

DILGP – BRIEF FOR DECISION	Date: 21 July 2016
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SUBJECT: Request to exercise ministerial call in powers for the West Village mixed use development over the Absoe site at West End and South Brisbane


NOTED or APPROVED/NOT APPROVED
 72(d)

 Hon. Jackie Trad MP
 Deputy Premier
 Minister for Infrastructure,
 Local Government and Planning
 and Minister for Trade and Investment
 Date: 26/07/16

RECOMMENDATIONS:

That you:

- **note** that on 27 June 2016 Councillor Jonathan Sri, Brisbane City Councillor for the Gabba Ward, Brisbane City Council (the council) wrote to you requesting you exercise your ministerial call in powers for the impact assessable development application for 'West Village', at 111 Boundary Street, 26 and 26A Little Jane Street, 19 and 23 Mollison Street, West End; and 37 Mollison Street, South Brisbane (**Attachment 1**)
- **note** that you have previously responded to a call in request from the West End Community Association for the development application for stage 1 of the development (**Attachment 2**)
- **note** the attached notice of appeal filed in the Planning and Environment Court by the West End Community Association Inc appealing the council's decision to approve the development application (**Attachment 3**)
- **approve** one of the following options available to you, detailed in the preliminary assessment report (**Attachment 4**) prepared by the Department of Infrastructure, Local Government and Planning (the department) :
 - Option 1
Do not issue a proposed call in notice, and **sign** the attached letter to Councillor Sri (**Attachment 5**) advising that you have decided not to issue a proposed call in notice for the development application;
or
 - Option 2
You issue a proposed call in notice and **approve** to restart the Integrated Development Assessment System process for the development application at the:
 - a) point of issuing an Acknowledgement notice in the Application stage or
 - b) start of the Information and referral stage or
 - c) start of the Public notification stage or
 - d) start of the Decision stage
 and **sign** the attached proposed call in notice (**Attachment 6**) and the attached letters to affected parties using your electronic signature (**Attachment 7**);
or
 - Option 3
Request the Honourable Dr Anthony Lynham MP, Minister for State Development and Minister for Natural Resources and Mines (Minister for State Development) to consider Councillor Sri's request, and **sign** the attached letter to the Minister for State Development (**Attachment 8**), enclosing a draft potential call in notice (**Attachment 9**);
or
 - Option 4
Do not issue a proposed call in notice, and elect to further investigate becoming a party to the appeal – a further brief will be prepared should you select this option
- **note** that the statutory timeframe for giving a proposed call in notice is on or before **27 July 2016** hence for this timeframe to be achieved a decision whether to issue the proposed call in notice must be made by **25 July 2016** to ensure that notices can be given on 27 July 2016.
- **note** this briefing note contains legal advice. The legal advice is confidential and subject to legal professional privilege.

Author details: [Redacted] Position: Senior Planner Telephone: [Redacted] Date completed: 5 July 2016	Endorsed by: [Redacted] Position: Executive Director Telephone: [Redacted] Date approved: 21 July 2016	Endorsed by: Stuart Moseley DDG: Planning Group Telephone: [Redacted] Date approved: 21 July 2016	Endorsed by: Frankie Carroll Director-General Telephone: [Redacted] Date approved: 21/7/16 
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BACKGROUND:

On 19 May 2016, the council issued a notice of decision to approve, subject to conditions, the development application for the 'West Village' mixed use development at 111 Boundary Street, 26 and 26A Little Jane Street, 19 and 23 Mollison Street, West End; and 37 Mollison Street, South Brisbane. The development seeks a preliminary approval under section 242 of the *Sustainable Planning Act 2009* (SPA) for material change of use, reconfiguration of a lot, building work and operational work to vary the effect of the *Brisbane City Plan 2014* (**Attachment 10**).

The preliminary approval varies the level of assessment, from impact assessable to code assessable, for future applications within the South Brisbane riverside neighbourhood plan, the District Centre zone, the heritage overlay and the High Density Residential zone. In particular, the approval provides:

- a supermarket tenancy of a maximum gross floor area (GFA) of 4,500 square metres, as opposed to a maximum GFA of 1,500 square metres
- the levels of assessment in relation to Lot 21 on RP10790 from those of the High Density Residential zone to those of the District Centre zone
- a site cover of a maximum of 95 per cent, as opposed to maximum of 80 per cent
- a Heritage Curtilage Area shown on the West Village Master Plan as opposed to the Heritage Overlay.

Varying the level of assessment from impact to code assessable development will remove the public's appeal rights following lodgement of a submission for future code assessable applications.

On 21 June 2016, the West End Community Association Inc filed a submitter appeal in the Planning and Environment Court against the council's decision to approve the development application.

On 27 June 2016, Councillor Sri wrote to you requesting you exercise your ministerial call in powers for the development application and included the following state interests for requesting a call in:

- state interests expressed in the State Planning Policy
- state interest of ensuring there is an efficient, effective and accountable planning and development assessment system.

This development application is within your electorate of South Brisbane.

The Sekisui House website includes the 'West Village' development as one of its residential projects.

Access refused under section 47(3)(a) of the RTI Act. Information subject to legal professional privilege under schedule 3, section 7 of the RTI

KEY ISSUES:*State interests*

Pursuant to section 424 of SPA, you, and the Minister administering the *State Development and Public Works Organisation Act 1971*, the Minister for State Development, may only call in the development application if the development involves a state interest. Under SPA, a state interest includes an interest that affects an economic or environmental interest of the state or a part of the state, including sustainable development, or an interest that the Minister considers affects the interests of ensuring there is an efficient, effective and accountable planning and development assessment system.

A State Planning Policy advances the purpose of SPA by stating the state's policy about a matter of state interest (section 22(b) of SPA). For SPA, a designated region's regional plan is also a state interest (section 35 of SPA).

Preliminary assessment report

The department has prepared a preliminary assessment report (**Attachment 4**) which identifies potential state interests that this development may involve. This report outlines the four options (listed above) available to you in response to the request to call in the development application.

ELECTION COMMITMENT:

This matter does not relate to an election commitment.

RESULTS OF CONSULTATION:

Legal services were consulted in the preparation of this brief and have no concerns.

RIGHT TO INFORMATION: Contents/attachments suitable for publication? Yes No

MEDIA OPPORTUNITY: Is there a media opportunity for the DP's Office? Yes No

RTI RELEASE

Option 1

DILGP – BRIEF FOR DECISION | Date: 9 September 2016

SUBJECT: Ministerial call in of the proposed West Village mixed use development over the Absoe site at West End and South Brisbane

NOTED or APPROVED/NOT APPROVED



Hon. Jackie Trad MP
Deputy Premier
Minister for Infrastructure,
Local Government and Planning
and Minister for Trade and Investment

Date: *14/09/16*

RECOMMENDATIONS:

That you:

- **consider** the development application lodged by Uniacke Pty Ltd (the applicant), noting there have been changes to the development application arising from the information request issued by the Brisbane City Council (the council) (the development application) (**Attachment 17**)
- **consider** the representations made in response to the proposed call in notice (**Attachment 13**)
- **consider** the previous decision brief and attachments (**Attachment 16**)
- **note** the Representations Report prepared by the Department of Infrastructure, Local Government and Planning (the department) (**Attachment 1**)
- **approve** one of the following options available to you:
 - ✓ • **Option 1 - Give a call in notice and restart IDAS at the decision stage**
 - **decide** to call in the development application
 - **decide** to restart the Integrated Development Assessment System (IDAS) process under the *Sustainable Planning Act 2009* (SPA) for the development application at the beginning of the decision stage
 - **decide** to reassess and re-decide the development application (as per the decision provisions of SPA)
 - **decide** not to reassess and re-decide the development application having regard only to the state interests
 - **approve, sign and date** the attached call in notice (**Attachment 2**)
 - **sign** the attached letter to Mr Colin Jensen, Chief Executive Officer of the council (**Attachment 3**) advising of your decision to call in the development application and to extend the decision making period to allow sufficient time for the reassessment, enclosing a copy of the call in notice and requesting information
 - **sign** the attached letter to the applicant (**Attachment 4**) advising of your decision to call in the development application and to extend the decision making period, enclosing a copy of the call in notice
 - **sign** the attached letters to submitters, using your electronic signature (**Attachment 5**) advising of your decision to call in the development application and to extend the decision making period, enclosing a copy of the call in notice
 - **sign**, using your electronic signature, the attached letter to the Chief Executive of the department as the concurrence agency (**Attachment 6**) advising of your decision to call in the development application and to extend the decision making period, enclosing a copy of the call in notice and requesting confirmation of the existing response and/or an updated response in relation to the development application
 - **sign**, using your electronic signature, the attached letter to Queensland Urban Utilities (**Attachment 7**) advising of your decision to call in the development application and to extend the decision making period, enclosing a copy of the call in notice and requesting information in relation to the development application
 - **sign** the attached letter to the Planning and Environment Court (P&E Court) (**Attachment 8**) advising of your decision to call in the development application and enclosing a copy of the call in notice.

Or

Author details: [redacted] Position: Manager Telephone: [redacted] Date completed: 31 August 2016	Endorsed by: [redacted] Position: Executive Director Telephone: [redacted] Date approved: 31 August 2016	Endorsed by: Stuart Moseley DDG: Planning Group Telephone: [redacted] Date approved: 1 September 2016	Endorsed by: Frankie Carroll Director-General Telephone: [redacted] Date approved: 12 September 2016
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- **Option 2 - Do not give a call in notice**
 - **decide** not to call in the development application, and **sign** the attached letters to the council, the applicant, submitters and the concurrence agency (**Attachment 9**) advising that you have decided not to call in the development application.
- or
- **Option 3 - Do not issue a call in notice and consider becoming a party to the appeal**
 - **decide** not to call in the development application, and **sign** the attached letters to council, the applicant, submitters and the concurrence agency (**Attachment 10**) advising that you have decided not to call in the development application and elect to further investigate becoming a party to the appeal. A further brief will be prepared should you select this option.
- **note** that the statutory timeframe for you to give the call in notice to the council (as the assessment manager) is on or before **14 September 2015**. A copy of the notice is then required to be given to the applicant, the concurrence agency and any submitter as soon as possible thereafter
- **note** that the statutory timeframe for giving written notice to the affected parties that you will not be calling in the development application is on or before **15 September 2016** (one day later than the date for giving the call in notice to the assessment manager)
- **note** this briefing note contains legal advice (indicated by inclusion in a box). The legal advice is confidential and subject to legal professional privilege.

BACKGROUND:

The development application and appeal

By development application dated on 30 April 2015, the applicant applied for a preliminary approval under section 242 of SPA for a material change of use for a mixed use development, reconfiguration of a lot, to carry out building work and to carry out operational work to vary the effect of Brisbane City Plan (being the development application).

The preliminary assessment report attached to the decision brief (MBN16/977) provides the background of the development application and summarises the development application from a local and state perspective (**Attachment 11**).

The development application was approved by the council by decision notice dated 19 May 2016.

A list of the development application material is provided at **Attachment 12**. This material is provided at the end of the brief at **Attachment 17**.

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That decision is currently the subject of a submitter appeal to the P&E Court.

The P&E Court has made directions for the conduct of the appeal, and it has been set down for hearing for five days in the December 2016 pool.

KEY ISSUES:

You may call in a development application only if the development involves a state interest.

Before calling in a development application, you must give a proposed call in notice to affected parties in accordance with section 424A of SPA. Amongst other things, the proposed call in notice must state that the person to whom the notice is given may make representations about the proposed call in within the representation period.

On 26 July 2016, you signed the proposed call in notice and advised affected parties that you were considering exercising your ministerial call in powers in relation to the development application. You invited written representations about whether or not the proposed development involves a state

interest, whether or not you should exercise your powers to call in the development and any matter stated in the proposed call in notice.

On 27 July 2016, the proposed call in notice was issued and stated:

- that you were proposing to call in the development application
- the reasons for the proposed call in
- that you were proposing to restart the reassessment for the development application from the beginning of the decision stage of the IDAS process
- that you were proposing to reassess and re-decide the development application against the normal assessment and decision provisions of SPA
- that you were inviting representations about the proposed call in.

Representations

Parties were given until 18 August 2016 to make representations about the proposed call in. A total of 735 representations were received, as at the time the representation report was completed on 30 August 2016. One subsequent representation was received after 30 August 2016 and was provided to you with the other representations. In total, 736 representations were received.

In accordance with section 424C of SPA, after considering all representations made in the representation period, you must decide to call in the application or not to call in the application.

Copies of all 736 representations are provided at **Attachment 13**. The Representations Report, prepared by the department, provides a summary of the primary issues raised in response to the proposed call in notice, and is **Attachment 1**.

Access refused under section 47(3)(a) of the RTI Act. Information subject to legal professional privilege under schedule 3, section 7 of the RTI Act

State interest

Under section 424 of SPA, you may call in a development application only if the development involves a state interest. A state interest is defined in schedule 3 of SPA as:

- an interest that the Minister considers affects an economic or environmental interest of the State or a part of the state, including sustainable development, or
- an interest that the Minister considers affects the interest of ensuring there is an efficient, effective and accountable planning and development assessment system

A State Planning Policy advances the purpose of SPA by stating the state's policy about a matter of state interest (section 22(b) of SPA). A designated region's regional plan is taken to be a state interest under section 35 of SPA.

Should you decide to call in the development application you are recommended to decide that the development involves the state interests identified below and that the application be called in for the reasons below.

1. The development affects an economic and environmental interest of the state or a part of the state as:
 - a. The development represents a substantial economic investment in the area, with:
 - i. the applicant's Economic Impact Assessment prepared by Macroplan Dimasi, dated April 2015, stating that:
 - "The non-residential component of the proposed West Village mixed-use development is proposed to contain a total floorspace of 11,500sq.m, including a 4,500sq.m GFA supermarket" (at page i)
 - "The proposed development, which in addition to the proposed retail and non-residential uses has a total of 1,350 units proposed or approximately 2,970 persons on development completion" (at page iii)

- "We have estimated that the proposed 4,500 sq.m GFA supermarket will generate sales in the order of \$45.0 million (\$10,000 per sq.m) in its first full year" (at page viii).
- ii. The request purports that the proposal is an \$800 million development (at page 8).
- b. The State Planning Policy April 2016 (the SPP) identifies the state interest of Development and construction (Economic growth), and states at page 22:
 - i. that development and construction is of interest to the state as "*Planning for development and construction supports a thriving industry that is both a major employer, delivers the housing we need and is a prerequisite for other economic activities.*"
 - ii. "*Planning supports employment needs and economic growth by facilitating a range of residential, commercial, retail and industrial development opportunities, and by supporting a strong development and construction sector.*"

The applicant's Economic Impact Assessment prepared by Macroplan Dimasi, dated April 2015, purports that:

 - i. "estimated employment resulting from the construction of the proposed development is 447 jobs per year, including 172 created directly and a further 275 resulting from multiplier induced effects" (at page vii)
 - ii. "net employment on-site and ongoing resulting from the retail is expected to be 368 net jobs" (at page 42).

- c. The SPP identifies the state interests of Liveable communities and Housing supply and diversity and states that:
 - i. housing supply and diversity is of interest to the state as "*Housing is required to cater for different lifestyles, incomes, ages, household and family types, and community needs*" (at page 16)
 - ii. liveable communities are of interest to the state as "*The liveability of communities is of fundamental concern to all levels of government as it directly influences our quality of life and wellbeing. As the population of our cities and towns grow, and socioeconomic and demographic profiles change, the importance of attractive, healthy, safe, accessible and inclusive places and spaces increases*" (at page 18).

The proposed development occupies a significant site identified as a 'Key development site' in the South Brisbane Riverside Neighbourhood Plan. The site comprises a total area of approximately 2.6 hectares in a brownfield inner-city location. This site provides a significant opportunity for infill development. The development of this site is of a significant scale and provides an opportunity to independently contribute to these state interests by:

- "*facilitating a diverse and comprehensive range of housing options*" (at page 17)
- "*providing for best-practice, innovative and adaptable housing design*" (at page 17)
- delivering "*liveable, well designed and serviced communities that support wellbeing and enhance quality of life*" (at page 17)
- "*planning for public open space that : (i) is functional, accessible and connected*" (at page 19)
- "*facilitating vibrant places and spaces, diverse communities, and good neighbourhood planning and centres design that meets lifestyle needs by: (a) providing a mix of land uses to meet the diverse demographic, social, cultural, economic and lifestyle needs of the community...*" (at page 19).

2. The South East Queensland Regional Plan 2009–2031 includes the following:

- a. "*The regional vision for SEQ is a future that is sustainable, affordable, prosperous, liveable and resilient to climate change, where...*

- *communities are safe, healthy, accessible and inclusive ...*
 - *development is sustainable and well designed*
 - *the community has access to a range of quality, open space recreational opportunities.*" (at page 10).
- b. The strategic direction 'Accommodating future residential and employment growth' in 'Part B Regional vision and strategic directions' states that:
- *"Residential and employment growth is distributed across the region to facilitate access and choice, assist housing affordability and sub-regional self-containment..."*
 - *"Future residential growth will be accommodated through a combination of redevelopment and use of: underutilised land within the broader urban framework and established urban areas"* (at page 11).
- c. The 'Sub-Regional Narratives' of Brisbane in 'Part C – Regional land use pattern' of the regional plan states that *"Under the SEQ Regional Plan, an additional 156 000 dwellings will be required to house Brisbane's expected regional growth and demographic change. Most will be delivered in existing urban areas. Redevelopment and infill will need to deliver at least 138 000 of these additional dwellings"* (at page 17).

The sub-regional narratives for Brisbane identify South Brisbane and West End as 'Existing urban areas.'

// The residential component of the development is purported by the applicant to contribute up to 1,350 infill dwellings in the Brisbane CBD frame area, contributing to these dwelling targets.

3. Ensuring there is an efficient, effective and accountable planning and development assessment system

The application seeks to have the effect of varying certain levels of assessment, from impact assessable to code assessable, for future applications within the South Brisbane Riverside Neighbourhood Plan, the District centre zone, the Heritage overlay and the High density residential zone of the City Plan including for the following:

- a supermarket tenancy of a maximum GFA of 4,500m² (as opposed to 1,500m²) within the Boundary Rd Vulture Precinct (NPP- 003)
- on Lot 21 on RP10790 from those of the High Density Residential zone to those of the District Centre zone
- a site cover of a maximum of 95 per cent (as opposed to 80 per cent)
- development within and adjoining the Heritage Curtilage Area shown on the West Village Master Plan (as opposed to the Heritage Overlay).

The application also seeks to vary the Heritage overlay code to the applicant prepared West Village Preliminary Approval Heritage overlay code.

Varying the level of assessment from impact to code assessable development will remove the public's appeal rights following lodgement of a submission for future code assessable applications. //

This development has attracted significant community interest as evidenced by the lodgement of 115 submissions and the filing of a submitter appeal. Resolution of this appeal is likely to take considerable time, delaying a clear decision on the development prospects of this decision for this site.

Please note that certain page references in the above state interests have been changed from the proposed call in notice to correct typographical errors.

If you wish to give the call in notice (**Attachment 2**), please ensure before signing it, that you are satisfied and agree with the identified state interests and reasons for giving the call in notice. Should you wish to alter, add to, or subtract from the text of the call in notice please advise the department to

enable any necessary advice to be given and/or the necessary amendments to be made for your signature.

Reasons for giving the call-in notice

1. I consider that the proposed development involves the state interests set out above.
2. The potential impact of the development on the economy is substantial, with the proposal purported to be an \$800million development, generating 447 jobs per year during construction with employment on-site and ongoing resulting from the retail expected to be 368 net jobs.
3. The contribution the development makes towards meeting the dwelling targets of 156,000 dwellings identified in the Brisbane sub-narrative of the regional plan, of which 138,000 need to be delivered through redevelopment and infill, with the development purported to be contributing up to 1,350 infill dwellings in the Brisbane CBD frame area.
4. This significant site, being identified as a 'Key development site' in the South Brisbane Riverside Neighbourhood Plan, provides an opportunity to contribute to the state interest of Liveable communities and Housing supply and diversity.
5. This is a significant development on a 'Key development site' and requires detailed consideration and assessment, based on sufficient information and on giving appropriate weight to community concerns, to ensure an efficient, effective and accountable development decision is made.
6. The economic and social significance of this development and the strong community interest warrants a timely consideration and resolution of this complex application in the interests of ensuring an effective, efficient and accountable development assessment system.

Decision Options Analysis

The following options are available to you, as the Planning Minister, for consideration in relation to your decision whether to call in the development application:

Option 1 – Give a notice of ministerial call in

You may call in a development application only if the development involves a state interest. The preliminary assessment report identified potential state interests. The department considers that the representations do not raise any new facts or issues which might lead to the content of any call in notice being varied from the content of the proposed call in notice.

You must also decide:

- whether to undertake a full merit planning reassessment under the normal assessment and decision provisions of SPA or to reassess and re-decide the application having regard only to the state interests; and
- the point in the IDAS process, before or at the start of the decision stage from which the IDAS process must restart for the development application. You may decide a point in the IDAS process that is different to the restarting point mentioned in the proposed call in notice.

Merit reassessment

Unless you propose to reassess and re-decide the development application having regard only to the state interests for which the development application may be called in, the normal assessment and decision provisions under SPA will apply. This means you will reassess and re-decide the development application on its merits in accordance with Chapter 6, Part 5 of SPA.

Access refused under section 47(3)(a) of the RTI Act. Information subject to legal professional privilege under schedule 3, section 7 of the RTI

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The council has issued a request for information, and has made a decision to approve the development application, citing that the decision does not conflict with any matters stated in the City Plan. It is considered that due to the quantity of information available and the nature of the development application, a comprehensive full merit reassessment would be preferable to a state interest specific assessment.

For completeness, it is noted that the proposed call in notice stated that a merit assessment would allow you 'to address key issues raised by the submitters, and in the Notice of Appeal and the request.' The draft call in notice has been amended to delete reference to the submitters, the Notice of Appeal and the request. This has been amended to clarify that key issues may arise from more than just these documents.

State interests reassessment

Section 426(4) of SPA provides (so far as material) that you may, if you consider it appropriate in the circumstances, reassess and re-decide the application having regard only to the state interests for which the application was called in. Section 425(3) of SPA provides that a call in notice must state whether you intend to reassess and re-decide the application having regard only to the state interests for which the application may be called in, and if so, that the usual assessment and decision provisions do not apply to your reassessment and re-decision on the application.

You may have regard to any common material for the development application and any other matter which you consider relevant to the state interest (section 427(8)(b) of SPA). As provided in schedule 3 of SPA, common material for a development application means:

- (a) *all the material about the application the assessment manager has received in the first 3 stages of IDAS, including —*
 - (i) any concurrence agency requirements, advice agency recommendations and contents of submissions that have been accepted by the assessment manager; and
 - (ii) any advice or comment about the application received under section 256; and
- (b) if a development approval for the development has not lapsed—the approval; and
- (c) an infrastructure agreement applicable to the land the subject of the application.

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Stage in IDAS Process

In deciding the point at which the IDAS process restarts, you may have regard to the development application, the representations made in the representation period for the development application and any other matters you consider relevant.

It is considered preferable to re-start the IDAS process at the start of the decision stage because the department considers that significant information has been provided about the development within the first three stages of the IDAS process, the development application has been publically notified and submissions were received.

Extension of decision making period

Due to the complexity of issues to be reassessed and the depth of external technical expertise required, should you be minded to call in the development application, the department recommends you extend the decision making period by 20 business days to allow sufficient time for the necessary technical and planning reassessments to be undertaken. Your decision on the reassessment of the development application would therefore be due on **Thursday 10 November 2016** (based on you giving a call in notice on **14 September 2016**).

Please note that the above decision dates will change should you give the notice of call in on a date other than **Wednesday 14 September 2016**.

Advantages

- If you choose to call in the development application, you will have the opportunity to undertake a reassessment of the proposal and re-decide the development application. You will become the assessment manager for the development application until you give a decision notice.
- If you decide to call in the development application, you will be able to ensure that a decision on the development application is reached expeditiously. No appeal may be made in the Planning and Environment Court against a ministerial call in decision, however, proceedings may be commenced in the Supreme Court on the basis that procedural fairness was not afforded or some other legal error was committed.

Disadvantages

- If you decide to call in the development application, the department estimates that a full reassessment will cost approximately \$120,000 and involve significant resources.
- There may be a perceived precedent for your involvement in similar development applications; although this occurs with every call in.

Option 2 – Not to give a notice of ministerial call in

The council has the responsibility and autonomy for ensuring the good rule and government of the local government area. The council is required to assess development applications in accordance with SPA, including against its planning scheme. The council made its decision to approve the development application, subject to conditions, within the decision making period.

The timeframes to give written notice are different should you decide not to call in the development application. If you decide not to call in the development application, written notice must be given to the affected parties by **15 September 2016** stating that the development application will not be called in.

If you are minded to choose this option, the appeal in the P&E Court continues. The P&E Court is the independent body established to resolve disputes about planning and development matters. This may be considered the appropriate avenue to resolve disputes about development proposals and the means for the views of local governments, applicants and submitters to be heard, tested and determined. The P&E Court has ordered a timetable for the hearing of the appeal, with an order that the appeal be listed for the five days in the December 2016 pool.

Advantages

- You will not risk setting a perceived precedent for your involvement in similar development applications.
- The state will not incur any costs associated with assessing and deciding the development application.

Disadvantages

- By choosing not to commence the call in process with regard to the matter, you cannot influence the outcome of the development application or address any state interests which may be relevant to a full merit reassessment unless you elect to become a party to an appeal.
- The parties will potentially be subject to delays in obtaining a decision in the P&E Court about the proposed development, together with the costs of litigation.

Option 3 – Elect to become a party to an appeal

Under section 489 of SPA, if an appeal is lodged in the P&E Court, you may, at any time before the appeal is decided, elect to be a party to the appeal if you are satisfied an appeal involves a state interest.

Access refused under section 47(3)(a) of the RTI Act. Information subject to legal professional privilege under schedule 3, section 7 of the RTI A

Recommendation

Should you decide to call in the development application you are recommended to decide that the development involves the state interests identified above and that the application be called in for the reasons set out above.

Should you decide to call in the development application, it is further recommended that you:

- decide to reassess and re-decide the development application under the normal assessment provisions of SPA, and //

- re-commence the IDAS process from the start of the decision stage. //

Discretionary Considerations

Section 424 of SPA provides:

The Minister may, under this division, call in an application only if the development involves a State interest. (Emphasis added)

You are not obliged to call in a development application just because the proposed development involves a state interest. You have discretion as to whether to call in such a development application and to give a call in notice. An outline of Discretionary Considerations is attached. (**Attachment 15**)

LEGAL ADVICE:

Legal advice has been included at **Attachment 14**. The advice is subject to legal professional privilege.

ELECTION COMMITMENTS:

This brief does not relate to an election commitment.

RESULTS OF CONSULTATION:

Legal Services were consulted in the preparation of this briefing note, the Representations Report and the draft call in notice. Media have been made aware of the impending decision and a media release has been prepared to support your decision. Communications has been made aware of the impending decision and a website update has been prepared to be implemented following your decision.

RIGHT TO INFORMATION: Contents/attachments suitable for publication? Yes No

MEDIA OPPORTUNITY: Is there a media opportunity for the DP's Office? Yes No