Honour, this case is very much of conflicts and it’s not just a case of conflict of the planning documents. It is, in the Council’s case, a conflict with strategic planning for the major centre in Noosa’s hierarchy – that’s the Shire Business Centre. The Shire Business Centre, as your Honour would be aware by now, is promoted both, we say, in the local planning documents – the scheme – but also in the South East Queensland Regional Plans as a true multipurpose centre, not as a retail centre. And can I say this, your Honour, as I’ve said on a number of occasions during the preparation of this matter; a city or a Shire Business Centre is not built over a number of years or decades. It’s certainly not built over the life of one or two plans. To build a business centre, that takes generations and in this case,

the business centre has really been planned for less than 20 years since, really, the 1997 Strategic Plan and, of course, when the appellant, QIC, acquired this land, I would hope they were well aware of the planning documents which is (sic) in place for 15 or 20 years before they purchased the land so they knew what the planning documents were.” (Emphasis added)

[19] The truly critical issues in this appeal are the extent of conflict with the relevant planning documents created by the proposal and whether sufficient grounds existed to justify approval notwithstanding that conflict. That said, the separate, but not entirely, discrete issues of visual amenity and traffic engineering warrant individual treatment.

[20] All of the town planners agreed that the proposed development was in conflict with relevant planning documents. As the appellant acknowledged in its written reply “conflict has been acknowledged from the outset”.^[15] Where Mr Schomburgk and Ms Vigar were in serious disagreement with the opinion of Mr Reynolds was about the extent of the conflict and whether sufficient grounds existed to warrant approval notwithstanding the conflict. To put it another way, whether the designated use of the land had been “overtaken by events”. According to Mr Reynolds it had. Mr Schomburgk and Ms Vigar strongly disagreed.^[16]

[21] The appellant of course bears the onus of establishing that the appeal should be upheld.^[17]

The lay witnesses

[22] The respondent tendered statements from eight lay witnesses. The witnesses are Mr White,^[18] Mr Chenoweth,^[19] Ms Tretheway,^[20] Ms Murphy,^[21] Ms Bloxsome,^[22] Mr Havilah,^[23] Mr Rogers,^[24] and Mr Deasy.^[25] I agree with the submissions made on behalf of the appellant that Mr Havilah should be treated as a lay witness. A number of objections were taken concerning elements of each of those statements.^[26] A number of the witnesses gave evidence beyond their apparent qualifications and expertise. By way of examples, evidence was given to the effect that the proposed development was contrary to the planning scheme, there was no need for a development of the type proposed and that the viability of the proposed development was doubtful. The most common objections were that the statements contained unqualified opinions, contained hearsay and in some instances were argumentative. I do not intend to go into detail concerning the objections other than to note that I consider them to be legitimate and, accordingly, I have only considered the unobjectionable evidence of these witnesses.

[23] At the risk of generalisation, their primary concerns could be identified as follows:

The bringing forward of infrastructure expenditure, particularly roadworks;

The impact on existing local businesses and, in particular, Noosa Junction and the Noosa Homemaker's Centre;

The consequential limitation on diverse business opportunities within the SBC; and

The height, bulk and scale of the proposed development (presumably in conjunction with the existing centre) was inconsistent with the more "relaxed", "low-key", and "village" Noosa lifestyle.

[24] These concerns are legitimate and, as it turned out, in many instances are supported by expert evidence. In this context I note that particularly in respect of the potential impact on Noosa Junction and other local business areas, Mr Deasy owns five shops in the Noosa Homemaker Centre and for a number of years was the chairman of the body corporate of that centre. Mr Havilah is the owner of a shop at Noosa Junction. Mr Chenoweth is the president of the Noosa Chamber of Commerce among other things, and Ms Tretheway is the president of the Noosa Junction Association.

[25] I consider the concerns expressed by each of the lay witnesses to be ones genuinely held and, insofar as their evidence is admissible, it provides support for the position adopted by the respondent. However, in the circumstances of this appeal the evidence of these witnesses is far from decisive.

Visual amenity and the "Noosa Style"

[26] The proposed development is significant, particularly in the context of the respondent's local government area. As I have already identified, it involves in excess of 35,000m² of roofed area and will occupy some 7 hectares of land including, of course, the carpark area. Under the roofed area is approximately 22,230m² of retail floor space and a 12m x 40m plus pedestrian link through and across the open space area to connect the two centres.

[27] Other significant dimensions of the proposal is that in total it is approximately 300m in length and, at its widest point, 160m wide. Also, as I understand it, at its highest, the built form would be about 12m above ground level but predominately would be more in the order of 10m above ground level.[\[27\]](#)

[28] It is clear from the evidence of Mr Sheehan and Mr Chenoweth, the visual amenity and landscaping expert, called on behalf of the appellant to deal with visual amenity ecology and landscaping issues, that a considerable amount of thought has been given not only to the physical design of the structures but also to the intended surrounding landscaping. Notwithstanding, it is asserted that, particularly by the co-respondents by election, the proposed development is in conflict with the relevant planning documents because of its height, scale and bulk. It was said to be inconsistent with the "Noosa style" of built form.

[29] Maintaining the “Noosa Style” is one of the “Community Visions” under the planning scheme[28] and has been the subject of considerable thought and public involvement.[29]

[30] Under the heading “The Design, Form, Layout and Character of the Proposal” the town planners specifically dealt with whether it complied with, or was in conflict with, the relevant planning provisions. Leaving aside the potential conflict arising out of the works proposed within the Open Space area, the thrust of Mr Reynolds’ evidence was that it was not in material conflict with the relevant provisions of the planning scheme.

[31] In the joint expert report, Mr Schomburgk and Ms Vigar did not appear to take issue with the height, bulk and scale of the proposed development per-se but saw it as being inconsistent with and “contrary to the scale of mixed uses intended for the centre”. [30] That is, as far as Mr Schomburgk and Ms Vigar were concerned, the proposed development did not appear to offend the so-called “Noosa style” so much but was of an overall bulk and scale which would materially exceed what would be expected within the relevant precincts had they been developed as originally intended.

[32] Mr Schomburgk confirmed his opinion in his individual report where he said:[31] “...the proposed development is of a form and scale not anticipated or desired by the planning scheme provisions that relate to this site and the SBC as a whole...”

[33] Ms Vigar expressed a similar opinion in her individual report where she said:[32] “While the SBC is intended to develop and operate as a MRAC, the shopping centre components of the proposal go beyond the scale and function intended for the SBC.”

[34] The evidence of Mr Sheehan and Mr Chenoweth makes it tolerably clear that from the external road network the proposed development will be well screened and unobtrusive. Further, even within the proposed carpark the structures would present in an articulated way broken up by landscaping and other features. It is also of some significance that the finger of open space that separates the existing development from that proposed would effectively screen each from the other. That is, a person situated in, or even driving by, the existing shopping centre would be unlikely to be able to observe in any material way the proposed development. Equally, any person situated in, or driving by, the proposed development would be unlikely to be aware, in a physical sense, of the existing development. Over time, of course, local knowledge would mean that residents in the area would know of both but that is not really to the point.

[35] Leaving aside the proposed development in and through the Open Space area which will be dealt with separately, I do not consider that the proposed development offends the so-called “Noosa style” from a design and construction point of view. Even Mr Schomburgk was prepared to say “...it’s almost, dare I say it, Noosa style”.

[33]

[36] The bulk and scale objections of Mr Schomburgk and Ms Vigar are essentially that, if developed as planned, Precinct E1 of the Shire Business Centre (SBC) would accommodate a number of buildings separated by community and landscaped areas as opposed to accommodating one large structure.[34]

[37] The planning scheme makes it clear that for the bulk of the southern part of Precinct E1 what was envisioned was a “dynamic mix” of different uses set in a “park like setting, with landscape treatment enhancing and forming an extension of the adjoining open space areas.”[35] (Emphasis added)

[38] The reality is that, notwithstanding the built form being sympathetic to the Noosa Style and the extensive and thoughtful landscaping materially softening the visual presence of the buildings, the proposal conflicts with the intended developed outcome for Precinct E1. In this regard I do not accept the submission made on behalf of the appellant to the effect that the reference in the planning scheme to “buildings” should be construed to also include the singular ‘building’.”[36]

[39] It is not of a form and/or scale desired or anticipated for Precinct E1 and, even if it were accepted that a park like setting would be created, it does not enhance nor form an extension of the adjoining open space area. (Precinct OS7 as amended or altered by Covenant J). To a very significant extent the proposed development would turn its back on the existing open space.[37] A conflict acknowledged by Mr Reynolds[38] together with other conflicts[39] concerning site coverage and road frontage.

The traffic issues

[40] Initially, a number of issues were raised concerning traffic. In the joint expert report of the traffic engineers, (Mr McClurg for the appellant and Mr Beard for the respondent), those issues were described:[40]

“The traffic related issues in dispute, as described in detail in section 2, can be grouped under the following four headings for consideration in this appeal:

- (a) traffic impacts;
- (b) carpark in quantum;
- (c) public transport;
- (d) connectivity for vehicles, pedestrians and cyclists.



It was agreed that issues (c) and (d) could be resolvable by reasonable and relevant conditions if the Court decides to approve the proposed development, so they are not discussed further in this report and need not be considered further in the hearing of the appeal against the refusal. Obviously, they might need to be discussed further, at a later date, if the development is decided to be approved. The grounds for refusal and associated particulars in respect of these potential issues are included in sections 2.3 and 2.4 (of the report) for completeness.” (Emphasis added)

[41] As the appeal proceeded, the carparking issue was also identified as being one that could be resolved by conditions and, therefore, was not a reason for refusal. Mr Bowie, the solicitor acting for the co-respondents by election, (“the co-respondent”), during his cross-examination of Mr McClurg, attempted to resurrect the carparking issue, as a potential ground for refusal. Mr Bowie was, to an extent, supported by Mr Hughes QC. Notwithstanding that issue being raised, I am satisfied that sufficient carparking could be provided onsite, avoiding offsite traffic issues and otherwise could be the subject of relevant and reasonable conditioning.[41] Accordingly, the only traffic issues that needed to be considered in detail were the potential impact on future road design/construction (the “bring forward” issue) and the associated potential increase in traffic that would be diverted from the major road corridors (the “rat running” issue).

[42] According to Mr Beard, the traffic generated by the proposed development would unnecessarily bring forward significant and costly roadwork expenditure. Mr Beard, who has had considerable experience with the road network systems within the respondent’s local government area, articulated these concerns in some detail in his separate court report. He said:[42]

“Without the proposed expansion, this system of intersections, at a traffic growth rate of 0.8 percent per annum, would have approximately 12 years beyond 2028 before the most heavily loaded intersection reaches capacity, demanding replacement of the roundabouts to signalised intersections. Consequently, Council’s infrastructure plan makes no provision for upgrading this system of roundabouts to signalised intersections. Given that these major upgrading would not be necessary for more than twenty years, this is entirely reasonable traffic planning. With currently unforeseeable social changes which could occur during this extended time-frame, the signalised intersections might never be necessary in the absence of the proposed development.

However, if the proposed  **Noosa Civic**  expansion occurs, the unplanned traffic volume increases generated by that development would bring forward the need for very major expenditure on a signalised intersection system by approximately 9 years, assuming this network change started at the most critical intersection of



Eumundi Road with Gateway Drive and Rene Street. Even if it was considered that over-capacity operation could be tolerated at this one most critically congested intersection, consideration of the five intersections in aggregate leads to the conclusion that the proposed  **Noosa Civic**  expansion would bring forward the need for conversion to a signalised system by 6 to 8 years.

Conversion of this system of five roundabouts to a signalised system would have a number of undesirable / unacceptable impacts:

It would be directly contrary to the design principles adopted and published by Council, specifically including the avoidance of traffic signals;

Because of the development patterns along Eumundi Road, many U-turns are generated at the major intersections and these would be much more difficult to accommodate at signalised intersections;

The cost of conversion of this section of road with five major intersections to a signalised configuration would be very high (probably tens of millions). The cost of service relocations alone necessary to allow the roadworks would be reasonably expected to be very high; and

Because, in the absence of the proposed  **Noosa Civic**  expansion, signalisation is not necessary for more than twenty years, Council's infrastructure plan makes no provision for signalisation of this intersection system, or the high costs of those work, so no funds are available.

Noosa is a small Council but it has a thoughtfully designed major road network which operates well now, and this would continue into the future in the absence of the proposed development. This proposed development has not been anticipated by future road network planning (or planning for the Noosa Business Centre), and would unreasonably and unacceptably invalidate otherwise sound road network planning which has been designed to closely integrate with Noosa's land use planning."

[43] Mr Beard's concerns were reinforced during his oral testimony and, in my view, his evidence on these matters was, to a significant extent, not weakened in cross-examination.

[44] In their third joint report Mr McClurg stated:[\[43\]](#)

"In respect of the dot points listed above by Mr Beard, Mr McClurg says the following:

Mr Beard and Mr McClurg have shown that the proposed development traffic can be satisfactorily accommodated at the ten year planning horizon by the existing roundabout based road network with some identified upgrading, without the need for traffic signals.

The assessment process is conservative in that it uses traffic volumes as derived by Mr Beard and Mr McClurg that include:

Background growth forecast to the ten year planning horizon; plus

The approved Masters development; plus

A nominal allowance for a further 8,000-10,000sq.m of commercial development (for which there is no planning application); plus

The subject development (adopting both Mr Beard's generation or Mr McClurg's generation, despite no agreement of these generations).

It is entirely reasonable for development to make use of the capacity of the existing road network."

[45] In their first joint expert report it was stated:[44]

"In respect of further analyses to be undertaken by each of the traffic engineers, it was **agreed that:**

(i) The design horizon to be adopted would be 2028 (ten years after the anticipated year of opening of the proposed development..." (emphasis added)

[46] Mr Beard's opinions were put to Mr McClurg during his cross-examination by Mr Williamson, junior counsel for the respondent. Before turning to Mr McClurg's cross-examination in more detail I should deal with an issue raised by Mr Williamson concerning the appropriate standard to be adopted when considering the issue of intersection saturation.

[47] It was suggested to Mr McClurg that a degree of saturation of 0.7 (70%), in accordance with the respondents Priority Infrastructure Plan, was a desirable and appropriate outcome at the relevant intersections. While I can readily accept that a degree of saturation of 0.7 would be a highly desirable outcome, I do not consider it to be a relevant standard in assessing the problem at hand. During cross-examination the following exchange took place between Mr Williamson and Mr McClurg:[45]

Q – Right. Do you accept this proposition, though: then, if we're going to look at the proposal, or that is with Civic, in the year 2028, of the five intersections that are identified, firstly, three of them exceed the .7?

A – Yes.

Q – So in that sense the proposal – or the development which is unplanned results in the achievement of a degree of saturation that those intersections which is inconsistent with an assumption made on the Council's priority infrastructure plan correct?

A – Well, I just – I guess the point of clarification is that what's in the priority infrastructure is a desirable standard, not an absolute standard, and I think – correct

me if I'm wrong, but Mr Beard has used a limit of .85 as well, and I think that's been agreed in the joint processes of the joint traffic engineers... and, in addition Council's own consultant has used .85 in their own planning work."

Mr McClurg was not corrected. That he was not is not surprising given that, in their first joint expert report it was agreed by Mr Beard that the assumed background traffic growth would be at 0.8% per annum; and that:[46]

"Mr Beard proposed that SIDRA analyses should adopt default values unless specifically agreed, and that the maximum intersection degree of saturation at a roundabout likely to represent acceptable traffic operations would be 0.85..."[47]

[48] Mr Beard's analysis of "bringing forward" issue concluded that:[48]

"...this proposed development has not been anticipated by the future road network planning (or planning for the Noosa Business Centre) and would unreasonably and unacceptably invalidate otherwise sound Road Network planning which has been designed to closely integrate with Noosa's land use planning".

[49] According to Mr Beard, the proposed development would bring forward the need to signalise the impacted intersections on the Eumundi Noosa Road.[49] His initial estimate was that signalisation would be required between 6 to 8 years earlier than had the land been developed as planned for.[50] That estimate was refined to "close to seven" years.[51] That is, instead of signalisation being required at or about 2040 (i.e. 2028 + 12) without development, it would be required at or about 2030-2033 with it.[52]

[50] Mr Beard seemed less concerned with the impact in dollar value terms than with other non-financial "costs" including impacting on the respondent's deliberate policy of avoiding signalised intersections. During his cross-examination the following exchange took place:[53]

Q- All right. So it's adding traffic to those – that roundabout system which will have adverse impacts, that being the take-up of spare capacity, the bringing forward of signalisation and do we?

A – It seems to me that I – well, I will list them again just so we've got it completely. I did this for Mr Williamson the other day. It seems to me that increased congestion, which we're talking about, is a cost to all members of the community in terms of delays and whatever, and that's particularly relevant in Noosa because you're talking about a tourist based economy. So the more free and easy you can keep the road system, the happier they're going to be in their holiday experience. So everyone suffers from increased congestion, the reduced ability to accommodate planned growth in terms of we've used up some of the spare capacity that was in that system that should have been available for development consistent with the

planning scheme on the Shire Business Centre side. Increased arterial road congestion does increase the likelihood of rat running, the bring forward costs that you've already referred to and the fifth factor is in my opinion the reduced time for social change in that council is currently investigating the introduction of, for example, free electric buses on its road network. All of this is designed to achieve social change. I like getting people out of their cars and into public transport, even free electric buses will be difficult and it will take time. So if we bring forward the need at which we've got to do, for example, signalisations, then that reduces the ability to effect the sort of social change that would be needed to perhaps obviate the need ever to signalise those intersections."

[51] Mr Beard's concerns are undoubtedly legitimate in an urban community planning context. However, they have to be seen in context.

[52] First, it is more likely than not that signalisation would be required at or about 2038-2040 in any event. This is not a case of introducing events that would otherwise have probably never occurred.

[53] Second, the increase in delays at the intersections referred to, seem to be relatively modest and not likely to result in an unacceptable traffic situation even for a tourism based local government area.[\[54\]](#)

[54] Third, while the increase in "rat running" via St Andrews Avenue, which was not quantified, would likely be greater than that generated by a fully developed mixed business centre as planned for, it would be largely limited to a fairly limited population moving in a north to south direction or vice versa. And, if not able to be entirely eradicated would probably be able to be addressed in a meaningful way by further works.[\[55\]](#)

[55] Fourth, the "reduced time for social change", which I understand to mean educating the travelling public to use other means of travel and to consider other alternatives,[\[56\]](#) has to be viewed in the context of there still being some 12 to 14 years to begin to address those matters.

[56] Finally, the actual cost in dollar terms of bringing signalisation forward could be significantly addressed by the imposition of appropriate conditions.[\[57\]](#)

[57] On balance, while the traffic engineering evidence does establish that the proposed development would cause some limited adverse impacts in the relevant locality, they would not warrant refusal of the proposed development. Indeed, neither the traffic issues nor the visual amenity conflicts separately or together would warrant refusal. That said, they still remain relevant issues when considering the appellant's "sufficient grounds" case.

The economic evidence and consumer behaviour

[58] During the course of this proceeding a considerable amount of evidence was given concerning the community need for a development of the type proposed, the supply and demand situation concerning non-retail commercial/industrial land and consumer behaviour.

[59] The evidence of Ms Say, one of the experts relied on by the appellant and Mr Duane, the economist relied on by the respondent, established that:

(i) Shoppers who usually shop at Coles would not readily change to shopping at Woolworths and vice versa. That is, there is a low percentage of “crossover” shopping between supermarkets.[58]

(ii) Shoppers who usually shop at Big W are more likely to also visit Target (and vice versa) than they are to shop at alternate supermarkets.[59]

(iii) The more of speciality shops and other services (e.g. restaurants and childcare) a shopping centre provides the greater the level of visitation and length of stay.[60] In this context, while there was some disagreement between Ms Say and Mr Duane about the “length of stay” issue I do not think that much turns on it but, given the average age of the expected shoppers, I suspect that Ms Say is probably right. That is, the more elderly shoppers are likely to remain within the centre for longer periods of time. More importantly though Mr Duane was clearly of the opinion that the greater the number of specialty shops the more likely is it that shoppers would be drawn away from existing centres such as Noosa Junction. This issue is discussed in more detail below but it was a consequence also accepted by Ms Say.[61]

(iv) Given the very unlikely prospect of a major retailer such as Myers, David Jones and Costco or of boutique stores such as Louis Vuitton and Chanel locating within the Shire there will always be a significant level of “escape expenditure”. That is, shopping occurring outside of the respondents local government area.

(v) The proposed development would however, if approved, probably have a positive effect in reducing that escape expenditure.

[60] The evidence of Ms Say was otherwise consistent with the evidence of the other relevant experts that, if approved, the proposed development would be commercially viable.

[61] Turning to the issue of non-retail demand, the joint reports prepared by Mr Rumbold, one of the economists relied on by the appellant and Mr Duane make several things sufficiently clear:

(i) Reflecting the distributions of population growth the greater majority of new jobs will be located at Maroochydore with far smaller numbers in Noosa.[62]

(ii) The Noosa shire business economy is largely dominated by small businesses characterised by low growth.[63]

(iii) Even if the proposed development were to proceed, substantial capacity would remain in the remaining precincts within the business centre to accommodate further non-retail employment over time.[64]

[62] To put it bluntly, as Mr Sains, the expert relied on by the appellant to deal with infrastructure issues observed, the respondent's expectations for non-retail business growth were grossly optimistic. According to him, the respondent's assumptions about development growth were "outdated and flawed".[65] The consequence of this is that there is a surplus of land available for non-retail commercial development.

[63] The following extracts from the joint experts reports of Mr Rumbold and Mr Duane support Mr Sains:[66]

"The Sunshine Coast has substantial capacity for a future development of commercial and related business, health and education facilities.

There are three major precincts designated for commercial and other non-retail uses on the Sunshine Coast: Maroochydore City Centre, Kawana and Sippy downs. Combined development capacity is not fully defined, however is likely to be in excess of 315,000sq.m. The Maroochydore PDA alone includes provision for 165,000sq.m of commercial space.

In the context of this very large commercial market, both existing and proposed, the Noosa commercial market is recognised as a relatively minor player. The current 27,000sq.m in the core urban areas of the Shire is equivalent to 18% of the Sunshine Coast office market (150,000 as at July 2015). Excluding smaller shop-top offices, Noosa's share would be lower again.

Future office and commercial demand, to the extent that it may be decentralised out of Brisbane, is likely to be concentrated in the core Sunshine Coast commercial precincts which are significant advantages for commercial and public sector organisations, relative to the smaller and more distant Noosa location."

[64] According to Mr Duane:[67]

"the Sunshine Coast has significant areas to accommodate future employment growth for commercial uses....

The designation of land within the Noosa Shire Business Centre for non-retail uses may reflect an aspirational target from Noosa Shire Council to create employment opportunities in the shire. To date, this is not occurred."

[65] In the opinion of both Mr Rumbold and Mr Duane:[68]

“The SBC is considered (sic) or has potential to attract a relatively limited range of uses, which include, civic and community uses, medical centre, aged care and retirement, warehousing/industry, and in conjunction with the retail centre, small scale offices and potentially cinemas.

Large scale commercial offices, including significant technology based businesses, research and development and Government departments are considered unlikely. The experts agree that the maximum long term potential for office space in the SBC would not exceed 20,000sq.m.”

[66] The reference to technology based businesses research and development is of significance as Precinct E1 is identified as a precinct which was intended to accommodate such enterprises.

[67] Finally in this context Mr Duane concluded:[69]

“Planning for the SBC has been proposed for many years and the objectives for the SBC have been clearly enunciated by council. QIC at the time of purchase of **Noosa Civic** would have clearly understood these aspirations, guides, plans and provisions.

A range of non-retail uses could be accommodated at the site, but would likely involve the relocation of the existing facilities which is considered unlikely or unviable. This is not to say that this planning could change, but given the lack of population growth, this is unlikely.

The maximum amount of commercial office floor space would likely be in the order of 20,000sq.m unless some major intervention occurred. Even at this level, there is still other land available to accommodate other non-retail uses on the assumption that the retail centre if it proceeded included basement carparking.

The development of only a retail centre at the site, however, does not add to the diversity of the Noosa economy, with major employment sectors including retail trade, healthcare and social assistance and accommodation and food services. It would add to one of the key employment industries, but not help to offset those peaks and troughs which occur in a location such as Noosa which is reliant on tourism and its flow-on effects to the wider economy.”
(Emphasis added)

[68] The net effect of the evidence of the relevant experts in this area is that as at 2016 and into the future, there will be a surplus of land available to accommodate non-retail commercial uses. And, even if the proposed development proceeded, space to accommodate non-retail commercial uses would remain within the designated SBC area. However, as Mr Duane observed, expansion of the shopping centre would not materially add to the diversity of commercial activity intended and

planned for by the respondent within the SBC. In this regard, in the May 2009 “Noosa Business Centre Review,” Urban Economics recommended that Precinct E1 should be used to accommodate expansion of the existing shopping centre.^[70] Obviously that advice was rejected.

[69] Encouraging knowledge-based businesses is an element of the “Economic Sector Vision” of the planning scheme.^[71] Further, it was recognised that development of the various precincts within the SBC and, in particular, Precinct E1 would likely be a long term project or outcome by the drafters of the planning scheme. Under the headings “community implications of commercial and retail uses” the planning scheme provides:^[72]

“Protecting the long term viability of the Shire Business Centre may mean setting aside short term needs to ensure the medium-long term implementation of the centre. No other centres or major retail and commercial development are intended within the coastal urban settlements, with the exception of those servicing predominately neighbourhoods and local communities.” (Emphasis added).

[70] During the course of the evidence of a number of the expert witnesses, reference was made to the exponential growth of technology, and as a consequence, the growth in technology based industries. The thrust of this evidence was to the effect that while demand for land to accommodate technology based businesses may be now and in to the foreseeable future low if not extremely low, it could not be ruled out that demand could increase dramatically and suddenly. Mr Schomburgk, put it in these terms:^[73]

“...when it was first done in 1997, some of the sort of new knowledge, which is the term used- one of the terms used in the planning scheme, and technology, another term used in the planning scheme, the sorts of things that might have been anticipated back in 1997, have probably long since passed, and we’re now moved on to different technologies and different new knowledges that we probably hadn’t even thought of in 1997, and I see that that process will probably continue as the rest of the Shire Business Centre is developed over many years. The relevance of that is it’s entirely appropriate for the council to, as the regional plan says, to secure land for uses that we don’t actually know about yet, when the council is so keen, as it says in the planning scheme on a number of occasions, and as the regional plans says, to diversify its economy out of just tourism. It’s keen to establish new knowledge and technology and R and D for things that probably haven’t even been invented yet, so that’s all the more important to secure land and protect land for those sorts of uses that it hopes-intends to come along at some stage in the future.”

[71] The difficulty with that form of reasoning is that it is unlikely that the economists and engineer called to give evidence about the different types of land use demands

within the respondents local government area, would have not factored that into their considerations and conclusions.

[72] Whilst, albeit very slowly, mixed non-retail development is occurring within the SBC.[74] Also, as Mr Rumbold acknowledged, the “first step in the process” of attracting specific development is to set aside land for that purpose.[75] It is also of significance that, as Mr Rumbold again acknowledged, there is a demand for commercial office space[76] and Precinct E1 was ideally located to meet any such demand.[77] He also agreed that the Precinct would be “ideally suited” for a range of academic and health uses.[78] Of course, there is no evidence of any meaningful present demand for land to accommodate such uses nor into the foreseeable future.

[73] The evidence concerning non-retail commercial uses leads me to conclude as follows:

(i) There is a surplus of land within the respondent’s local government area appropriately designated and available for non-retail uses.

(ii) That situation is unlikely to change in the foreseeable future.

(iii) Even if there was a material and sudden increase in the demand for non-retail commercial uses there would be sufficient land available to meet that demand.

(iv) Even if the proposed development went ahead, there would still remain areas of land capable of accommodating non-retail, including R&D based development within the SBC.

(v) In the event that material growth were to occur within the non-retail commercial sector, Precinct E1 would be an ideal location for such development.

[74] The over supply of land available for non-retail commercial uses and the demand, or more relevantly the lack of demand for non-retail uses within the SBC are significant factors favouring the appellant. However, for the reasons given below, are not determinative.

Conflict and sufficient grounds

[75] It is clear that the subject site is ideally suited, in a geographical sense, for development of the type proposed. Accordingly to Mr Duane it is “a logical location”.

[79]

[76] On 27 January 2016, the appellant’s solicitors identified that the “sufficient grounds” pleaded in paragraph 29 of its notice of appeal were those set out in Chapter 8 of the town planning report dated December 2014.[80] That report identified a number of grounds and, in particular, the need for further retail development.[81]

[77] The totality of the appellant's "sufficient grounds" can be summarised as:[82]

- (i) *economic and community need*
- (ii) *limited demand for commercial uses within the SBC*
- (iii) *support for the hierarchy of centres*
- (iv) *catalyst for future development*
- (v) *creation of employment*
- (vi) *(other) economic, social and environmental benefits*
- (vii) *improved connectivity and infrastructure*
- (viii) *public amenity*

[78] Mr Duane and Mr Shimmin agreed in their joint report that there was a community need for an additional DDS (Target) and supermarkets (Coles and Aldi) together with a complementary range of speciality shops.[83] However, Mr Duane considered that a smaller scale development than that proposed was appropriate. Under the heading "The Economic Need for the Proposed Development in the Shire Business Centre" it was stated:[84]

"Outcome: It is agreed that there is a need for an additional DDS, supermarkets and speciality retail stores to serve the needs of trade area residents, and to curtail the level of escape spending and therefore the requirement to travel for regular needs. Shimmin says this, in turn, can be seen to have both personal benefits to consumers, and environmental/health benefits to the public at large, and therefore result in enhanced community wellbeing. There is disagreement around the size of the appropriate expansion of the centre, with Duane believing a smaller scale development at around 15,000-16,000sq.m as compared with 22,000sq.m is the more appropriate level of expansion."

[79] "Need", in the town planning sense does not require a pressing critical or even a widespread need or desire. In *Watts & Hughes Properties Pty Ltd v Brisbane City Council*[85] it was observed:

"...need does not connote a pressing agency but relates to the wellbeing of the community. A use would be needed if it would, on balance improve the services and facilities available in a locality".

[80] In *Isgro v Gold Coast City Council*[86] Wilson SC DCJ (as he then was) after citing with approval the above passage from *Watts & Hughes Properties* went on to say:

“Need, in planning terms, is widely interpreted as indicating a facility which will improve the ease, comfort, convenience and efficient lifestyle of the community... there is a latent unsatisfied demand which is either not being met at all or is not being adequately met...

This Court has been prepared to find that a need exists, despite the presence of similar businesses in the locality. Generally speaking, however, those decisions have been confined to circumstances where the proposals were likely to provide benefit by way of a greater level of convenience to patrons.... At the other end of the spectrum are cases in which such facilities as a new service station, or cinema complex would add to a consumer’s area of choice but not noticeably improve the wellbeing of the community, or improve the services and facilities available in a locality where existing businesses plainly met demand.”

[81] Mr Reynolds acknowledged that a number of conflicts arise however he, like Mr Sains, considered the respondent’s planning scheme to have been “overtaken by events”. In addition to referring to the issues of community need and the availability of land for non-retail commercial uses he, more relevantly in this context, set out his opinions concerning conflict in the following way:^[87]

“The proposal is consistent with the overall planning intent of the relevant planning instruments. The SBC will serve the role and function intended by the SEQRP (South East Queensland Regional Plan) and the planning scheme, as will the other centres in the hierarchy.”

“Acknowledges that there are **inconsistencies** between the proposal and certain planning provisions which intend to implement the overall planning intent, specifically:

(a) The provisions relating to layout and form of development; and

(b) The provisions relating to land use of specific precincts within the SBC.”

“Says that the layout and form inconsistencies arise from the built form parameters associated with the height and site cover of development, as well as the alignment boundaries on Map SBC. Whilst acknowledging it is a matter for the court (he) believes these inconsistencies do not amount to a conflict with the planning scheme. To the extent the Court determines there is a conflict between the proposal and (these) planning provisions.

(a) The conflict can be attributed to a greater degree of design of design resolution...

(b) Map SBC was prepared in 2002 and represents a conceptual planning exercise;

(c) Map SBC ought to be considered as an illustrative example of one way in which the overall intent sought for the SBC could be achieved.

(d) Map SBC ought not be slavishly applied in a way that limits the achievement of the overall intent of the SBC through an alternative proposal; and

(e) Little weight should be attributed to the conflicts because:

(i) The proposal is generally consistent with the intent for the design and form of development in the SBC; and

(ii) The extent to which the community will be able to perceive the impacts of the design and form of the proposal is limited.”

• “Acknowledges conflicts with the planning scheme arise from the land use of specific precincts with the SBC. These land use conflicts arise from the proposed retail use, specifically an additional floor area and the use of Precincts E1 and OS7. Mr Reynolds says these land use conflicts arise because the planning scheme has been overtaken by events....”

[82] Reference to “consistent” and “inconsistent” uses is the language used in parts of the planning scheme.[88]

[83] In the joint expert report of the town planners, Mr Schomburgk and Ms Vigar summarised their opinions as follows:[89]

“... the proposal is in stark and acute conflict with various provisions of the SEQRP and the Noosa Plan, in particular with the site specific planning intentions that have been in place (and regularly reviewed) for many years.

The Council has consistently stated its long term intentions for this centre, and this proposal offends those intentions and would, in practice, deny the achievement of those long term goals. While the demand for some of the preferred non-retail uses may not be strong at present (and has not been strong for some time), that is not sufficient justification to compromise the long term planning vision espoused in both the SEQRP and the planning scheme.

While it is a matter for the court, the sufficient grounds proffered by Mr Reynolds do not, in our opinion, justify such a dramatic change to the long standing planning intentions for the site and the centre.” (Emphasis added).

[84] The appellant, while accepting that the proposed development was in conflict with the planning scheme,[90] contended that; first, many of the conflicts were “minor” and where “more significant” were with “lower order provisions, not with the strategic objective of developing the SBC consistently with the needs of the community.” Second, the conflicted lower order provisions of the planning scheme are based on outdated information and have been overtaken by events.[91]

[85] Section 326(1) of the Sustainable Planning Act 2009 (SPA) relevantly provides:

“(1) The assessment manager's decision must not conflict with a relevant instrument unless—

(a) the conflict is necessary to ensure the decision complies with a State planning regulatory provision; or

(b) there are sufficient grounds to justify the decision, despite the conflict; or”

[86] Here of course this court stands in the position of the “assessment manager”. Sufficient “grounds” for the purposes of s 326(1)(b) means matters of public interest and does not include the personal circumstances of an applicant, owner or interested party.[92] In *Weightman v Gold Coast City Council*[93] Atkinson J said:

“In order to determine whether or not there are sufficient planning grounds to justify approving the application despite the conflict.... The decision maker should:

1. Examine the nature and extent of the conflict;
2. Determine whether there are any planning ground which are relevant to the part of the application which is in conflict with the planning scheme and if the conflict can be justified on those planning grounds;
3. Determine whether the planning grounds in favour of the application as a whole are, on balance, sufficient to justify approving the application notwithstanding the conflict.”

[87] In addition to articulating the necessary “tasks” to be considered in cases involving conflict, Her Honour said:[94]

“The proposal must be refused in such a situation if there are not sufficient planning grounds to justify the approval *despite the conflict*. **The discretion, as White J observed in *Grosser v Council of the City of the Gold Coast* is couched in negative terms, that is, the application must be dismissed unless there are sufficient grounds. This is a mandatory requirement. If there is a conflict, then the application must be rejected unless there are sufficient planning grounds to justify its approval despite the conflict. The primary judge wrongly held that it was directory only....**

The **first task** required of the decision maker, as the learned primary judge recognised, is to **consider the nature and extent of the conflict**. The conflict may be minor or major in nature or indeed anywhere on the continuum between those two extremes. The conflict in this case is a major one, arising as it does from an absolute prohibition on the height of any development exceeding the maximum stipulated height of three storeys...

The **second** question the decision maker has to consider is whether there are any **planning grounds** on which to approve, or which militate against approval of, that

part of the application which is in conflict with the planning scheme. The nature and extent of the conflict may be such as to suggest that there are significant planning considerations against that part of the application.

The decision maker should then **consider other aspects** of the development and determine whether they are consistent with proper planning grounds. Those are the planning grounds which apply whether or not the conflict exists.

It is only after consideration of all of these matters that the decision maker is able properly to assess whether or not the planning grounds in favour of the application as a whole are, on balance, sufficient to justify approving the application notwithstanding the conflict.” (Emphasis added)

[88] In *Woolworths Ltd v Maryborough City Council (No 2)*^[95] Fryberg J, in considering the then provisions of s 3.5.14 of the Integrated Planning Act, expressed the view that in resolving a contest between conflict and grounds of justification it may not be necessary for the decision maker to formally identify and set out each area of conflict and that “... the purely mechanical application of the *Weightman* dictum should be avoided...”.

[89] More recently however, the Court of Appeal has endorsed the three step approach adopted in *Weightman in Lockyer Valley Regional Council v Westlink Pty Ltd & Ors* where it was said:^[96]

“The Council’s attempt at construing *Weightman* so as to add another layer of explication to Atkinson J’s explanation of the section (in its earlier form) should be rejected. There is no warrant in s 3.5.14(2)(b) itself for applying different weight to different grounds. To do so would be to impose an entirely artificial set of fetters on the decision-making required. The importance of the ground must depend on what it is, not where it falls in the three-steps approach in *Weightman*.”

[90] The section referred to in *Lockyer Valley* is a reference to the relevant provision under the then Integrated Planning Act 1997 which has been repealed and replaced by the Section 326 of the SPA.

[91] In *Australian Capital Holdings Pty Ltd v Mackay City Council & Ors*,^[97] in considering a section under the then Local Government (Planning and Environment) Act 1990, which was to materially the same effect as s 326 of the SPA, the Court of Appeal said:

“The primary judge, having concluded that there were conflicts with ‘relevant strategic plan(s)’ was required to decide if there were ‘sufficient planning grounds to justify approving the application despite the conflict.’ In this case that exercise required the identification of ‘planning grounds’; an assessment of the role and importance to the planning scheme of the provisions which would be infringed

should the application be approved; the adverse consequences, if any, which might flow from such infringement and the competing merits and weight of the planning grounds relied on to justify approval....”

Conflict with the SBC

[92] Consistent with DEO 3.1.3(b) and a number of the objects of Overall Outcome 11.8.2(w), the proposed development would be an “in centre” development that would, at face value, confirm and strengthen the SBC, ensure its viability and, broadly speaking, be largely consistent with the needs of the community.

[93] According to Mr Schomburgk and Ms Vigar, in addition to the traffic and other centre impacts and the bulk and scale issues, the proposed development was in conflict with a number of other material elements of the planning scheme. In particular:

1. Desired environmental outcomes 3.1.3(b)(ii) and (iii). It is said that conflict arises as the proposal is not in keeping with the planning for the SBC and would detract from the achievement of a centre as intended.[98]

2. Overall outcomes for the Noosaville locality 11.8.2(w)(i), (ii), (iii), (iv), (ix), (x) and (xi) are conflicted because the proposal would result in a centre that does not provide the anticipated range of land uses and is not developed in accordance with the long standing planning intentions for the centre.[99]

3. Specific outcomes for the SBC O89, O92, O102, O103, O123 and O124 are conflicted because some of the proposed uses are identified as “inconsistent uses” within Precinct E1.[100] The planning scheme defines inconsistent uses to be uses that are “strongly inappropriate in the relevant zones because it is incompatible with other uses generally expected in that zone.”[101]

[94] It is beyond doubt that a number of the uses proposed for Precinct E1 are inconsistent uses under O89 of the Noosaville locality plan.[102] As far as O92 is concerned I cannot see any material conflict. I also consider that there is no material conflict with O103. Leaving aside for the moment O123, I am also satisfied that there would be no material conflict with O124. The proposed development would provide a major employment tenant. Indeed in this context, I accept the evidence of Mr Shimmin to the effect that it would employ a significant number of persons (full time and part time) during the construction phase and of course thereafter.[103] O125, being concerned with landscaping, setting and interaction with open space areas has already been discussed above and, save for the pedestrian link, needs no further discussion.

[95] The pedestrian linkage between the existing and the proposed centres is a significant structure. It will be some 12m in width and at least 40m in length and will

be partly covered.[104] It is intended to be more than a walkway, and be part of the “experiential” nature of the development. According to Mr Chenoweth and Mr Reynolds, a place where shoppers can dine and relax.[105] During its construction, disturbance of the natural vegetation will occur, and it is not likely to “enhance” the existing natural state. That said, it has to be considered in context. First, a not insignificant pedestrian link through the open space area has always been envisaged in a similar location.[106] On balance, I do not consider this structure raises any material conflict with the planning scheme.

[96] The proposed development is in conflict with O102[107] in a number of respects. Some of which I do not consider to be of much significance in the scheme of things. For example the suggested limitation of only one DDS and the references to a pedestrian and bikeway network. However, while with the proposed development in place there might still be sufficient land within the SBC for “a substantial amount of non-retail business development”, the SBC would be “dominated” by retail uses, an outcome clearly not envisaged under the subject planning regime. There is a material conflict in that regard. This issue is also discussed in more detail below. My concerns about the achievement of a landscaped park like setting have already been stated.[108]

[97] Overall outcome 123 provides:

“Precinct E1 is designed and located to form a key employment node in new knowledge industries, with the northern section developed for civic purposes.”

[98] The “Civic” designation in the northern section of Precinct E1 contemplates a wide range of uses ranging from a “central library” and “performing arts center (sic)” through to “public art, sculptures and murals” and “street entertainment.”[109]

[99] The proposed development is intended to include 895m² of non-retail space of which 460m² would be a gymnasium and 430m² for “multiple uses.” Even with the proposed “civic precinct” and the occasional use of the northern (landscaped) carpark for markets etc., clearly a number of the contemplated civic uses would be unachievable with the shopping centre in place.

[100] For reasons already given,[110] the development is in material conflict with O125[111] in that it would not enhance nor form an extension of the existing open space, OS7/ Covenant J.

[101] According to Mr Schomburgk and Ms Vigar, the “key issue” is:[112]

“...the dramatic change to the overall intent for the SBC that this approval would bring about. That overall intent is for a mixed use centre laid out in a form along the lines of that shown on the SBC map, with a mix of land uses and juxtaposition of land uses generally in accordance with that shown on the map. **This**

proposal offers a significant and deleterious departure from that clear and longstanding statement of planning intent.” (Emphasis added)

[102] At a superficial level, DEOs 3.1.3(b)(ii) and (iii) also appear to be satisfied. Even with the proposed development in place, the balance of the SBC could be developed in stages with land available to accommodate the planned for uses. Further, the uncontradicted evidence of Mr Shimmin, is that the viability of the centre could in fact be enhanced by the expansion on the shopping centre.

[103] Turning then to the Overall Outcomes identified by Mr Schomburgk and Ms Vigar in the Noosaville Locality Plan, again I am satisfied that with the proposal in place the SBC would create employment. As to the remaining DEO's identified by Mr Schomburgk and Ms Vigar, as already identified, the proposed development is not necessarily in any material conflict, in the sense that the SBC would still be a multifunction employment node.^[113] That said, the mix of businesses and therefore the mix of employment, would be materially altered.

[104] For the reasons given, the proposed development is, at face value, consistent with the needs of the community and would have no negative impact on the timing and construction of the external and internal road systems including Walter Hay Drive. Indeed, the proposed development would bring forward those works and other services. Also, a substantial area of open space would still be able to be provided.

[105] Overall outcome for the Noosaville Locality Plan 11.8.2(w)(xi) is intended to see that the SBC:

“Is developed into precincts, as depicted on Schedule 4 – Shire Business Centre Map, which include a dynamic mix of development within appropriate integration of uses within each, including –

(A) Business precincts.

(B1)-(B2), which provide for the highest order of retail development in Noosa and comprises the retail core of the Shire business centre site, with associated car parking generally located with precinct B2;

(B) Precinct B3, which provides for showroom and office development;

(C) Employment Precincts (E1-E7) for future employment growth, which include precincts (E1, E2, E3) with preferred themes to allow these precincts to take advantage of new employment opportunities;

(D) a civic area located within Precinct E1, which provides for a range of civic uses and functions;

(E) an inter-regional transit facility in Precinct E6;

(F) a Residential Precinct (RES), which provides residential support accommodation to the key precincts; and

(G) a Minor Recreation/Minor Mixed Use/Open Space Precinct (REC/MU) developed for the purposes of a minor recreation use or minor mixed use development.”

[106] The various precincts are shown in various documents tendered during the course of this hearing, but for the purposes of these reasons I will refer to the map shown in Exhibit 1 at p 12. By reference to that map, the existing shopping centre is located within those precincts identified as B1 and B2 and within the circular road network containing Precincts B1, B2, B3, E1, E2 and OS7.

[107] Precinct E1 would be entirely occupied by the proposed development. By reference to the SBC plan it can be seen that it was designated for the use of “EMPLOYMENT (technology based R&D business offices and civic)”. Precinct E7 will also be materially affected in that some 2 ha of the northern part of that precinct will be required to accommodate the relocation of the roadworks (including a roundabout) at the southern end of the proposal.^[114] The planned use for Precinct E7 is identified in the SBC plan as being “EMPLOYMENT (business and offices)”. There is also the inconsequential intrusion along the western edge of the precinct E6.

[108] Precinct OS7 is identified as “OPEN SPACE (environmental drainage)”. The footprint of the shopping centre would extend into the south eastern section of Precinct OS7 to the extent of some 900 m² (or about 19%) and a walkway designed to connect the existing and proposed centres will also be constructed toward the northern end of the precinct.^[115] Insofar as the footprint of the proposed development intrudes into Precinct OS7 is concerned, I do not consider that creates any material conflict with the planning scheme. In this context I agree with Mr Reynolds, and Mr Schomburgk,^[116] that the shape and extent of the OS7 was effectively replaced by the area identified in covenant J.^[117]

[109] Before proceeding further, Precinct E3 was originally planned for environmental R&D and other businesses. Generally speaking, it has been developed for industrial warehouse/showroom purposes. That is, for inconsistent uses.^[118] In this regard though I am satisfied that the existing development within that precinct does not reflect any material change in the planning philosophy of the respondent. It is more likely that that relatively isolated precinct was simply recognised as one more appropriately located to accommodate industrial uses similar to that occurring immediately to the west.^[119]

Noosa Junction

[110] The size of the proposal and, more particularly, the number of specialty stores was a matter considerable concern to Mr Duane. The fundamental issue being whether the number and variety proposed would have a material negative impact on other centres and, in particular, Noosa Junction.

[111] In his court report Mr Duane stated:[120]

“In paragraph 151 of the joint economic report, I agree that on the population figures **an additional discount department store, an additional supermarket, and some complementary specialty shops could be justified in this trade area. The level of need was not the subject of agreement and I was only ever able to support a considerably smaller scale expansion – again on purely economic terms putting aside planning considerations which are beyond my expertise...**” (Emphasis added)

[112] Mr Duane concluded:[121]

“**The subject proposal at in excess of 22,000sq.m is larger than the market can sustain without resulting in a high level of impacts on the next three largest centres in the Noosa Shire including Tewantin, Noosaville and Noosa Heads.** The absence of any agreements for lease from major retail traders brings into question the extent of the need for this proposal.

The level of impacts at up to 15% including cumulative impacts from other proposed developments will likely lead to a high level of vacancy in the short to medium term, with minimal opportunity to regain sales over time given the low population growth in the trade area.

...

In terms of vacancies, Noosa Junction is likely to experience the highest level of vacancy with an already high level of vacancy at over 10% of stores.” (Emphasis added)

[113] Mr Duane reinforced his views in his court report[122] and his cross-examination.[123] However, of note, he was unable to particularise in what way his more limited range of speciality shops might vary from that proposed.

[114] While I do not accept the proposition that the absence of any agreements for leases brings into question the extent of the need for the proposed development, I am otherwise persuaded by the conclusions reached by Mr Duane concerning Noosa Junction.

[115] Mr Shimmin summarised the “practical consequences” of the proposed development in his court report in the following terms:[124]

“In addition to understanding the likely impacts based on an understanding of current spending behaviour, especially the level of escape spending, it is also relevant to note the market orientation of the specialty stores in each location.

The apparel retailers in Noosa Junction, for example are largely targeted to the visitor market (i.e. the stores offer mainly resort wear). All of the stores are independent and boutique labels.



Similarly the homewares stores appeared to be positioned largely to cater for the visitor market as well, albeit probably more so the owners of holiday homes and rentals.

The apparel and homewares are two of the smallest categories in Noosa Junction; comprising 15% of shopfronts, with other uses therefore clearly dominating its role and function...

Consequently, it would be reasonable to expect minimal impact from the proposed development on these types of stores for the following reasons:

(i) To the extent that they cater to the visitor market, and these customers stay in or around Noosa Heads, Noosa Junction should be quite resilient.

(ii) To the extent that the leasing strategy for the subject development proposal aims to attract national brands and other retailers that are currently being sought out further afield (i.e. escape spending), Noosa Junction should be quite resilient.

*(iii) Most of the impact in Noosa Junction is likely to fall on the Coles and IGA Supermarket, and the Target Country store in Noosa Junction Plaza, by virtue of the new supermarkets and DDS at  **Noosa Civic** .*

It is also relevant to note that almost 25% of all shop front uses in Noosa Junction are non-retail businesses such as medical related, accountants, banks, training, gyms and travel agents. A further 14% are retail services and 70% are food catering establishments.... These are important differentiators for Noosa Junction, and these categories will be largely unaffected by the proposed expansion.” (Emphasis added)

[116] Other practical consequences, with a focus on community rather than individual business effects were summarised as follows:

(i) There has clearly been lack of investment in the supermarkets throughout the trade area, and also the physical appearance of stores generally. In a more competitive environment this can be expected to improve in the future, to the benefit of shoppers generally.

(ii) Both Coles and Target will be provided with the opportunity to trade out of full size stores enabling a full range to be offered. Even if Target chose to close the Target Country store in Noosa Junction the community is likely to be better off due to

the greater range available and the convenient access to a full line Target store. Moreover, the two entrances to the Target Country would make the space quite adaptive. It could easily be split into two or more tenancies if required. In any event, the possible relocation of Target would not change the role or function of Noosa Junction. In conclusion, it is highly unlikely, in my view, that the impacts on Noosa Junction, Noosaville and Tewantin will be as estimated by Duane. (Emphasis added)

[117] On the evidence before me, including that dealing with consumer behaviour, it seems likely that the Target Country would close and relocate (as a Target DDS) to the proposed development and, those shoppers loyal to Coles would split between Noosa Junction and the proposed Coles. In this context, it also has to be borne in mind that the proposed development also includes a substantial Aldi store. Further, where residential development is constrained to the east by the ocean and to the north by other environmental constraints, it is likely that the slippage to the proposed supermarkets would be significant.

[118] No likely tenant or tenants for the vacated Target Country floor space were identified and, given the existing vacancy levels, it would not be unreasonable to expect that some difficulty might be encountered in filling that space either with retail or non-retail uses. Noosa Junction already has a high level of vacancy at over 10% of stores.[\[125\]](#)

[119] Another area of concern I have regarding the evidence of Mr Shimmin was his assertion that one of the important differences between Noosa Junction and the proposed development was the emphasis on food catering establishments. The proposed development intends that a significant amount of floor space will be occupied by dining facilities including restaurants. These uses are clearly important experiential elements that would “entice people to visit, linger and socialise as well as shop.”[\[126\]](#)

[120] I have little doubt as Mr Shimmin said, that a significant number of people who shop at Noosa Junction would be tourists and therefore probably less likely to be interested in having to drive any material distance (or indeed drive at all) to carry out their shopping. That said, the experiential features of the proposed development combined with the existing shopping centre might be expected, as the evidence of Ms Say would suggest, to attract shoppers that might otherwise have not been particularly interested in travelling as far as the proposed development.

[121] It is clear from the evidence of Mr Shimmin that the proposed development, together with the existing centre, is intended not only to be viable but also vibrant and better than the “average” shopping centre. According to him, the size of the centre Mr Duane contended for would bring what is proposed “back to effectively the average.”[\[127\]](#)

[122] During cross-examination by Mr Hughes QC, Mr Shimmin accepted that the Coles supermarket at Noosa Junction was an important anchor tenant which would be materially affected if the proposed development went ahead. In this context the following exchange took place:[128]

Q: Now, what I'm suggesting to you is the new Coles will be much more convenient to access for all of those people living to the west of Weyba Creek than is the existing Coles in Noosa Junction?

A: Yes. It will.

Q: So what's going to happen is for the Coles loyal people, they are going to be split between the two and there's no doubt that the trade at Coles Noosa Junction will suffer, correct?

A: Yes.

Q: And that has knock on effects can I suggest, because the trade generated by Coles at Noosa Junction is that generated by the major anchor tenant at that Centre correct?

A: You'd expect there to be some effect.

Q: More people will be going to Coles at Noosa Junction than any other retail outlet in Noosa Junction correct?

A: Not necessarily.

Q: Name me one other outlet at Noosa Junction that will attract more visits than the Coles.

A: Probably Coles.

Q: Sorry?

A: At Noosa Junction.

Q: Mr Shimmin I suggest to you that Coles is a retail outlet [sic] at Noosa Junction which will attract more visits and more customers than any other retail outlet at Noosa Junction?

A: Yes. I agree with that.

Q: Do you agree with that?

A: Yes.

Q: There's no doubt about that in your mind?

A: No doubt.

Q: OK. Well, we can move on. Now, the problem is with the anchor tenant when you split the trade or diminish the trade of an anchor tenant there are obvious knock-on effects for the other tenant who, to use a colloquial expression, trade off the traffic generated by the anchor tenant, correct?

A: Yes. That's – that's correct.

Q: Right. And in this case there is no doubt that by opening a new Coles to the west there will be a split in the Coles loyal trade?

A: That's correct.

Q: There is another issue, with respect to Noosaville [sic] and that is respect to Target because Target Country presently trades in Noosaville [sic] correct?

A: In Noosa Junction. Yes.

Q: At Noosa Junction sorry correct?

A: Yes.

Q: And there's no doubt if this proposal goes ahead and QIC is successful in attracting Target to the proposal they will focus and close their Target shop at Noosa Junction and move across and focus on competing with KMart at the – sorry, with Big W at the **← Noosa Civic →** Centre?

A: I think that's a reasonable expectation.

Q: So in terms of Noosa Junction there is potential for two very obvious negative hits, that is, there'll be vacancy in that Noosa – sorry, there will be a vacancy where there is a presently [sic] Country Target and, secondly, there will be an impact on the trade of Coles loyal customers to the Coles supermarket?

A: Yes."

[123] The appellant relied on the existing approval for the expansion of Coles at Noosa Junction. While inconclusive, the evidence of Messrs Duane and Mr Shimmin leaves me unconvinced that that approval will be acted upon, at least into the foreseeable future.

[124] It may be accepted that by 2021, turnover at Noosa Junction will increase in the order of \$9 million. However, the evidence is clearly to the effect that the proposed development will have a material negative impact on Noosa Junction. In this context, I accept Mr Duane's evidence that recovery could take up to 7-10 years. Indeed, the impact could be so significant as to require Noosa Junction to "re-invent" itself in the manner described by Mr Shimmin, discussed below.

[125] In a particularly long answer, Mr Shimmin explained how he saw Noosa Junction reinventing itself in the event of the proposed development going ahead. These included an injection of capital to refurbish the existing Coles, the amalgamating part of the “fragmented” nature of the Noosa Junction Centre and looking for other opportunities to take advantage of Noosa Junction’s locational attributes or advantages.[129]

[126] During part of his answer Mr Shimmin said:

“... so when I say I think exactly the opposite to what Mr Hughes is putting to me, I think that this presents a terrific opportunity for reinvestment. Now, on top of that, I think there’s also an opportunity for Council because it’s not all in the hands of the private sector. There’s a great opportunity for Council here to introduce a place making strategy and to really improve the ambience of Noosa Junction. There’s a great opportunity for Council to introduce a main street program with a manager that enables events and marketing activities to be co-ordinated in the junction. **And there’s a great opportunity for Council to really think about Noosa Junction as a significant place for not only the local residents in that secondary north east, but tourists in particular because, to be honest, nothing much has happened there for a long time. And – and I’m sure there’s lots of people who have property there in their superannuation funds that haven’t seen the need to reinvest...**” (Emphasis added)

[127] Following that answer the following exchange took place between Mr Shimmin, Mr Hughes and myself:[130]

Q: Mr Hughes: Mr Shimmin, can I suggest to you everything you’ve said is quite incredible in a market which is fixed in terms of the amount of dollars in the trade area to be spent. Who is going to invest in redeveloping Noosa Junction when QIC has approval to develop 50,000 m² of retail at the business centre? Who’s going to do that? You?

A: Your Honour, if I owned property there I would – yes – for the reasons I’ve just said. I think we mustn’t talk Noosa Junction down because it is in a great location. It has great attributes.

Q: His Honour: but leaving – leaving aside the rhetorical question by Mr Hughes being “you”, who would be such investors, do you think?... You don’t have to give names, but the categories or types of investors?

A: Its – its – when you – and I do know Noosa quite well, your Honour, and when you think about unit development in Noosa anywhere from the junction down to Hastings Street, its actually pretty hard to – to see where there’s opportunities for further tourist accommodation. And so one group that might be interested would be

a group that would consider building holiday apartments or even just permanent apartments in the main street of Noosaville [sic] with ground level activity.

Q: His Honour: Are you saying that there be a shift of focus away from retail towards accommodation, which in turn might then stimulate retail investment?

A: Yes, yes. I think that, you know, one – it was a little bit like Maroochydore back in the 90s where there was all sorts of a hullabaloo about the opening of Sunshine Plaza. But, in fact, what happens is that there is a lot of regeneration that goes on as a consequence.

Q: Mr Hughes so we need to redo the planning entirely, effectively?

A: I believe that has been suggested already.

Q: So on the basis of the present planning, we're constricted. We can't do what you want to do. But if we revisit the planning, then we can achieve the sort of result you're talking about and recommending we do?

A: Your Honour, I'm simply saying that I think that Noosa Junction has some terrific attributes and the proposed development could arguably be a catalyst for reinvestment.

Q: Is there anywhere on your economic theory or analysis prospect that we touched on before that when a town planning scheme designates an area as a centre, that area ought be protected for centre uses and its redevelopment, as and when necessary, ought be encouraged and facilitated?

A: I don't believe that's in the report."

[128] Insofar as the potential economic impact on Noosa Junction is concerned, I prefer the evidence of Mr Duane to that of Mr Shimmin. First, it was very likely that Mr Shimmin had materially understated the likely impacts on Noosa Junction. Second his "rejuvenation" of Noosa Junction seemed to be more of an afterthought than the result of considered planning and/or economic analysis. It failed to have proper regard to the existing planning regime, and would result in Noosa Junction changing its character from being a recognised business and retail district into one dominated by residential development with a subordinate business/retail component.

[129] Ensuring that Noosa Junction remains a viable and vibrant commercial centre is clearly important. The proposed development is in conflict with the planning scheme in that it would materially impact on the viability and vitality of that centre in a negative way. This is not a case of standing in the way of an economic competitor but one involving ensuring the ongoing viability of an important asset within the respondent's local government area.

[130] That Noosa Junction has a distinct competitive edge insofar as tourism expenditure is concerned and that that expenditure is likely to increase over time does not in any material way offset the concerns raised by Mr Duane, which I have accepted, in this regard. Nor is it an answer to say that Noosa Junction's "historic" role as "the principal business centre" was envisaged to change with the development of the SBC.^[131] The envisaged development of the SBC did not include another DDS, two substantial supermarkets and numerous speciality uses.

[131] The negative economic impacts on the centres located at Noosaville and Tewantin are relatively minor in the scheme of things and do not warrant further discussion.

Conclusions

[132] I have found this to be a finely balanced case. There is a clear community need for an additional discount department store and at least one major supermarket tenant and some more speciality shops and other uses. The site is clearly a logical one and there is sufficient land available to accommodate both the expansion of the shopping centre and other commercial non-retail uses. A development of the type proposed is also not, on its face, entirely inconsistent with the planned "mixed use" for the SBC and would be a significant generator of employment and may also simulate and accelerate other commercial development within the centre.

[133] However, it is in serious conflict, with important elements of the relevant planning documents. The intended and planned use for Precinct E1 is annihilated and the amount of land available for planned uses in Precinct E7 has also been seriously compromised. Further, I am unable to accept that the extent of the development as proposed would not have a significant negative impact on Noosa Junction.

[134] There is little room for doubt that the respondent's planning for commercial uses other than retail have been materially, if not grossly, optimistic. That said, the respondent has legitimately decided that it should structure its planning scheme so as to encourage other non-retail commercial enterprises and reduce its dependency on the tourism industry. The respondent's planning scheme does not stand alone in that regard. The South-East Queensland Regional Plan 2009 – 2031 (SEQRP), while recognising that retail employment is a very significant matter in the context of the overall wellbeing of the Sunshine Coast community, also recognises the need for diversity and, of relevance, places an emphasises on science and technology.

[135] By way of some examples the SEQRP states:^[132]

“The expansion of science and technology opportunities at the Noosa Business Centre Technology and Industrial Hub will also facilitate employment growth and diversity...”

[136] Also:[133]

“Locations recognised as ‘new economy’ science and technology opportunity areas have been mapped and profiles prepared (see Map 13 and Map 14). These areas occur where the government and private sector organisation have invested major research infrastructure and where land must be secured to create future creative industry, science and knowledge based hubs in SEQ.”

[137] The subject SBC is one of those mapped areas,[134] but it must be noted that to date there has been no government and/or private sector investment in major research infrastructure which has or might impact on the SBC. The overall demand for non-retail commercial uses has otherwise already been dealt with.

[138] A policy of the SEQRP is to identify and set aside strategically placed land to facilitate for future business and industry uses to meet the long term needs of the community of South-East Queensland.[135] It also advocates the need to plan for balanced employment growth and the securing and protecting of appropriate locations for future employment and enterprise expansion.[136] Indeed the plan provides:[137]

“Strategically located land for existing and future innovation, science and technology hubs **should be protected for the long term from inappropriate use and the encroachment of incompatible land uses.** Any proposal that could erode the future use of such land for industry and business purposes should be reviewed against the long term business and employment needs for the land.” (Emphasis added)

[139] That language has a number of striking similarities with Part 3 of the planning scheme which speaks of:

“Protecting the long term variability of the Shire Business Centre may mean setting aside short term needs to ensure the medium - long term implementation of the centre....”[138] (Emphasis added)

[140] As identified above, there is evidence that the respondent has honoured that philosophy by rejecting the 2008 Urban Economic recommendation to sacrifice Precinct E1 for retail uses.

[141] The sufficient grounds argument is substantive. However, the proposed development would bring to an end the intended use of Precinct E1 and materially impinge on the land available for the Precinct

E7 uses. It is not a complete answer to say that there remains an abundance of land for mixed uses and why, by way of example, could not the Precinct E1 uses be relocated, at least in part, to Precinct E2 and/or Precinct E7.

[142] In the appellant's written reply it is asserted^[139] *"it can be accepted that it cuts across the intent for Precinct E1, but the aspirations for the SBC can still be achieved"*. While I am able to accept that the boundaries of the relevant Precincts as shown on the plans should not be seen as being set in stone, the rearrangement of precincts that would be necessary to accommodate both the proposed development and the intended uses goes well beyond what could be reasonably contemplated. To permit the proposed development to go ahead would, effectively defeat a clear and long standing statement of planning intent.

[143] The SBC would go from one with a focus on establishing a *"dynamic mix"* of commercial development and community facilities which would *"include a shopping centre anchored by a discount department store"* to one being dominated by a shopping centre with the business uses having to be largely accommodated at its fringes.^[140]

[144] During the course of Ms Vigar's cross-examination the following exchange took place:^[141]

Q: So is your [indistinct] taking E1 out, is your concern about changing the personality of the site from being one which was intended to be retail with various mixed uses to being one with retail and various mixed uses, but where the retail is in fact the dominant element?

A: Yes your Honour. It's – Its basically changing the – the heart of the centre of the town centre from a mixed use town centre to a shopping – a big shopping centre."

[145] It might be unusual to describe a business centre as having a "heart" but I understand the thrust of Ms Vigar's evidence and consider it persuasive.

[146] It was submitted on behalf of the appellant that:

1. "As to Precinct E1, the intent for that precinct is no more 'core' than the intent for any other Precinct. Precinct E1 is one of seven employment precincts having a significant number of common consistent uses ... approval of the development would not frustrate the Council's strategy of the SBC."^[142]

[147] With respect, that submission misses the point. It fails to address and give sufficient weight to the clear planning intent that the core, or

physical centre of the SBC not be dominated by retail uses, but be comprised of a meaningful mix of retail and non-retail business uses.

[148] Before turning to the application of some of the cases to which I was referred to in submissions, there is one further matter I should address. Earlier I referred to the proposed development meeting community needs **at face value**. The reason for that caveat was that I am not satisfied that the benefits to the community provided by the proposal would offset the negative consequences that would likely flow from a significantly weakened centre at Noosa Junction.

[149] Also, in this context, I am not satisfied that there is genuine community need for two more supermarkets (Coles and Aldi)^[143] nor for the number of speciality shops proposed. In respect of the latter, the evidence of Mr Shimmin^[144] leaves me with the distinct impression that the number and diversity of the intended speciality shops was more concerned with maximising the experiential nature of the centre and thereby maximising custom and viability rather than with meeting a real latent unsatisfied community need for so many and varied speciality shops and other uses. Or, to use the words of the appellant, *“to serve the needs of the community.”*^[145] That is particularly so in respect of the restaurant and café components which are designed to *“appeal to the lifestyle needs of the community as well as to tourists.”*^[146] It is not in dispute though that the proposed development would predominantly serve the local permanent community.

[150] In *Zappala Family Co Pty Ltd v Brisbane City Council*^[147] the Court of Appeal noted that the same principles that apply to statutory construction applied to the construction of planning documents. However, I accept the submission made on behalf of the appellants that planning schemes should be construed broadly with a sensible and practical approach. They should be construed as a whole and in a way that best achieves the planning schemes apparent purposes and objects. Further, conflict alone may not have the effect of ruling out a particular proposal.^[148]

[151] That land has been identified for a particular use within the planning scheme and not of itself be conclusive. In *City Area Leases Ordinance 1936 v Axiom Pty Ltd*^[149] Kelly J said:

“Acceptance of the submission that land use may never be changed because of changed circumstances involves the proposition that once a particular land use for land is fixed upon that use remains the only use to which that land can be put by the authority exercising town planning functions. Such a view takes no account of the ordinary changes which take place over any reasonably lengthy period in any city, changes which are usually brought about as a result of the movements of people

from old to new places of residence and from old to new places of business. Such ossification as the proposition would lead to was inconsistent with ordinary human experience and cannot have been in the mind of parliament.”

[152] It is also recognised that this court may depart from clearly stated planning intentions where it is evident that the local government has itself departed from that intent or where the subject land has been given a designation that was and remained invalid in the overall scheme of things.[150] Departure from the objects of a planning scheme may also be justified in circumstances where the planning grounds in support of the current arrangements could be described as being absent or weak.[151]

[153] However, it is equally well recognised that this court should adopt a “self-limiting approach at least when considering town planning matters...”[152] That it is not the function of this court to substitute planning strategies has also been stated in a number of cases. In *Elan Capital Corporation Pty Ltd & Anor v Brisbane City Council & Ors*[153] the court said:

“It should not be necessary to repeat it but this court is not the planning authority for the city of Brisbane. It is not this court's function to substitute planning strategies (which on evidence given at a particular appeal might seem more appealing) for those which a planning authority in a careful and proper (sic) has chosen to adopt.... Adopting the phraseology of those cases which deal with the non-derogation principle, I feel that to allow this appeal would be to, ‘cut across’, in quite an unacceptable manner, a planning strategy which has been adopted by the planning authority and publicly exhibit for community comment.”

[154] That this court is not the planning authority and therefore should not readily substitute deferent planning objects and strategies was also recognised by the Court of Appeal in *Australian Capital Holdings Pty Ltd v Mackay City Council & Ors*. [154] However, as was observed in both *Grosser and Jensen* and *Bowers* departure from even long standing planning intentions may be warranted in certain circumstances. In *Beck v Atherton Shire Council*[155] Quirk DCJ relevantly said:

“The court has however, repeatedly stressed the importance of strategic planning and the need to respect and support the integrity of the important planning tool which the Strategic Plan is. There may be cases where a departure from the Strategic Plan would be justified; **Where, for example, the planning strategies which it represents, having been overtaken by events (or for some other reason), clearly no longer having application; or where it can be demonstrated plainly the land has been given a designation on the basis that was and remains invalid.** One would expect such cases to be rare...” (Emphasis added)

[155] It would be wrong to characterise the subject planning scheme as being one overtaken by events. No event, such as an unexpected increase in population or material shift in public expectations has occurred. The proposed development is not a response to any particular event. It is largely responding to an identified community need in the sense of providing greater choice, variety and convenience in circumstances where there is an over supply of land available for non-retail uses.

[156] In this context, it is not as if the residents (permanent and tourists) of Noosa exist in a virtual retail wasteland. Centres offering varying retail choices are present in locations including the existing subject centre, Tewantin, Noosaville, Noosa Junction and the expanding centre at Maroochydore. It may well be that those centres might be less convenient than that proposed to some residents, but the inconvenience could not be described as being unreasonably onerous.

[157] Nor has there been any material change or inconsistent planning decisions made by the respondent. There has been some inconsistency in the types of uses approved in the E3 Precinct but the background that has been explained above. I agree with the evidence of Mr Schomburgk and Ms Vigar that the planned mix of uses within the SBC is the product of a "clear and longstanding statement of planning intent".[\[156\]](#)

[158] It may well be that the amount of land identified and set aside for commercial uses within the Noosa local government area, including the SBC, was based on faulty or invalid data, assumptions and predictions. That however does not mean that the uses identified for Precinct E1 or, for that matter E7, were made "on the basis that was and remains invalid".[\[157\]](#) That the core or centre of the SBC be comprised of a mixture of commercial uses and not dominated by retail uses remains a legitimate planning aspiration, notwithstanding the over supply of commercial land.

[159] In support of its case, the appellant pointed out that, depending on population growth, it could take between 138 to 294 years to reach full occupancy of the SBC.
[\[158\]](#) That is powerful evidence in favour of the appellant. However, it does not tell the whole story. Of the 79, 826m² of capacity, Precinct E1 would represent slightly less than half once the Civic designated area is taken into account. Further, it is a material consideration that this precinct, together with Precinct E2, and the only Employment/Business precincts within the centre or core of the SBC.

[160] In Australian Capital Holdings the Court of Appeal was concerned with a case involving significant conflict with the planning scheme and "persuasive" grounds for approving the development notwithstanding the conflict. In the leading judgment of Muir JA (with Holmes JA and White J (as she then was) agreeing) summarised the position of the primary judge:[\[159\]](#)

“the primary judge then concluded ACH had satisfied its onus and explained, ‘To balance the conflict noted, ACH can point to its proposal satisfying community needs for the new supermarket and for the new road’.”

[161] His honour, after citing with approval a number of cases and, in particular, *Grosser v Council of the City of Gold Coast*^[160] also went on to cite with approval the reasoning of Jerrard JA (with McMurdo P and Philippides J (as she then was) agreeing) in *Leda Holdings Pty Ltd v Caboolture Shire Council & Ors*. The passage from the judgment of Jerrard JA cited by Muir JA is:^[161]

“Those authorities were cited to show that conflict between a development application and (sic) strategic plan was often fatal to the application, even prior to the introduction of s 4.13(5A) and its counterparts in 1992.....(as has been said repeatedly, this court is not the planning authority for this area and it is my view that it would inappropriate for the court to approve a proposal which is squarely in conflict with the formally expressed planning strategies of that authority).....(the Strategic Plan and the Strategic Plan Map are legitimate planning tools adopted by a Local Authority for the future planning of the Local Authority Area. The Local Authority in those circumstances is planning ahead and endeavouring to direct its future planning process in an orderly manner)..... (The Court has however, repeatedly stressed the importance of strategic planning and the need to respect and support the integrity of the important planning tool which the Strategic Plan is. There may be cases where a departure from the Strategic Plan could be justified; where, for example, the planning strategies which it represents, having been overtaken by events (or for some other reason), clearly no longer have any application; or where it can be demonstrated plainly the land has been given a designation on the basis that was and remains invalid)..... (The significance of strategic planning, particularly on rezoning applications, has been recognised by the Court on many occasions. Since the forward planning documents of a Local Authority are indicative of the intent of a planning authority as to the future preferred form of development that it sees for its Local Authority area, considerable weight ought to be given to the provisions of forward planning documents of a Local Authority).” (citations omitted)

[162] After a consideration of the nature of the conflict, the sufficient grounds asserted on behalf of the developer and the relevant case law his honour concluded that the “considerations, taken in combination, warrant the conclusion that the primary judge failed to apply the principles referred to ... above and thus erred in law.”. Accordingly his Honour concluded that the appeal ought to be allowed and the decision of the primary judge set aside.^[162]

[163] White J (as she then was) after agreeing with the reasons for judgment of Muir JA went on to say:^[163]

“(I) agree with his Honour in finding that there were insufficient planning grounds to justify approval of the development application by the Judge below departing, as he did, from the well-established principle that a planning court ought not substitute its own preferred planning strategies in place of carefully developed schemes of the planning authority, particularly where the schemes have recently been reviewed.”

[164] The final case to which I will refer is one relied on by both the appellant and the co-respondents, *Hydrox Nomineers Pty Ltd v Noosa Shire Council*.^[164] In *Hydrox, Rackemann DCJ* allowed an appeal against the respondent’s refusal of a development application for a Masters home improvement centre in the Precinct B3 in the North West of the same SBC. Substantive reasons for allowing the appeal were that the conflict with the planning scheme involved land at the “periphery” of the SBC and that there was a “significant and public or community need” for the proposal.^[165]

[165] *Hydrox* can be distinguished from this case, in that the conflict involved here goes to the core or centre of the SBC and involves a much more extensive area of land. Also, unlike the situation here, while I accept there is genuine need for development generally of the type proposed, I do not accept that there is a significant need for a development of the scale contended for.

[166] Notwithstanding the distinction between the two cases I do however respectfully endorse the observation of Judge Rackemann that:^[166]

“The court has always been keen to ensure that a new facility at an unplanned location not prejudice facilities offered or potentially to be offered in a planned centre. That was relevant to this court’s rejection of the initial Bunnings proposal. This is not however, a case of “out-of-centre” development which might impact upon existing or proposed in-centre development. The subject site is an “in centre” location which is proposed for a facility which would compete mainly with existing out-of-centre retailers.” (Footnote deleted)

[167] The positives associated with the development proceeding are real. However, for the reasons given I am unable to accept that those positives to the community are as substantial as contended for by the appellant. The level of conflict together with the other negative consequences associated with the proposed development, when taken in combination, leaves me in the situation where I am not satisfied that there are sufficient grounds to justify the proposed development.

[168] Lest there be any doubt about things, the reasons I have concluded that the combination of conflicts outweighs the sufficient grounds advanced by the appellant are, in ascending order:

(i) the negative traffic implications;

(ii) the likely negative outcomes for the intended “Civic” area;

(iii) the bulk and scale of the proposed development insofar as it could result in more intensive development and that it does not enhance or form an extension of OS7/ Covenant J;

(iv) the likely overestimation of the need for and the extent and variety of speciality shops;

(v) the likely negative impacts on the Noosa Junction Centre; and

(vi) the substantive conflict between long term proposed use and mix of uses intended for the SBC, at its centre or core.

[169] For the sake of completeness, I would also point out that I do not consider that no retail development within Precinct E1, or, for that matter E2 and E7, should be permitted provided that a significant area within E1 was left for its intended use. That however is not the situation before me. Finally, while the supply and demand evidence was not so compelling so as to warrant upholding this appeal, it could in my view, warrant the respondent investigating further the extent of land designated for the planned uses for Precincts E6 and E7 and, given its location west of OS7 and proximity to the existing shopping centre, possibly E2.

[170] For the reasons given the orders of the court are:

1. The appeal is dismissed;

2. I will hear from the parties (if necessary) as to any consequential orders.

[1] See Exhibit 30.

[2] Exhibit 10, p 4.

[3] E.g. see Exhibit 1, p 33.

[4] Transcript (T) 2-34, ll 37-40.

[5] T2-54, ll 5-10, Exhibit 17 Fig 6(the “roofed area” includes some 3,300m² of overhangs and open spaces).

[6] Affidavit of Mr Wilson: also T7-35.

[7] See, for example, Exhibit 28 and Exhibit 1 at p 32.

[8] E.g. see Exhibit 1, p19 and Exhibit 40.

[9] See Exhibits 28 and 39.

[10] Exhibit 10, p 7.

[11] E.g. see Exhibit 39 and Exhibit 10, p 61.

[12] Exhibit 10, p 12.

[13] T1-20, II 40-45 – T1-21, II 1-7.

[14] T1-69, II 33-45.

[15] At para 31.

[16] T8-7, II 4-32 per Mr Reynolds. T8-52, II 15-30 per Mr Schomburgk. Also Exhibit 10 at pp 44-50.

[17] S 493 of SPA.

[18] Exhibit 41.

[19] Exhibit 42.

[20] Exhibit 43.

[21] Exhibit 44.

[22] Exhibit 45.

[23] Exhibit 46.

[24] Exhibit 47.

[25] Exhibit 48.

[26] Exhibit 49 and 50.

[27] T2-39, II 32-47, T2-40 II 1-3.

[28] Exhibit 6, Tab 4, pp 1-1, 1-2.

[29] E.g. see Exhibit 38.

[30] Exhibit 10, p 39.

[31] Exhibit 23, para 36.

[32] Exhibit 29, p 2, para 5(a).

[33] T8-80, L 1-4. See also Mr Vigar at T9-7, L 27-42.

[34] Mr Schomburgk T8-78, II 27-45; T8-79; Ms Vigar T9-7, II 27-42.

- [35] Exhibit 6, Tab 9, pp 11-33& 11-65.
- [36] Written reply at para 78(c).
- [37] E.g. Exhibit 1, p 33, Exhibit 2A, p 8, Exhibit 3, p 4.
- [38] T7-85, L 40-47; T7-86, L 1-35.
- [39] T7- 84, L 22-44.
- [40] Exhibit 11, p 1.
- [41] See also Mr Beard at T4-11, ll 1-10.
- [42] Exhibit 25, p 7.
- [43] Exhibit 11, Tab C, p7.
- [44] Ibid, Tab A, p 10.
- [45] T3-59, ll 27-40.
- [46] Exhibit 11, Tab A, p11.
- [47] See also at T4-17, ll 27-37& T4-29, ll 17-32.
- [48] Exhibit 25 at p7.
- [49] T4-18, ll 7-10.
- [50] Exhibit 25, p 7.
- [51] T4-18, L 47.
- [52] T4-19, ll 35-42.
- [53] T4-18, ll 14-34.
- [54] T4-21 to 4-23.
- [55] T4-25 to T4-27, ll 1-5.
- [56] E.g. see T4-19, ll 15-33.
- [57] T4-28, ll 1-10.
- [58] Ms Say, T5-3, ll 33-44: Mr Duane, Exhibit 12, p 18, para 62.
- [59] T5-3, ll 45-47, T5-3 ll 1-5.
- [60] T5-4, ll 6-25.

- [61] T5-14, II 33-45, T5-15, T5-17, II 16-40.
- [62] Exhibit 13, Tab B, p 38.
- [63] Ibid, p 39.
- [64] Ibid, p 66.
- [65] Exhibit 21, p 10.
- [66] Exhibit 13, Tab B at p 31.
- [67] Ibid, pp 31-32.
- [68] Ibid, p 74: See also p 58, paras 238-239.
- [69] Ibid, p 75.
- [70] Exhibit 61, V2, p 600.
- [71] Exhibit 6, Tab 4, p 1-2.
- [72] Exhibit 6, Tab 6, p 3-3.
- [73] T8-38, II 21-34.
- [74] See Exhibit 28A.
- [75] T4-76, II 15-26.
- [76] T4-68, II 39-40.
- [77] T4-69, II 1-4.
- [78] T4-71, II 1-18, also Exhibit 13, pp 49-50, para 198.
- [79] T7-2, L 36.
- [80] Exhibit 5, Tab 15, p2.
- [81] Exhibit 4A, Tab 5(a)(p 106-109).
- [82] Ibid para 475.
- [83] Exhibit 14, Tab B, p 49, para 151.
- [84] Ibid, p 49, para 153.
- [85] [1998] QPELR 273 at 275.
- [86] [2003] QPEC 2; [2003] QPELR 414 at paras [21] & [26].

- [87] Exhibit 10, p 44.
- [88] E.g. Division 24: See Ex 6, Tab 9, pp 11-59 and onwards.
- [89] Exhibit 10, p 50.
- [90] Exhibit 5, Tab 15.
- [91] Appellant's written submissions, para 473, 474.
- [92] SPA, Schedule 3.
- [93] [2002] QCA 234; [2003] 2 Qd R 441 at para [36].
- [94] At paras [35]-[37], [44]-[46].
- [95] [2006] 1 Qd R 273 at [55].
- [96] [2012] QCA 370 at [21].
- [97] [2008] QCA 157 at [60].
- [98] Exhibit 10, p 46, para 221(i): also Exhibit 6 at Tab 6, p 3-2.
- [99] Exhibit 6, tab 9, p 11-33.
- [100] Exhibit 6, tab 9, p 11-60.
- [101] Exhibit 6, tab 5, p 2-21.
- [102] Exhibit 10, p 10: Exhibit 6, Tab 9, p 11-60.
- [103] Up to 940 full and part time jobs: Exhibit 14, Tab A, p 122.
- [104] E.g. see Exhibit 37A.
- [105] E.g. see Exhibit 2A, p 22.
- [106] E.g. see Exhibit 1, p 25; Exhibit 10, pp 37-38 and Exhibit 64, p 9.
- [107] Exhibit 6, Tab 9, p 11-62.
- [108] At para [39] above.
- [109] Exhibit 61, p 286.
- [110] In para [39].
- [111] Exhibit 6, Tab 9, p 11-65.
- [112] Exhibit 10, p 47, para 224.

- [113] OO11.8.2(w)(ii) in Exhibit 6, Tab 9, p 11-33.
- [114] See Exhibit 39. See also Exhibit 18 at p 9.
- [115] See e.g. Exhibit 28, A and Exhibit 3, p 3.
- [116] T8-44 II 1-5.
- [117] See Exhibits 32 and 35.
- [118] E.g. see Exhibits 28A.
- [119] T9-20 II 8-24.
- [120] Exhibit 24, para 3.1.
- [121] Ibid at paras 5.1(a), (b) and (f). (see also T7-4, II 27-40).
- [122] Exhibit 24, p 5, para 3.1.
- [123] T7-2, II 33-47.
- [124] Exhibit 16, pp 21-22.
- [125] Exhibit 24, para 5.1.
- [126] Evidence of Ms Say, Exhibit 15, paras 14-16: T5-5, II 10-18.
- [127] T6-27, II 27-40, **Restricted transcript.**
- [128] T5-66, L 20 to T5-67, II 1-23.
- [129] T5-77, II 13-43.
- [130] T5-77, II 43-47; T5-78, II 1-42.
- [131] Appellant's written reply at para 111.
- [132] Exhibit 7, p 23.
- [133] Ibid, p 113.
- [134] Ibid, p 116.
- [135] At p 122, policy 9.3.1.
- [136] Ibid, p 112, policy 9.1.3.
- [137] P 115.
- [138] Exhibit 6, Tab 6, p 3-3.

[139] At para [164].

[140] See generally Part 1 of the planning scheme s 1.7.7(c) in Exhibit 6, Tab 4, pp 1-5, also OO11.8.2(w)(xi), Exhibit 6, tab 9, p 11-33.

[141] T9-30. L14-28.

[142] Appellant's second written submissions, at para [3].

[143] Mr Duane's apparent agreement to more than one supermarket (Exhibit 14, para 151) needs to be seen in the light of his explanation of his support being for "an additional supermarket" and for a "considerably smaller scale expansion." (Exhibit 24, para 3.1).

[144] T6-27 to T6-30 **of the restricted transcript.**

[145] Appellant's second written reply at para [9].

[146] Restricted Transcript T6-30 ll1-23.

[147] [2014] QCA 147; [2014] QPELR 686.

[148] See generally *Westfield Management Ltd v Pine Rivers Shire Council & Anor* [2004] QPELR 337

[149] [1986] ACTSC 24 at para [68].

[150] *Grosser v Gold Coast City Council* [2001] QCA 423; (2001) 117 LGERA 153 at [44] per White J (as she then was).

[151] *Jensen & Bowers Pty Ltd v Redland Shire Council* [2003] QPEC 44; [2004] QPELR 86 at [25] per Robin QC DCJ.

[152] *Grosser* at [38].

[153] [1990] QPELR 209

[154] [2008] QCA 157.

[155] [1991] QPLR 56 at 59.

[156] Exhibit 10, p 47, para 224.

[157] *Beck* at p 59 cited with approval in *Leda Holdings Pty Ltd v Caboolture Shire Council* [2006] QCA 271 at 9-10: also *Australian Capital Holdings* at [56].

[158] Exhibit 52.

[159] At para [48].

[160] At [55].

[161] At [56].

[162] At [69].

[163] At [73].

[164] [2014] QPEL 18.

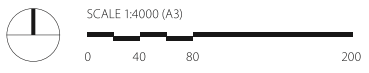
[165] *Hydrox Nominees Pty Ltd v Noosa Shire Council* [2014] QPEL 18 at [70] and [71].

[166] *Ibid* at [56].

RTI RELEASE



- LEGEND**
- Area Boundary
 - Major Road
 - Existing Road
 - Proposed Road (Indicative)
 - Proposed Bus Interchange
 - Existing Bus Route
 - Existing Pedestrian Crossing Point
 - Proposed Shared Space/ Raised Crossing
 - Key Pedestrian/ Cycle Link
 - Green Space/Recreation Open Space
 - High Density Residential
 - Innovation
 - Transit
 - Village Mixed Use
 - Business
 - Showroom
 - Public Congregation and Activation
 - Special Place - Arrival / Meeting/ Town Character
 - Primary Streetscape Treatment Area
 - Primary Active Street Frontage
 - Key Corner
 - Key View - Contextual
 - Key View - Localised
 - Gateway
 - Character Landscape
 - Contours @ 1.0m Intervals
 - Taxi Rank
 - SEQ Principal Cycle Network Including Priority Routes*
- *Routes shown are indicative only and guide further planning. These routes are not currently resourced.



Framework & Character Plan

New Noosa Plan

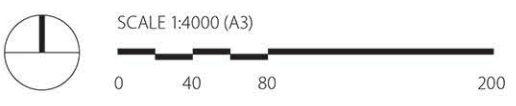


- LEGEND**
- Area Boundary
 - Major Road
 - Existing Road
 - Proposed Road (Indicative)
 - Potential Transit Facility *
 - Existing Bus Route
 - Existing Pedestrian Crossing Point
 - Proposed Shared Space/ Raised Crossing
 - Key Pedestrian/ Cycle Link
 - Village Green Space
 - High Density Residential
 - Innovation
 - Potential Transit Facility *
 - Village Mixed Use
 - Business Park
 - Small Scale Business
 - Public Congregation and Activation
 - Special Place - Arrival / Meeting/ Town Character
 - Primary Streetscape Treatment Area
 - Primary Active Street Frontage
 - Key Corner
 - Key View - Contextual
 - Key View - Localised
 - Gateway
 - Character Landscape
 - Contours @ 1.0m Intervals
 - SEQ Principle Cycle Network Including Priority Routes **
 - Taxi Rank

Disclaimer:

* Potential transit facility indicative only and subject to further investigation and resourcing.

** Routes shown are indicative only and guide further planning. These routes are not currently resourced.



Draft Framework & Character Plan

From: [Teresa Luck](#) on behalf of [Kerry DOSS](#)
To: [Teresa Luck](#)
Subject: FW: Draft Noosa Plan
Date: Tuesday, 22 December 2020 1:23:38 PM
Attachments: [image002.png](#)
[image004.jpg](#)
[image005.jpg](#)
[image006.jpg](#)
[image007.jpg](#)
[image008.jpg](#)
[image009.jpg](#)
[image010.jpg](#)
[image011.jpg](#)
[image012.jpg](#)
[image001.png](#)

From: Kerry Doss
Sent: Tuesday, 7 January 2020 1:11 PM
To: [redacted] stockwells.com>
Cc: [redacted] stockwells.com>; [redacted] stockwells.com>
Subject: RE: Draft Noosa Plan

Hi [redacted]

Thank you for your email. My officers are currently reviewing the draft plan as submitted by Noosa Council.

I have directed your correspondence onto the team reviewing this and asked them to consider the matters you have raised. I have asked for advice as to whether these matters require further consideration in respect of State interests including the SEQ Regional Plan.

At this point in time I do not see the need for a meeting with you. I will be in contact once my team have provided further advice.

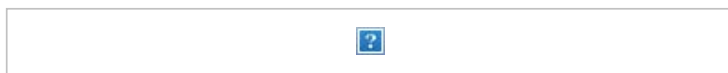
regards

Kerry Doss

Deputy Director-General
Planning Group
Department of State Development,
Manufacturing, Infrastructure and Planning

P 07 3452 7909 M [redacted]
Level 13, 1 William Street, Brisbane QLD 4000
PO Box 15009, City East QLD 4002
www.dsdmip.qld.gov.au

LET'S CONNECT



From: [redacted] stockwells.com>
Sent: Tuesday, 7 January 2020 12:57 PM
To: Kerry Doss <Kerry.Doss@dsdmip.qld.gov.au>
Cc: [redacted] stockwells.com>; [redacted] stockwells.com>
Subject: Draft Noosa Plan
Importance: High

Hi Kerry

Happy New Year! You may recall we spoke in late 2018 and again in May 2019 regarding the proposed new Noosa Plan.

Since this time, we have engaged with Noosa Council regarding the proposed plan and made submissions during both rounds of community consultation. We understand the Council have or will shortly submit the final version of the plan to the State for it's final State interest check.

We still have concerns with key elements of the plan that are of State significance due to the resultant impact on the intentions of the SEQ Regional Plan for the MRAC at the northern end of the Sunshine Coast, being the Shire Business Centre.

Please find attached briefing note for your review. I would like to come and meet with you at your earliest convenience to discuss this with you further.

Kind regards



Stockwell



RTI RELEASE

From:
To: [Anna McGrath](#); [Jamaica Hewston](#); [Garth Nolan](#)
Cc: [coles.com.au](#);
Subject: HPE CM: Draft Noosa Plan - Coles Group Submission
Date: Friday, 24 January 2020 10:21:10 AM
Attachments: [image003.png](#)
[image005.png](#)
[image007.png](#)
[image009.png](#)
[200124 - New Noosa Plan - Social Housing Requirements.pdf](#)

Anna and team,

Urbis are assisting Coles Group to review the draft *New Noosa Plan* amendments.

Coles Group have previously made two submissions on the draft New Noosa Plan. Both submissions identified that Coles Group are supportive of providing greater housing diversity, which includes smaller forms of housing and social housing to support key workers and smaller family units. However, they have raised concerns with the proposed approach, notably the requirement to dedicate 1 in 10 dwellings at no cost to a registered housing provider or Council.

We have prepared a written submission to the Department that outlines the key concerns with this approach from a State interest perspective (**attached**). This has been informed by a high level feasibility analysis for a conceptual design for the redevelopment of the site.

Drawing upon the knowledge of our colleagues in other jurisdictions, we understand that the consistent application of affordable housing policies has been a challenge in other states. There has been work done elsewhere to provide consistency and transparency in this policy space which we would be eager to share.

We are keen to meet at the earliest opportunity to discuss in more detail the feasibility implications of the proposed change (acting as a disincentive to housing affordability) and the precedent being set for policy across the State.

Many thanks



**SHAPING
CITIES AND
COMMUNITIES**



LEVEL 7, 123 ALBERT STREET
BRISBANE, QLD 4000, AUSTRALIA

Urbis recognises the traditional owners of the land on which we work.
Learn more about our [Reconciliation Action Plan](#).

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24 January 2020

Ms Anna McGrath
DSDMIP
Level 3, 12 First Avenue
Maroochydore QLD 4558

Dear Anna,

NEW NOOSA PLAN - SUBMISSION ON SOCIAL HOUSING

We write on behalf of Coles Group Property Development Limited (**Coles Group**) regarding the *New Noosa Plan*. Coles Group are the landowner of Noosa Bowls Club, located at 99 Noosa Drive, Noosa Heads (Lot 3 on RP884396).

Coles Group have made two submissions on the *New Noosa Plan*. A copy of these submissions is included at **Attachment A** and **Attachment B**. Both submissions have identified that Coles Group are supportive of providing greater housing diversity, which includes smaller forms of housing and social housing to support key workers and smaller family units. However, they have raised serious concerns with the proposed approach, notably the requirement to dedicate 1 in 10 dwellings in the High Density Residential zone at no cost to a registered housing provider or Council.

We are writing to the Department of State Development Manufacturing Infrastructure of Planning (DSDMIP) to draw your attention to the proposed approach which is contrary to State interests. The proposed approach does not incentivise affordable or social outcomes and will adversely impact housing supply.

This letter identifies the background relevant to this issue and examines the wider implications that the Minister for DSDMIP should have regard to when considering Council's request to adopt the proposed planning scheme in its current form.

1. BACKGROUND

The *New Noosa Plan* was placed on public notification until 20 May 2019. During this time, Coles Group made a submission that whilst they generally supported the new Planning Scheme, there were provisions that could be improved upon. A copy of this submission is included at **Attachment A**.

In relation to the matter of social housing, the submission identified that Coles Group support the inclusion of higher density living in mixed- use developments as a way of providing housing choice and diversity. Coles Group also support Council's intention to deliver greater housing diversity, which includes smaller forms of accommodation and social housing to support key workers and smaller family units.

However, Coles Group does not support the requirement imposed by PO19 of the High Density Zone Code for one in every 10 dwellings to be dedicated to a registered housing provider at no cost to the provider or Council. The submission identified that other mechanisms are available to Noosa Council

to encourage the provision of social housing or smaller accommodation forms, whilst also being feasible from an economic perspective.

Following the submission, significant changes were made and as such the *New Noosa Plan* was placed on public notification. The second submission prepared by Coles Group focused on the delivery of social housing and made suggested changes to the wording of PO 19 if the High Density Zone Code (refer **Attachment B**). The intent behind these changes (specifically the removal of the dedication requirement) was to provide Council the flexibility to accommodate a broad range of social housing models that current exist or may be established in the future.

Page 80 of the Consultation Report includes the response provided by Council staff (refer **Attachment C**). The justification provided by Council for the 1 in 10 dedication is the uplift associated with the increase in density was just cause for the dedication. Council also referenced their housing needs analysis.

The Consultation Report recommends that PO 19 be reworded to clarify the intent. The proposed wording of PO 19 which Council will be seeking be adopted is as follows:

- a) 1 in every 10 dwellings shall be social housing, provided at no cost to council or the provider, to provide for the social housing needs of the community; and*
- b) The social housing dwellings shall be distributed evenly across the development and provided for the life of the development*

Editor's note; Social housing is housing made up of public and community housing, that is owned and run by the government or a non for profit agency (as the provider) for people on low incomes or with special needs.

Whilst Council have proposed to reword PO 19 to clarify the intent, Council has not accepted the request that the requirement to dedicate at no cost be removed. Consequently, a developer is required to purchase the land, pay for the construction cost and then dedicate 1 in 10 dwellings at no cost. This is unprecedented, inconsistent with State interests and has implications for housing supply.

The reliance on uplift as justification for onerous and unviable controls does not recognise the community and economic benefits associated with the redevelopment of the site. The redevelopment of our Client's site has the potential to deliver new open space in the form of a public plaza and new public roads that will enhance connectivity. Similarly, the mixed use development of the site will provide enhanced activation and casual surveillance and provide new housing and tourist accommodation opportunities.

The justification provided by Council does not acknowledge the development potential under the existing Planning Scheme. The Community Services zoning under the Noosa Plan supports the redevelopment of the site for retirement living (Multiple Housing - Type 3) at a height of two storeys. This includes a retirement village and residential care facility. This is considered a viable redevelopment outcome and would not be subject to the dedication requirement.

2. CONSISTENCY WITH STATE INTERESTS

The State Planning Policy (SPP) contains state interest policies and where relevant, the assessment benchmarks for each state interest. Of relevance to this submission is the State interest of 'housing supply and diversity'. Specifically, in relation to affordable and social housing the SPP states (our emphasis added):

*“(c) considering **incentives** promote affordable and social housing outcomes, particularly in areas in close proximity to services and amenities.”*

The state interest identifies that affordable and social housing outcomes should be incentivised. The state interest does not endorse compulsory action.

The mandatory requirement proposed in the *New Noosa Plan* to dedicate at no cost 1 in 10 dwellings is not an incentive mechanism. The provision actively discourages the provision of housing supply, with the high level feasibility analysis prepared by Urbis concluding that the proposed provision would make the development of the site for mixed use/residential unviable. Consequently, the project would not proceed in the current market and therefore no new dwellings would be delivered on the site.

Council, in their response to the submissions have justified this mandatory requirement on the grounds that the site will benefit from uplift. Whilst we acknowledge that the site will benefit in this regard, the uplift itself does not automatically make the development feasible. The requirement for the developer to fund the construction of social housing and then dedicate for no cost is significant.

In the submission on the *New Noosa Plan*, incentive mechanisms to promote affordable housing, which are more in line with the state interests were identified. These mechanisms are discussed in this submission.

3. ECONOMIC FEASIBILITY

Urbis have undertaken a high level financial feasibility analysis to determine the outcome of dedicating 1 in 10 dwellings in the High Density Residential zone at no cost.

The high level financial feasibility analysis has been based on an inactive masterplan for the mixed use redevelopment of the site comprising approximately 120 apartments. The concept has sought to maximise the development yield.

The analysis has identified in its base case, the proposed development is already considered to generate returns below that of a generally accepted return level for development feasibility. With the addition of a social housing commitment this impact becomes more severe. Notably, the requirement to dedicate 1 in 10 dwellings represents a greater cost consideration than the applicable Infrastructure Charges of the development.

4. NEED FOR A CONSISTENT APPROACH

Affordable and social housing schemes must be consistently and rigorously assessed. To ensure close alignment with the Queensland Housing Strategy 2017-2027 and SPP, the supply of social and affordable rental housing must be incentivised and be economically feasible. Prior to endorsing Noosa Council's approach, we would encourage DSDMIP to consider taking a wholistic view on how they assess the merits of an affordable housing scheme.

The Qld Government supports this approach for infrastructure charges framework and notably the Infrastructure Funding Framework for Priority Development Areas (PDAs). The Infrastructure Funding Framework applicable to PDAs must encourage development, maintain affordability for the end consumer, State and Council, ensure new development fairly contributes and provide certainty to landowners. The implementation of affordable housing mechanisms should be subject to the same level of scrutiny.

We understand that the adhoc approach to affordable housing and social housing requirements resulted in the NSW Government implementing a State Environmental Planning Policy (SEPP) and an associated Guideline. The adoption of the SEPP has allowed a consistent approach to the assessment and adoption of affordable housing schemes by local governments.

In NSW there are parameters under which a Council can implement affordable housing mechanisms . State Environmental Planning Policy 70 (SEPP 70) requires that Council can only impose a condition of development approval requiring a contribution to affordable housing where this requirement has been included in the Planning Scheme (Local Environmental Plan). Contributions can be made in the form of a monetary contribution (per sqm) or dedication of a proportion of the proposed floor area on the site. Where dedication is proposed, this is to be made to an accredited affordable housing provider.

Prior to State approving a change to a Planning Scheme to insert an affordable housing contribution clause, the Council must:

- Investigate the affordable housing need in the LGA;
- Identify the areas to which an affordable housing contribution scheme will apply;
- Determine a **viable affordable** housing contribution rate;
- Prepare an affordable housing contributing scheme; and
- Amend the Local Environmental Plan (Planning Scheme) through the statutory process.

As part of developing an affordable housing contribution scheme and preparing a planning proposal to amend a Planning Scheme to levy developer contributions to affordable housing, the Council needs to prepare and provide evidence that affordable housing contribution rates are viable. The evidence and assumptions used to determine the affordable housing contribution rate must be provided to the Department of Planning and Environment for review. The modelling must demonstrate that the rates are viable and would not impact on feasibility and overall housing supply.

The NSW Government has developed a *Guide for Developing an Affordable Housing Contribution Scheme* which assists Council, the industry and the public in understanding the requirements. This supports a consistent approach to the delivery of affordable housing.

Notably, the proposed approach by Noosa Council would not be supported considering the contribution rate is not economically viable and would consequently impact on feasibility and housing supply.

In addition to affordable housing contributions, the supply of affordable rental housing is incentivised in NSW through the implementation of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (Affordable Housing SEPP). Broadly, the Affordable Housing SEPP provides plot ratio bonuses for developments that incorporate affordable housing for a minimum of 10 years. The application of the Affordable Housing SEPP applies across the State, with site eligibility determined by zoning and overlays. The Affordable Housing SEPP also supports social housing providers, public authorities and joint ventures through various planning provisions.

Coles Group would urge DSDMIP to consider the proposal by Noosa Council in the overall context and the precedent that will be established. A consistent, merit based approach to the provision of affordable housing which incentivises the delivery of affordable housing, whilst not impacting the feasibility of developments is needed.

5. ALTERNATIVE OPTIONS

In addition to the above, there are other mechanisms available to encourage the provision of affordable housing and smaller accommodation forms. Incentive mechanisms that do not penalise the landowner/developer would be consistent with the State interest for 'housing supply and diversity'.

Mechanisms which provide a true incentive to developers to deliver this type of housing product, such as reducing development assessment fees and infrastructure charges or allowing bonus height and plot ratio to create efficiencies and economies of scale for a development.

There are also alternatives to social housing that would be consistent with State interests. Examples of affordable housing schemes include:

- Affordable housing contributions have been successfully implemented within PDAs. The Bowen Hills and Northshore Hamilton PDAs both include a requirement for a proportion of dwellings to be affordable. Under the Bowen Hills Development Scheme, a minimum of 5% of total residential GFA must be either a mix of public housing, social housing or affordable housing.
- Consistent with Economic Development Queensland (EDQ) and Priority Development Areas (PDA) in Queensland, major redevelopment areas in Western Australia also have affordable housing targets that range between 10-15%. To achieve this, developers are required to make a contribution to affordable housing through the sale of dwellings at construction cost. This can include sale on the private market (to eligible applicants) or to a registered housing provider. There are no instances where developers are required to dedicate at no cost.

- Brisbane Housing Company: Set at 74.9% of the market rent, Brisbane House Company (BHC) offers an alternative to social housing and aims to keep rent at an affordable level. BHC assesses the household income of applicants to find homes that households can afford. Affordability is calculated by bench marking 30% of house income plus Commonwealth Rent Assistance and match this figure to the rent for available apartments.
- Nightingale Model: The Nightingale model aims to deliver sustainable, affordable, liveable homes that connect its residents with the community and has been developed for use by architects and others to deliver triple bottom line apartments at cost. The model is a replicable platform conceived in Melbourne by Breathe Architecture with the support of the Robin Boyd foundation. The definition of affordable housing is housing that should only cost you 30% of your household income. One of the key tenets of Nightingale Housing however is financial sustainability. They want to help provide access to high quality sustainable housing to all and do this by undertaking development in an innovative way that strips out costs, and then fixes prices of product going forward.
- The 'Opening Doors' program in Western Australia has proven successful. This shared home ownership program allows eligible applicants through a shared mortgage with the State Government. The upfront costs of buying a property and the monthly loan repayments are significantly lower, with the State Government contributing 30% towards the cost of the home. Whilst it would require careful consideration, in the context of Noosa, the Infrastructure Charges associated with the unit could be used to offset the cost of the dwelling or used to fund a shared ownership program.

6. INFRASTRUCTURE CHARGES COMPARISON

Parallels to the need for a consistent approach to affordable housing can be made with the history of infrastructure charges in Queensland. In response to inconsistent and increasing infrastructure charges, a maximum infrastructure charge framework was implemented. This provides greater certainty for the development sector and balances the competing demands facing local authorities.

The social housing requirement proposed by Noosa Council undermines previous efforts to provide a certain, equitable and efficient infrastructure charging methodology. The proposed approach is economically unfeasible and will prevent future development from proceeding. It represents a significant cost to the developer, which is being levied outside of the infrastructure charges framework.

As identified, the high level feasibility analysis has found that the cost of the 1 in 10 dedication provision is greater than the infrastructure charges levied for the project as a whole.

Approval of the proposed social housing provision will set a precedent for other Council's to levy similar requirements. Considering the impact of feasibility, this will undermine investment in Queensland and ultimately reduce the supply of housing, which would have wider impacts on housing affordability.

We reinforce that affordable housing contributions must be subject to the same scrutiny as infrastructure charge contributions. The Infrastructure Funding Framework demonstrates how the State Government assesses infrastructure charges in PDAs. The criteria applicable can be readily applied to affordable housing contribution schemes.

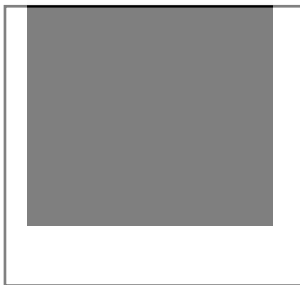
7. SUMMARY

Having regard to the matters above:

- The requirement to dedicate 1 in 10 dwellings at no cost does not align with State interests;
- The proposal by Noosa Council is economically unfeasible, does not constitute an incentive mechanism and will impact on overall housing supply;
- Consistent with the approach taken in other jurisdictions, affordable and social housing schemes must be consistently and rigorously assessed to ensure they do not impact on overall housing supply; and
- There are other incentive mechanisms available to Council to promote affordable housing that align with State interests.

Thank you for this opportunity to provide this submission. We welcome the opportunity to discuss any aspect of the submission with you or provide any additional information or clarification that may be required. Please do not hesitate to contact me on

Yours sincerely,



Director



ATTACHMENT A: COLES GROUP SUBMISSION NO. 1

RTI RELEASE

20 May 2019

Mr Brett de Chastel
Chief Executive Officer
Noosa Council
PO Box 141
TEWANTIN QLD 4565

Dear Mr de Chastel,

Submission on New Noosa Plan - 99 Noosa Drive, Noosa Heads

This submission has been prepared by Coles Group Property Development Limited on the *New Noosa Plan*, which is currently on public notification until 20 May 2019.

Coles Group Property Development Limited (**Coles Group**) are the landowner of Noosa Bowls Club, located at 99 Noosa Drive, Noosa Heads (Lot 3 on RP884396). The site is located within the heart of Noosa Junction, in close proximity to a range of services and amenities and is directly adjacent Pinaroo Rotary Park (refer **Figure 1**).

The site is zoned 'Community Services' under the *Noosa Plan 2006* and is proposed to be zoned part 'High Density Residential', part 'Major Centre' and part 'Recreation and Open Space' under the *New Noosa Plan*. Coles Group generally support the direction of the *New Noosa Plan* and specifically the rezoning of the site.

Whilst there is general support for the *New Noosa Plan*, there are a few matters which we suggest could be improved upon. The suggested changes and the rationale in support of these are set out in this submission. A summary of recommendations is contained at the end of the submission.

Coles Group welcomes the opportunity to make a submission for Council's consideration and is available at Council's convenience to discuss any aspect of the submission or provide any additional information or clarification that may be required.

1. Centres Hierarchy

The *New Noosa Plan* establishes an activity centres hierarchy aimed at creating a network of vibrant activated centres with good accessibility and connectivity, high amenity and a unique sense of place. Each centre is to have a defined role and function, with a retail core supported by commercial and community uses.

Noosa Junction has been elevated to a Major Centre and is now intended to service a sub-regional catchment. This change is strongly supported and reflects the importance of Noosa Junction as a unique high amenity centre, which offers diverse business, employment and residential opportunities. Reflective of its status, an explicit retail cap is not prescribed. Again, this approach is supported.

Figure 1 – Aerial of site



2. Development Controls

The *New Noosa Plan* imposes several specific, prescriptive built form parameters for future development within Noosa Junction, which fetter the ability of Noosa Junction to achieve its intended role and function in the centres hierarchy:

To achieve its intended role and function and make development within Noosa Junction a more attractive proposition we recommend the following aspects be reconsidered:

- **Building Height** – PO16/AO16 prescribes a building height in Noosa Junction of 12 metres and no more than three storeys from any elevation. It is noted that there are instances where heights of up to 4 storeys can be achieved within 12m and therefore we recommend that the performance outcome should remove reference to the number of storeys.

The limitation on the acceptable height of 12m within a Major Centre does not recognise that additional height can be accommodated on larger sites. We would encourage the acceptable outcome to allow additional height where this setback from the parapet, thereby ensuring a 'human scale' at the street frontage.

Additional building height on the site is also encouraged as it allows for the more efficient use of land, enables development to be stacked to enhance activity, defines and holds the street edge without the loss of human scale, enables efficiencies through scale to deliver mixed use development, and increases the on-site residential population required for an activated and safe

centre. Additional building height also provides greater opportunity to deliver affordable housing as it can offset the upfront costs in providing this.

- **Site Cover and Plot Ratio** – The new planning scheme attempts to regulate bulk and scale through site cover and plot ratio controls. The site cover controls in the High density residential precinct is limited to 40% of the site area. This site cover is considered very conservative and does not reflect a high density residential environment. We recommend that this control be removed or the site cover increased to 60%.

Plot ratio as a means of regulating bulk and scale is no longer considered best planning or design practice and discourages the innovative and efficient use of land. Plot ratios 1.9:1 appear highly conservative. These should either be increased or removed, with built form outcomes controlled by height, setback and site cover controls.

2. Social Housing

Coles Group supports the inclusion of higher density living in mixed- use developments as a way of providing housing choice and diversity and more importantly creating activated and safe publicly accessible spaces with opportunities for day and night time casual surveillance. Coles Group also support Council's intention to deliver greater housing diversity, which includes smaller forms of accommodation and social housing to support key workers and smaller family units.

However, Coles Group does not support the requirement imposed by PO19 of the High Density Zone Code for one in every 10 dwellings to be dedicated to a registered housing provider at no cost to the provider or Council for social housing.

There are other mechanisms available to Noosa Council to encourage the provision of social housing and smaller accommodation forms. Mechanisms which provide a true incentive to developers to deliver this type of housing product, such as reducing development assessment fees and infrastructure charges or allowing bonus height and plot ratio to create efficiencies and economies of scale for development which provide the one in 10 dedication. The fees and charges reductions have proven very successful in other jurisdictions at encouraging these types of outcomes and should be explored.

Examples of affordable housing schemes that do not involve the dedication of one in 10 as social housing include:

- **Brisbane Housing Company:** Set at 74.9% of the market rent, Brisbane House Company (BHC) offers an alternative to social housing and aims to keep rent at an affordable level. BHC assesses the household income of applicants to find homes that households can afford. Affordability is calculated by bench marking 30% of house income plus Commonwealth Rent Assistance and match this figure to the rent for available apartments.
- **Nightingale Model:** The Nightingale model aims to deliver sustainable, affordable, liveable homes that connect its residents with the community and has been developed for use by architects and others to deliver triple bottom line apartments at cost. The model is a replicable platform conceived in Melbourne by Breathe Architecture with the support of the Robin Boyd foundation. The definition of affordable housing is housing that should only cost you 30% of your household income. One of the key tenets of Nightingale Housing however is financial sustainability. They want to help provide access to high quality sustainable housing to all and do this by undertaking

development in an innovative way that strips out costs, and then fixes prices of product going forward.

- The 'Opening Doors' program in Western Australia has proven highly successful. This shared home ownership program allows eligible applicants through a shared mortgage with the State Government. The upfront costs of buying a property and the monthly loan repayments are significantly lower, with the State Government contributing 30% towards the cost of the home. Whilst it would require careful consideration, in the context of Noosa, the Infrastructure Charges associated with the unit could be used to offset the cost of the dwelling or used to fund a shared ownership program.

3. Infrastructure Provision

Coles Group acknowledges its responsibility to deliver the road and public park (community) infrastructure on the site. We understand that the *New Noosa Plan* identifies a new link road connecting Noosa Drive to Lanyana Way. New green space in the form of a public park is also identified as being required on the site.

We understand that the park is a piece of community infrastructure that will service the district and will have wider benefits that extend beyond the site. For this reason, it is appropriate that this be identified as trunk infrastructure for which an infrastructure offset can be granted.

Whilst a new road through the site will be necessary, we are of the opinion that the location, design and specifications of this road should be determined at detailed design stage and not specified in the *New Noosa Plan*.

4. Dwelling Size Restrictions

Table 5.5.5 identifies that a multiple dwelling with a gross floor area (GFA) exceeding 90m² are subject to Impact Assessment. This level of assessment actively discourages housing diversity by providing an unnecessary impediment to the delivery of larger housing types required by larger sized households.

The 90m² restriction removes flexibility to respond to market demand over the life of the planning scheme. We note that at 90m² the dwellings will be too small to accommodate a three bedroom product or a comfortable two bedroom apartment.

It is the strong view of Coles Group that the size of the dwellings delivered should be determined having regard to consumer demand and not be restricted by the planning scheme. It is therefore requested that the 90m² restriction be removed to provide flexibility and enable a broader cross section of the community to be accommodated in a range of housing types. If this is unacceptable, we request that 90m² be an average size to allow a greater mix of sized product in a development, for example ranging from 60m² to 120m² but achieving an average of 90m² across the site.

5. Minimum Lot Size

The Reconfiguring a Lot Code identifies a minimum lot size of 400m² for land zoned Major Centre, with a minimum frontage of 15.

The site has an opportunity to accommodate a broad range of housing types, including shop-top housing on smaller lots. This typology typically involves buildings with a relatively narrow frontage. In

addition to offering an alternate product, this typology provides a fine grain retail experience and offers a variation in built form architectural styles that is highly consistent with the desired style referenced in Figure 6.4.1.4 of the *New Noosa Plan*.

An example of the building typology that could be successfully adapted for the site includes SOHO (Small Office Home Office). As shown in **Figure 2** these developments provide for an activated ground floor with residential located above. These can be accommodated on small lots, with frontages ranging from 5m to 8m.

To facilitate this style of development, we request that the acceptable outcome remove reference to the minimum lot size and instead rely on a performance outcome that seeks functional and efficient lot sizes that reflect the intended character of the area.

6. Level of Assessment

A market is identified as Impact Assessable on the site in both the High Density Residential and Major Centre zone. We request that this level of assessment be changed on the site to:

- Accepted Development where not involving building work or operational work; and
- Code Assessable where involving building work or operational work.

A market provides an excellent means of activating a space which would otherwise be vacant. The site is an appropriate location for a temporary market, which would facilitate community interaction and support local businesses and start-ups.

The Bowls Club has ceased operation and will be redeveloped in future. Changing the level of assessment will allow a temporary market to operate during this period. This use would ensure the site remains activated, whilst providing for positive social and economic benefits.

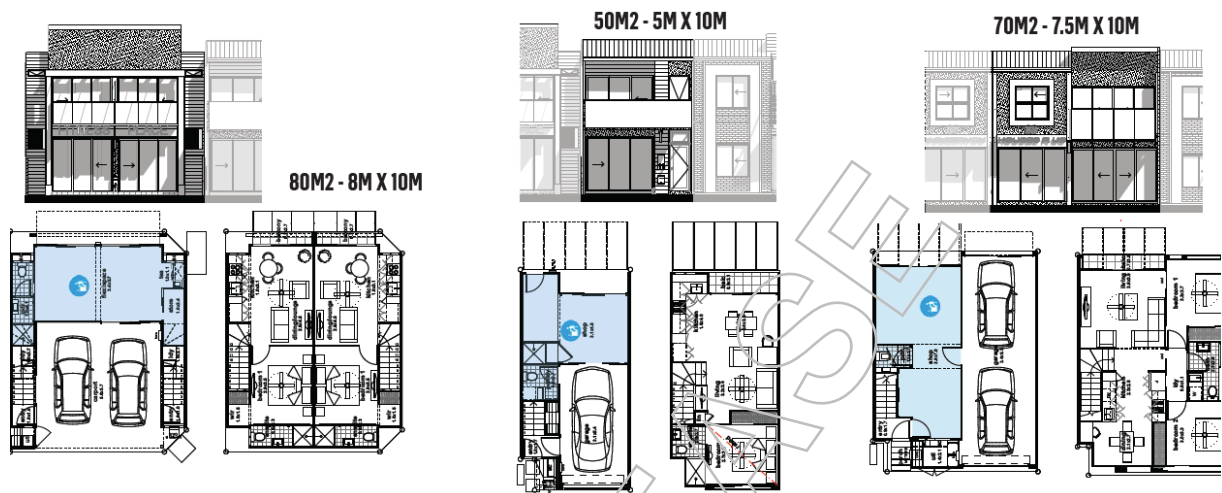
Figure 2 – The Nest, Fitzgibbon



Picture 1 – Street Perspective



Picture 2 – Cross Sections



Picture 3 – Floor Plans

RECOMMENDATIONS

Having regard to matters outlined above, Coles Group requests the following amendments to the *New Noosa Plan*:

- The reference to three storeys should be removed given a height in metres is specified. The acceptable outcome for building height should be increased, where the additional height is setback and not readily visible from the street;
- Remove the 40% site cover control for the High Residential Zone, as it applies to the site or increase to 60% to better reflect the high-density outcome sought.
- Discard plot ratio as a planning control;
- Delete PO19 of the High Density Zone Code to remove the requirement to dedicate one in 10 dwellings for social housing. Instead, allow bonus height or plot ratio where social housing is provided or implement an infrastructure charges reduction for social and affordable housing to encourage delivery of these housing types on appropriately located sites;
- The public park required on the site should be identified as trunk infrastructure for which an infrastructure offset can be granted. The specifications of the road should be determined at detailed design stage and not specified in the *New Noosa Plan*;
- Remove the maximum 90m² dwelling restriction to provide flexibility and enable a broader cross section of the community to be accommodated in a range of housing types or amend it from a maximum to an average; and
- Remove the numeric lot size and frontage requirements on the site to facilitate fine grain shop-top housing typologies that provide for greater variation in form.

Thank you for this opportunity to comment on the *New Noosa Plan*. We trust the basis for submission and the recommended changes are favourably considered by Noosa Council. We welcome the opportunity to discuss any aspect of the submission with you or provide any additional information or clarification that may be required.

Yours sincerely,

[Redacted Signature]

Coles Group Property Developments

[Redacted Address Line]

L1 96 Mt Gravatt Capalaba Road
Upper Mt Gravatt, QLD, 4122

RTI RELEASE



ATTACHMENT B: COLES GROUP SUBMISSION NO. 2

RTI RELEASE

11 November 2019

Mr Brett de Chastel
Chief Executive Officer
Noosa Council
PO Box 141
TEWANTIN QLD 4565
E: nnpsubmissions@noosa.qld.gov.au

Dear Mr de Chastel,

Submission on 'Significant' Changes to draft New Noosa Plan - 99 Noosa Drive, Noosa Heads

This submission has been prepared by Coles Group Property Development Limited on the 'significant' changes to the draft *New Noosa Plan*, which are currently on public notification until 11 November 2019.

Coles Group Property Development Limited (**Coles Group**) are the landowner of Noosa Bowls Club, located at 99 Noosa Drive, Noosa Heads (Lot 3 on RP884396).

We support the recognition of Noosa Junction as a Major Centre and associated zoning and understand that the significant changes that have been made do not alter this. We stand by the recommendations made in our original submission and would encourage Council to revisit these.

Whilst Coles Group is supportive of providing greater housing diversity, which includes smaller forms of accommodation and social housing to support key workers and smaller family units, we hold concerns about the draft wording of PO19 of the High Density Zone Code, which states (our emphasises added):

PO19

For development on Lot 3 RP884396, Noosa Heads or a site with a frontage to Walter Hay Drive, Noosaville:

- a) a contribution shall be made towards the social housing needs of the Noosa community;*
- b) the contribution mentioned in (a) above, shall be one in every 10 dwellings is **dedicated to a registered** housing provider at no cost to the provider **or Council**; and*
- c) the contributed dwellings shall be distributed evenly across the development.*

Editors Note- Social housing is owned and run by the government or a not-for-profit agency for people on low incomes or with special needs.

In its current format, the draft PO requires or could be interpreted to require that all social housing be dedicated to a registered social housing provided at no cost to the provider or Council. This wording is unnecessarily restrictive, and could in fact limit Councils ability to achieve its desired outcome.

The requirement to dedicate the dwelling(s) does not provide Council the flexibility to accommodate the broad range of social housing models that currently exist or may be established in future. The intent of PO19, which is to make a contribution to the social housing needs of Noosa would still be achieved without the requirement to dedicate. That is, the dwelling can be retained in private ownership and be managed by a social housing provider.

Alternatively, there may be instances where Council makes a part contribution to social housing, with this determined on a case-by-case basis. The draft wording of PO19 does not provide this flexibility and therefore we recommend that the wording be modified.

For the reasons stated above, we request that PO19 be amended as follows, with new text in blue and deleted text in ~~strikethrough~~:

PO19

For development on Lot 3 RP884396, Noosa Heads or a site with a frontage to Walter Hay Drive, Noosaville:

- a) a contribution shall be made towards the social housing needs of the Noosa community;*
- b) the contribution mentioned in (a) above, shall be one in every 10 dwellings is dedicated to a registered housing managed and operated by a registered social housing provider at no cost to the provider or Council; and*
- c) the contributed dwellings shall be distributed evenly across the development.*

Thank you for this opportunity to comment on the draft *New Noosa Plan*. We trust the basis for submission and the recommended changes are favourably considered by Noosa Council. We welcome the opportunity to discuss any aspect of the submission with you or provide any additional information or clarification that may be required.

Yours sincerely,



Coles Group Property Developments Limited
L1/96 Mt Gravatt- Capalaba Rd
Upper Mt Gravatt QLD 4122





ATTACHMENT C: CONSULTATION REPORT

RTI RELEASE

Submitter	Submission and Grounds of Submission	Planners' Response	Recommendation
	<p>site. Further the range of uses should also be expanded and include uses such as Community Use, Educational Establishment, Low Impact Industry and Service Industry. A suggested consolidated Table of Development is provided in the submission.</p>		
21005957	<p>The requirement to dedicate dwellings for social housing does not provide Council the flexibility to accommodate the broad range of social housing models that currently exist or may be established in the future. The intent of PO19, which is to make a contribution to the social housing needs of Noosa would still be achieved without the requirement to dedicate. That is, the dwelling can be retained in private ownership and be managed by a social housing provider.</p> <p>Alternatively there maybe instances where Council makes a contribution to social housing, with this determined by a case-by-case basis. The draft wording of PO19 does not provide this flexibility and therefore we recommend the wording be modified as follows:</p> <p><i>The contribution mentioned in (a) above, shall be one in every 10 dwellings is managed and operated by a registered social housing provider at no cost to the provider; and.</i></p>	<p>The sites that are subject to PO19 have been substantially up lifted in zoning, particularly the bowls club site as it was previously Community Services Zone. This site is strategic and has been considered significant in terms of responding to Councils Housing needs analysis and is intended to provide for a diversity of housing choice and affordability. The necessary community benefit was considered in rezoning of this site.</p> <p>Some rewording of the PO is considered to be clearer about the intent.</p>	<p>Reword PO to provide some clarification of the intent as follows;</p> <p>a) 1 in every 10 dwellings shall be social housing, provided at no cost to council or the provider, to provide for the social housing needs of the community; and</p> <p>b) The social housing dwellings shall be distributed evenly across the development and provided for the life of the development</p> <p><i>Editor's note: Social housing is housing made up of public and community housing, that is owned and run by the government or a non for profit agency (as the provider) for people on low incomes or with special needs.</i></p>
20996586 21003256	<p>Disappointed to see submissions on the previous draft plan regarding the changes in Noosa Junction have been ignored. Would like to re-iterate that they see the removal of the need for impact assessments for development within the planned hospitality precinct as an abrogation of Council's responsibility to residents, particularly those who live near the Junction.</p> <p>A minimum commitment to the community would be to allow public comments on any proposed new developments in the Junction.</p>	<p>As per previous comments - The Hospitality Precinct focuses entertainment uses within the centre of Noosa Junction to reduce adverse amenity impacts on adjoining residential areas and allows for entertainment uses to be code assessment. Entertainment uses located outside the precinct area are still subject to an impact assessment and the community will still have an opportunity to comment on these. In addition to this an Entertainment Activities code has been introduced which provides more provisions related to amenity and operating issues such as operating hours, live music and design of premises, to reduce amity impacts within and adjoining the centre. It also introduces the requirement for an operational management plans which the current scheme does not include</p>	<p>That no change be made to the New Noosa Plan as a result of this submission</p>
21006295	<p>Acknowledge the response to the car parking requirements for offices in the amended Draft Noosa Plan. However considers that the requirements for onsite parking and/or the requirement to contribute to trunk infrastructure for community car parking and the like remains a major impediment for the future development of The Junction under the amended draft Noosa Plan.</p> <p>The onsite parking requirements for service industry uses are considered to be excessive when compared to other uses such as health care service, food and drink outlet and shop. The consequence of equalling the parking requirements for these uses will result in the Noosa Junction not realising its potential and service industry type uses being promoted by Council for the Noosa Junction elsewhere in the draft Noosa Plan.</p> <p>The draft Noosa Plan incorporates a number of provisions that attempts to retain the existing fine grained development in both lot boundaries and built form. Yet the excessive setbacks and car parking requirements will challenge the ability to retain the preferred fine grained development pattern. Suggests that the amended draft Noosa Plan be further amended so as to enforce minimum setbacks above level 2 for all uses so as to promote building separation and street articulation but at the same time allow additional floor area to achieve the desired plot ratios as specified. Considers that this essentially involves using the plot ratio/height limit to restrict the scale and using setbacks to help control building articulation and identity.</p> <p>Massing studies were provided and determined the maximum plot ratios will not be realised unless Council agrees to accept contribution in lieu of the provision of onsite parking for a development proposal and the amount of contribution is acceptable. Underground parking is not an option on an 1131m² site.</p> <p>The infrastructure charges to community car parking likely to be obtained by Council as a result of the draft Noosa Plan and based Council's current policy, is considered excessive for the Noosa Junction Area. States that the current amount should be reduced to a more appropriate amount with due recognition to the facts and circumstances associated with providing further community parking facilities specifically in and for the Noosa Junction.</p> <p>The requirement under the amended draft Noosa Plan to provide additional bicycle spaces and bike spaces in addition to onsite car parking spaces is not fully supported however agrees that the motorbike concessions proposed in the amended draft Noosa Plan are a positive change. Supports the provision of bicycle spaces in new development but not in addition to onsite car parking spaces. The maximum number of car parking spaces that are able to be substituted with motorbike parking is overall too low to make an appreciable difference. The new Noosa Plan should include a basis of equating bike spaces to car spaces as currently exists and extended to also include bicycle spaces. There should also be the ability for part car spaces to be absorbed by bike and bicycle spaces rather than car space being rounded up. The draft</p>	<p>The in lieu payments for car parking are not dealt with in the planning scheme and are subject to a separate Council policy on car parking in lieu payments.</p> <p>Car parking rates for a service industry was not a significant change in the Draft Planning Scheme. The definition of a service industry has been amended in the Planning Act and examples include audio visual equipment repair, bicycle repairs, clock and watch repairs, hand engraving, jewellery repairs, locksmith, shoe repairs etc. These and similar uses can be typically located in retail centres and are grouped with other business uses and therefore attract a similar rate of car parking. This also allows for interchangeable uses without requiring a development approval which is considered an important and flexible provision for centres. A reduction in car parking rate could be considered at development application stage should the service industry be more industrial in nature.</p> <p>Noted. Setbacks in Noosa Junction have been considered as part of the consultation process. These were developed with urban design advice to achieve a fine grained and articulated built form. No changes recommended.</p> <p>Bicycle spaces and end of trip facilities are a current requirement in the planning scheme and help promote more active transport options particularly in a centre. Likewise the motor bike parking in lieu of car parks is also a current policy in the Noosa Plan and provides flexibility for alternate transport options.</p> <p>Any concessions in car parking can be considered as part of a planning application.</p>	<p>That no change be made to the New Noosa Plan as a result of this submission</p>

From: [Anna McGrath](#)
To:
Subject: Re: Draft Noosa Plan - Coles Group Submission
Date: Friday, 24 January 2020 12:35:01 PM
Attachments: [image003.png](#)
[image005.png](#)
[image007.png](#)
[image009.png](#)

Thanks

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From: urbis.com.au>
Sent: Friday, January 24, 2020 10:20:32 AM
To: Anna McGrath <Anna.McGrath@dsdmip.qld.gov.au>; Jamaica Hewston <Jamaica.Hewston@dsdmip.qld.gov.au>; Garth Nolan <Garth.Nolan@dsdmip.qld.gov.au>
Cc: coles.com.au) coles.com.au>
 urbis.com.au>
Subject: Draft Noosa Plan - Coles Group Submission

Anna and team,

Urbis are assisting Coles Group to review the draft *New Noosa Plan* amendments.

Coles Group have previously made two submissions on the draft New Noosa Plan. Both submissions identified that Coles Group are supportive of providing greater housing diversity, which includes smaller forms of housing and social housing to support key workers and smaller family units. However, they have raised concerns with the proposed approach, notably the requirement to dedicate 1 in 10 dwellings at no cost to a registered housing provider or Council.

We have prepared a written submission to the Department that outlines the key concerns with this approach from a State interest perspective (**attached**). This has been informed by a high level feasibility analysis for a conceptual design for the redevelopment of the site.

Drawing upon the knowledge of our colleagues in other jurisdictions, we understand that the consistent application of affordable housing policies has been a challenge in other states. There has been work done elsewhere to provide consistency and transparency in this policy space which we would be eager to share.

We are keen to meet at the earliest opportunity to discuss in more detail the feasibility implications of the proposed change (acting as a disincentive to housing affordability) and the precedent being set for policy across the State.

Many thanks



[Urbis Website](#)





LEVEL 7, 123 ALBERT STREET
BRISBANE, QLD 4000, AUSTRALIA

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RTI RELEASE

From: 
To: [Anna McGrath](#)
Cc: @coles.com.au); [Jamaica Hewston](#)
Subject: Noosa Plan
Date: Sunday, 2 February 2020 4:31:17 PM
Attachments: [image001.gif](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[P0011024 Coles Letter - Final.pdf](#)

Hi Anna

Please find attached the finalised feasibility analysis to inform your assessment further to our correspondence last week regarding the proposed planning scheme amendment.

I think there would be value in meeting briefly to talk through the assessment if possible this week on either Tuesday or Thursday if either work ?

Kind regards



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29 January 2020



Coles Group Property Development Limited
Level 1, 96 Mt Gravatt Capalaba

Dear 

HIGH LEVEL FEASIBILITY AND FINANCIAL IMPACT ASSESSMENT OF SOCIAL HOUSING

Introduction

Urbis has been approached by Coles Group to undertake a high-level feasibility analysis on the conceptual residential proposal that has been prepared for the (former) Noosa Bowls Club, located at 99 Noosa Drive, Noosa Heads.

The core purpose of this analysis is to review and compare the potential impact of dedicating 1 in 10 dwellings within a 'High Density Residential' zoning at no cost to Council or a social housing provider. The output will inform discussions with the State Government and Council.

This will occur by the preparation of a high-level financial feasibility of the subject site. This should allow a basic understanding of the potential financial impact as a result of the inclusion of Social Housing provisions as specified under the New Noosa Plan. High level and market based revenue and cost allowances will be used as inputs in line with the current yield assumptions and modelled utilising EstateMaster.

We highlight that this is not considered a valuation and should not be utilised as such and is merely a high-level assessment of social housing. We suggest that more detailed financial analysis be undertaken in the future, in line with a typical development delivery should this be perused.

Site Background

The subject site is located at 99 Noosa Drive, Noosa Heads and currently comprises a former Noosa Bowls Club. Under the New Noosa Plan, part of the site will be re-zoned High Density Residential and will be suitable for a residential and mixed-use style development.

We have been provided with an indicative master plan by Coles Group indicating a potential development yield for the subject. This has been utilised within our calculations with the following core development inputs:

Table 1 – Yield

Component	Yield
Residential and Accommodation	94 – Two-bedrooms 26 – Three-bedrooms 32 - Accommodation Rooms
Commercial	600m ²
Car Park	Basement - 161 Residential 62 Commercial, At Grade - 33 visitor

For the purpose of simplifying the analysis Residential and Commercial are considered to be the two main revenue inputs with a two-bedroom unit utilised in place of accommodation rooms (16 two-bedrooms – for a total of 136 residential units). It has been assumed that the development occurs as a single large-scale development. GFA has been estimated based on an average unit size of 105m² for two-bedroom units and 139m² for three-bedroom units. An extract of the utilised plan is provided below:



NOOSA JUNCTION DEVELOPMENT
LANYANA WAY

COLES PROPERTY GROUP
SITE MASTER PLAN

preliminary
scale: 1:2000 @ A3
date: 21.09.14 14:10:13
7041/SK01

Blackburne Jackson Design
ARCHITECTS + ENGINEERS + PLANNERS



Feasibility Inputs

For the purpose of this high-level feasibility, we have considered both known site specifics and broader market based assumptions to provide opinion of the feasibility of the current scheme. We highlight that a number of inputs are considered high level and whilst considered appropriate for the task, we suggest that further investigations and site-specific revenue and cost investigations be undertaken before proceeding in a development process. Key inputs and assumptions include:

- Calculations based on the dedication of 1 in 10 dwellings within a 'High Density Residential' zoning results in a total of six dwellings being provided to social housing. This figure has been adopted and subtracted from the total residential revenue yield within the Sensitivity Scenario below.
- With regard to trunk infrastructure costs, it has been assumed that the subject site has full capacity with no costing allowance for infrastructure relocation or telecommunication upgrade works required.
- Construction costs for a new internal road have been included; however, the feasibility does not account for any costs associated with external road upgrades which may be required.

We highlight and comment of the following utilised Revenue and Cost elements:

Revenue

Residential and Commercial: The core component of development value is the Residential to be constructed on site. We have had regard to the current Noosa and wider Sunshine Coast market and historic sell downs to establish a reasonable price point for residential product.

With this in mind we have adopted an average Two-bedroom apartment price point of \$525,000 and a three-bedroom average apartment price point of \$685,000. Sell down has been assumed at circa 4 per month in presales and construction. We have assumed a 70% presale requirement to start construction reflecting a period of circa 24 months. This has been based on current trends within the Sunshine Coast market and is considered reasonable for the product and price point assessed. Whilst considered reasonable for the purpose of this exercise, more in-depth demand studies are considered necessary as a development process advances to assess a ideal development mix.

From a commercial perspective we adopted a potential revenue of circa \$4,250/m² across an assumed NLA of 510m². This is assumed to be sold fully leased and have additionally allowed cost element of \$200,000 for this to occur. This is considered to reflective of a good quality end product in the market with favourable lease terms. Construction would occur concurrently with settlement occurring at completion of the project.

Costs



Land input: We have adopted the Coles Development purchase price of the site as a notional purchase price reflecting \$4,785,000 in line with the 2016 purchase. Whilst we acknowledge the land input is directly related to the potential feasibility of a development, and that holding costs etc. have been impacting the current owner during their tenure, a new notional purchase at the above price point has been implemented to remove these variables.

Professional Fees: An allowance of 10% of construction costs has been implemented across the holding period and is assumed to include such costs as project management, engineers, architects etc. This is considered a reasonable market-based assumption given the development scale.

Construction Costs: Construction costs have been drawn from the latest addition of the Rawlinson's Construction Handbook 2019 Ed. 37. This is a market staple for indicating relative constructions costs of projects. Consideration has also been had to the RLB Rider Digest, a similar product where further clarity is sort. Coles Property Group have also provided costing input. We have adopted the following key cost elements

Table 2 – Core Construction Costs

Construction Element	Applied Area/Number	\$/m ²	Total Cost \$
Apartments (Incl. Accommodation) + Common Areas	14,243 m ²	\$1,850	\$26,350,095
Balconies (Incl. Accommodation)	2,766 m ²	\$763	\$2,425,021
Commercial	600 m ²	\$1,363	\$817,500
Car Parking (Basement)	223	\$52,950	\$11,807,850
Car Parking (At Grade)	33	\$3,115	\$102,795
Infrastructure - Road	1,239 m ²	\$1,211	\$1,500,000
Public Realm / Landscaping (35% of site area)	6,286 m ²	\$71.6	\$450,078
Demolition Costs (<i>Bowls Club Building Only</i>)	1,260 m ²	\$115	\$145,000



Construction Element	Applied Area/Number	\$/m ²	Total Cost \$
Demolition Misc Site Prep	17,960 m ²	\$0.42	\$7,543

We have assumed that the site is essentially unencumbered after the Bowling Clubs removal, and has no unique development characteristics

Contingency – a standard 5% contingency allowance has been placed on development costs for project overruns, and considered in line with market benchmarks.

Statutory Costs – Urbis has reviewed the applicable planning charges and has adopted the following Infrastructure charges for the development:

- Two-bedroom private units: \$12,574.08 (Council Charge) + \$8,197.78 (Unity Water charge) = \$20,780.63
- Three-bedroom private units: \$17,303.73 (Council Charge) + \$11,476.90 (Unity Water charge) = \$28,780.63
- Visitor Accommodation (16 x two bedroom) = \$6,287.04 per two-bedroom unit (Council Charge) + \$4,098.88 (Unity Water)
- Commercial = \$188.60 per sqm (Council Charge) + \$27.67 per sqm (Unit Water)

For the purposes of this exercise we have assume Council will offer a 100% rebate on their charges for the social housing units, with Unity Water Timings remaining unchanged and incurred.

Holding Costs – A minor static allowance for Municipal Rates and Land Tax has been implemented for holding costs over the development cycle, and based on the notional purchase price. The applied council rating category has been set in line with the Vacant Land charge of \$0.008388 per dollar of rateable value.

Interest Expenses – As with standard modelling practice the development is assumed to be 100% debt funded. (this generally allows a level playing field of comparison with developments). An interest rate of 6.00% is considered reasonable for the purpose of analysis.

Return

For the purpose of analysis a return rate of 15% has been adopted within our calculation. The return rate and feasibility is not considered the core criteria of the analysis, rather, the assessment of how much more, or less profitable and risk inherent would a development be if the mandate of 1 in 10 residential apartments are committed to social housing.



Base Case Feasibility Results

In respect to the above inputs we provide a snapshot of the base case feasibility in the table overleaf.

The development in this iteration would generate a return of 6.4% or \$4,256,378. This return is considered below the generally accepted range to generate a feasible development in the current market.

Base Case

Noosa Junction

Table 3

Revenues	
Residential - 2 Bedroom Units	\$57,750,000
Residential - 3 Bedroom Units	\$17,810,000
Commercial Office	\$2,200,000
Less Selling Costs	-\$3,593,040
Less Purchasers Costs	\$0
NET SALES REVENUE	\$74,166,960
TOTAL REVENUE (before GST paid)	\$74,166,960
Less GST paid on all Revenue	-\$6,869,091
TOTAL REVENUE (after GST paid)	\$67,297,869
Costs	
Land Purchase Cost	\$5,263,500
Land Acquisition Costs	\$283,176
Construction Costs	\$47,966,470
Professional Fees	\$4,796,647
Statutory Fees	\$2,996,788
Project Contingency (Reserve)	\$2,787,995
Land Holding Costs	\$400,546
Interest Expense	\$4,387,988
TOTAL COSTS (before GST reclaimed)	\$68,883,111
Less GST reclaimed	-\$5,841,619
TOTAL COSTS (after GST reclaimed)	\$63,041,491
Net Development Profit	\$4,256,378
Development Margin (Profit/Risk Margin)	6.4%

Source: Coles Property Group; Estate Master; External; Urbis



Sensitivity Case – 1 in 10 Social Housing Feasibility Results

In respect to a scenario where 1 in 10 residential dwellings located within a 'High Density Residential' zoning are provided as social housing, we provide the following snapshot of feasibility:

Sensitivity Case – Social Housing

Noosa Junction

Table 4

Revenues	
Residential - 2 Bedroom Units	\$54,600,000
Residential - 3 Bedroom Units	\$17,810,000
Commercial Office	\$2,200,000
Less Selling Costs	-\$3,454,440
NET SALES REVENUE	\$71,155,560
TOTAL REVENUE (before GST paid)	\$71,155,560
Less GST paid on all Revenue	-\$6,582,727
TOTAL REVENUE (after GST paid)	\$64,572,833
Costs	
Land Purchase Cost	\$5,263,500
Land Acquisition Costs	\$283,176
Construction Costs	\$47,966,470
Professional Fees	\$4,796,647
Statutory Fees	\$2,921,343
Project Contingency (Reserve)	\$2,784,223
Land Holding Costs	\$400,546
Interest Expense	\$4,286,923
TOTAL COSTS (before GST reclaimed)	\$68,702,829
Less GST reclaimed	-\$5,829,019
TOTAL COSTS (after GST reclaimed)	\$62,873,809
Net Development Profit	\$1,699,023
Development Margin (Profit/Risk Margin)	2.6%

Source: Coles Property Group; Estate Master; External; Urbis

The development in this iteration would generate a return of 2.6% or \$1,699,023. The reduction in saleable product reduces the overall revenue by \$3,150,000. This alone represents a greater cost consideration than the applicable Statutory Fees (infrastructure Charges) of the development (Base Case) at \$2,996,788.



Only a negligible impact in construction timeframe from a pre-sales perspective is realised (two months), meaning there is little to be gained by financial breakeven, cost reduction or offset to this cost element on the development and thereby lowers return and increases risk exposure to developers.

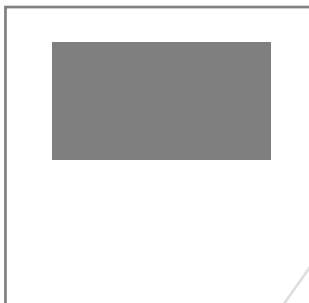
Conclusion

As can be seen from the above examples, the additional requirement of having 1 in 10 Residential Dwellings located within a 'High Density Residential' zoning committed as social housing has a noticeably detrimental effect on overall development return.

In its base case, the proposed development is already considered to generate returns below that of a generally accepted return level for development feasibility, with the addition of a social housing commitment this impact becomes more severe.

Understandably this is an unappealing result for any potential developer and would lower the overall desirability to consider a similar potential development on an already cost incumbered site.

Yours sincerely,



From: [Anna McGrath](#)
To: [redacted]
Cc: [redacted] coles.com.au); [Jamaica Hewston](#)
Subject: Re: Noosa Plan
Date: Sunday, 2 February 2020 5:10:46 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Hi [redacted]

Can you please confirm if Noosa has received a copy of this letter?

Kind regards,

Anna

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From: [redacted] urbis.com.au>
Sent: Sunday, February 2, 2020 4:30:46 PM
To: Anna McGrath <Anna.McGrath@dsmip.qld.gov.au>
Cc: [redacted] urbis.com.au>; [redacted] coles.com.au)
[redacted] coles.com.au>; Jamaica Hewston <Jamaica.Hewston@dsmip.qld.gov.au>
Subject: Noosa Plan

Hi Anna

Please find attached the finalised feasibility analysis to inform your assessment further to our correspondence last week regarding the proposed planning scheme amendment.

I think there would be value in meeting briefly to talk through the assessment if possible this week on either Tuesday or Thursday if either work ?

Kind regards



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RTI RELEASE

From: [Planning Group Correspondence](#)
To: [redacted]@stockwells.com
Subject: DDG response re: Draft Noosa Plan
Date: Tuesday, 11 February 2020 8:45:00 AM
Attachments: [DDG letter - \[redacted\].pdf](#)
[image002.png](#)
[image003.png](#)
[image013.jpg](#)

Good Morning

Please find attached letter from Mr Kerry Doss, Deputy Director-General, Planning Group.

If you require any further information, please contact Mr Garth Nolan, Manager – Planning, SEQ North, in DSDMIP on (07) 5352 9710 or SEQNorthSARA@dsmip.qld.gov.au, who will be pleased to assist.

Thanks

Sophie Smith

Correspondence Officer

Planning Group

Department of State Development,
Manufacturing, Infrastructure and Planning

P 07 3452 7658

Level 13, 1 William Street, Brisbane QLD 4000

PO Box 15009, City East QLD 4002

www.dsdmip.qld.gov.au

From: [redacted]@stockwells.com>

Sent: Tuesday, 7 January 2020 12:57 PM

To: Kerry Doss <Kerry.Doss@dsmip.qld.gov.au>

Cc: [redacted]@stockwells.com>; [redacted]@stockwells.com>

Subject: Draft Noosa Plan

Importance: High

Hi Kerry

Happy New Year! You may recall we spoke in late 2018 and again in May 2019 regarding the proposed new Noosa Plan.

Since this time, we have engaged with Noosa Council regarding the proposed plan and made submissions during both rounds of community consultation. We understand the Council have or will shortly submit the final version of the plan to the State for it's final State interest check.

We still have concerns with key elements of the plan that are of State significance due to the resultant impact on the intentions of the SEQ Regional Plan for the MRAC at the northern end of the Sunshine Coast, being the Shire Business Centre.

Please find attached briefing note for your review. I would like to come and meet with you at your earliest convenience to discuss this with you further.

Kind regards

[redacted]

Stockwell





Department of
**State Development,
Manufacturing,
Infrastructure and Planning**

Our ref: DEPC20/79

11 FEB 2020

[REDACTED]
Stockwell Noosa Civic Pty Ltd
PO Box 3144
SOUTH BRISBANE QLD 4101

Email: [REDACTED]

Dear [REDACTED]

Thank you for your email of 7 January 2020 about the draft New Noosa Plan (the draft planning scheme) and the Noosa Business Centre (the NBC).

I understand you have concerns about the draft planning scheme including:

- the elevation of Noosa Junction to a major activity centre equal to the NBC
- maximum floor space limits and impact assessment requirements
- the requirement to dedicate one in every 10 dwellings in the High density residential precinct for social housing
- the removal of a parcel of land in the NBC from the High density residential precinct.

As you are aware, the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) undertook a state interest review on the draft planning scheme to ensure it complies with the *Planning Act 2016*, State Planning Policy 2017 (SPP), South East Queensland Regional Plan 2017 (*ShapingSEQ*) and other state interests prior to public consultation. The state interest review, including consideration of the draft planning scheme's provisions related to NBC, was completed in January 2019 and the draft planning scheme was approved to proceed to public consultation.

Following public consultation, Noosa Shire Council (the council) provided the draft planning scheme to the Planning Minister for approval to adopt in December 2019. DSDMIP officers are currently considering the legislative requirements, including compliance with the relevant state interests, and the requirements in the Minister's Guidelines and Rules. Based on this assessment, a report and recommendation will be provided to the Planning Minister about whether the council may proceed to adopt the draft planning scheme.

1 William Street
Brisbane QLD 4000
PO Box 15009 City East
Queensland 4002 Australia
Telephone +61 7 3452 7100
www.dsdmip.qld.gov.au
ABN 29 230 178 530

Your email also raised a number of matters which are being concurrently considered alongside the final state interest review of the draft planning scheme. The following paragraphs provide some useful background to matters that DSDMIP is currently considering.

Noosa Business Centre and *ShapingSEQ*

I note your concern that the draft planning scheme is contrary to *ShapingSEQ* due to the elevation of Noosa Junction to a major activity centre (equal to the NBC), as well as gross floor area (GFA) considerations and impact assessment requirements for certain precincts in the NBC. I understand that while both centres are identified as major activity centres in the draft planning scheme, the strategic framework and Major Centre zone code overall outcomes clearly articulate the differing roles and functions of each centre.

The NBC will have a predominant role in providing for long-term development and employment, while Noosa Junction will serve a local catchment function and cater more for local industries and hospitality uses. Therefore, the higher order role of the NBC as a major regional activity centre in *ShapingSEQ* is not considered by DSDMIP to be compromised due to Noosa Junction being identified a major activity centre.

I encourage you to continue your discussions with the council regarding the development of the NBC, including discussions about a master plan for the orderly development of the remaining vacant lots in the NBC.

Social housing provisions

I note your concern about the requirement to dedicate one in every 10 dwellings in the High density residential precinct for social housing. I advise that this matter is still under consideration by DSDMIP.

Amended zoning

I understand that the council's decision to remove the northern parcel of land from the Major centre zone (High density residential precinct) and place it within the Recreation and Open Space zone was due to the site having a very high bushfire risk. This matter will be considered during DSDMIP's assessment to determine if there is a conflict with state interests.

If you require any further information, please contact Mr Garth Nolan, Manager – Planning, SEQ North, in DSDMIP on (07) 5352 9710 or SEQNorthSARA@dsdmip.qld.gov.au, who will be pleased to assist.

Yours sincerely



Kerry Doss
**Deputy Director-General
Planning Group**

From: [Jamaica Hewston](#)
To: @urbis.com.au
Cc: [Anna McGrath](#); [Garth Nolan](#)
Subject: RE: Sunny Coast
Date: Thursday, 16 January 2020 2:41:00 PM
Attachments: [image002.png](#)
[image015.png](#)
[image016.png](#)
[image017.png](#)
[image018.png](#)
[image019.png](#)
[image003.png](#)

Hi

As discussed on the phone earlier, DSDMIP is currently assessing the draft New Noosa Plan. Garth and I would be happy to meet with you and your client Coles in person or via teleconference to discuss concerns with the social housing requirements in the draft New Noosa Plan.

Please let me know a time and date that suits you next week, perhaps Wednesday or Thursday. Feel free to send through any background material for our review prior to the meeting.

Regards

Jamaica Hewston
Principal Planning Officer
[Planning and Development Services](#)
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LET'S CONNECT



From: @urbis.com.au>
Sent: Thursday, 16 January 2020 8:17 AM
To: Anna McGrath <Anna.McGrath@dsdmip.qld.gov.au>
Subject: Sunny Coast

Morning Anna

HNY to you!

Quick one, I have a client very keen to meet with the State regarding the proposed Noosa Planning Scheme changes for social housing. Who is the most appropriate planner for me to contact on this matter ?

Cheers



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