**INDEPENDENT DECISION REVIEW PANEL REPORT**

**8 May 2020**

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| **Development Application** | 10301/2019/MCU |
| **Application Description** | Material Change of Use Business Use, Entertainment Use, Recreation Use & Shopping Centre |
| **Street Address** | 143, 143A & 163 Brisbane Street, 23 & 24 Ipswich City Mall, 2 Bell Street, IPSWICH QLD 4305 |
| **Real Property Description** | Lot 1 & 2 RP 50109, Lot 2 SP 246525, Lot 1 RP 209886, Lot 1 SP300605, L1 RP157021 |
| **Owner** | Ipswich City Council |
| **Applicant** | Ipswich City Council C/- Cardno |
| **Reason for Referral** | Council Application other than for Local Government Infrastructure |
| **Panel Members** | Wendy Evans – Planning (Chairperson) |

## KEY MATTERS IDENTIFIED BY COUNCIL STAFF

This is a report concerning a development application seeking approval for a material change of use for a business use, entertainment use, recreation use and shopping centre, predominantly to be undertaken within existing, refurbished buildings, which forms part of the redevelopment of the Nicholas Street and Union Place precinct by Ipswich City Council.

The subject application requires review by the General Purposes Committee and determination by Full Council in accordance with the Framework for Development Applications and Related Activities Policy as the application has been made by Council, and does not relate to the provision of standard local government infrastructure. Further, the application is considered a Sensitive Development Matter and is required to be reviewed by an Independent Decision Review Panel.

## PANEL REVIEW

### 1. Core Issues

The development application is code assessable and accordingly, must be carried out only against the assessment benchmarks in a categorizing instrument for the development, and having regard to any matters prescribed by regulation for paragraph 45(3) of the *Planning Act 2016* (see paragraph 45(3) of the *Planning Act 2016*).

The draft officer report does not identify the relevant assessment benchmarks which have been applied for the purposes of this assessment. Nor does the report make it clear what (if any) matters the code assessment has had regard to, for the purposes of section 45(3) of the *Planning Act 2016*.

Understanding what the core issues are, that are related to this application, is not immediately possible based on the current draft officer report.

The draft statement of reasons advises the assessment benchmarks, and further – identifies where there is non-compliance with the same. What is interesting in this regard is that the non-compliance identified sits at the Specific Outcome level of the Commercial and Industrial Code. The Cardno town planning report focused on the Overall Outcomes of the applicable codes, and undertook a more cursory assessment of the Specific Outcomes – and in doing so, did not address the non-compliance with 12.7.4(3). Based on this, it would appear that the Council officer's assessment has been attended to in the manner directed by the legislation. However, it is not presently reflected in the draft officer report.

Assessment Manager Response: Report updated to include the assessment benchmarks under the heading 'Notice about the Decision'.

**2. Additional Issues**

Based on the development proposed and its location, the panel considers that the following issues should more clearly be addressed within the draft officer report:

a) **Tenancy Mix:** Suitability of the proposed land uses (which could be variously configured in terms of ultimate tenancies) in the context of the subject land. Where it will be left to market led drivers to determine the ultimate tenancy mix (i.e. there is no GFA indication/condition proposed as to what extent each use type should occupy the various tenancies), an observation confirming why this is appropriate and how it will still achieve the planning scheme provisions regarding vibrancy, economic performance and the like, would be beneficial.

Assessment Manager Response: Report updated to address suitability of tenancy mix under the heading 'Proposal' and 'Other Relevant Information - Appropriateness of Proposed Uses'.

b) **Traffic, servicing and parking**: The ability of the proposed development (which could be variously configured in terms of ultimate tenancies) to function from a traffic, servicing and parking perspective, given that no changes to current parking provision or servicing arrangements appears to form part of the application, ought to be addressed in the report.

Assessment Manager Response: Report updated to address matters raised relating to traffic, servicing and parking under the heading 'Proposal'.

c) **The SPP**: Specific attention to the State Planning Policy components forming assessment benchmarks is needed. In light of the Planning and Environment Court's decision in *Black Ink Architecture Pty Ltd v Ipswich City Council* [2020] QPEC 13 – this should include further information on the site's flood credentials/location with respect to a natural hazard area, and how the development 'avoids' or 'mitigates risk'.

Assessment Manager Response: Report updated to address the State Planning Policy under the heading 'Other Relevant Information - Development Constraints'.

d) **Currency period**: Where there is no proposed sequencing or staging of the development, an explanation in the draft report as to the suitability of the six-year currency period would be appropriate.

Assessment Manager Response: Report updated to address the currency period imposed under the heading 'Other Relevant Information - Currency Period'.

e) **The covered walkway**: Clarification of the approval intentions for the covered walkway over Bell Street would be advantageous both in the report and possibly in the conditions. It would appear that Drawing AR-MB 3001, Revision C "Elevations – Sheet 2" indicates the "*existing covered walkway to be refurbished*". Page 8 of the Cardno town planning report advises instead the 'demolition of the existing pedestrian bridge crossing Bell Street'. The draft Council officers report at page 9 advises "*other works associated with the precinct could also involve the demolition of the existing pedestrian Bridge connecting the Health Plaza over Bell Street, however these works do not form part of the subject development application*";

Assessment Manager Response: Report updated to indicate that these works do not form part of this application under the heading 'Proposal - Precinct K'. A note has also been included on the Draft DA Plans Approved plans.

f) **Other permits**: It is recommended that part 5 of the draft decision be revisited, with respect to the need for subsequent operational works permits (as well as building works permits and plumbing approvals), especially in light of road reserve work.

Assessment Manager Response: Report updated to clarify why subsequent operational works permits are not required under heading 'Other Relevant Information - Municipal Works'.

g) **Trunk Infrastructure**: Part 12 of the draft decision records that trunk infrastructure is "not applicable to this decision". Accepting that this might be a standard observation of Council, clarifying what is meant by this statement further, would be of assistance for stand-alone reading (i.e. it is unclear whether it is meant to convey that there is no trunk infrastructure that services the subject site, no trunk infrastructure changes necessary to service the proposed development, or otherwise).

Assessment Manager Response: Part 12 of the Decision Notice has been updated to state that 'No trunk infrastructure changes necessary to service the development'.

h) **Public Art:** It is noted in the draft officer's report that no public art will be required as this development involves the re-use of existing buildings. It does not appear that this exemption falls into the terms of the Implementation Guideline No. 31. However, it also appears that this guideline is non-statutory in nature (instead constituting an explanatory/ extrinsic/implementation guide in accordance with section 2.3(2) of the Scheme) and could accordingly adopt somewhat of a discretionary role in terms of its final application. If the officer is satisfied that their position in terms of this development's contribution to public artwork would stand irrespective of the applicant details, no change is suggested to this component of the draft report.

Assessment Manager Response: Report updated to specifically address this matter under heading 'Other Relevant Information - Public Art'.

i) **Restriction of 'business uses'**: More specific confirmation via the conditions that the term 'business use' excludes those uses which would ordinarily trigger impact assessment (such as funeral premises, service station, or the predominant use of premises for a skin penetrating activity other than acupuncture) should be provided. It may be appropriate to attend to this in draft condition 8(a). Condition 8(c) achieves this well for the 'entertainment use' category.

It is noted that none of the impact assessable business uses are identified in the Attachment A list to form part of the development approval. However, where none of the conditions expressly refer to Attachment A (and instead do the generic reference back to Part 3), there is the potential for debate around the purpose of Attachment A.

Assessment Manager Response: Condition 8(c) updated to specifically exclude business uses which would ordinarily trigger impact assessment.

j) **Air Quality**: Page 6 of the draft officer's report advises that a detailed air quality impact assessment report will be needed. This is not reflected in draft condition 18. Furthermore, draft condition 18(a) refers to condition 22 on acoustics – which does not exist. Condition 18(a) ought to be wholly revisited in light of the Dewpoint Group technical note and the Cardno response to the Council's information request on this point, and a more specific condition created to set clear and measurable requirements.

There is no draft condition 18(b).

Draft condition 18(c) requires annual air quality monitoring to demonstrate compliance. This condition ought to be revisited also, when the more specific and measurable parameters of what condition 18(a) requires can be known. At the very least, requiring annual monitoring to be done under "typical operating conditions" should be specified.

Assessment Manager Response: Report updated to address this matter under heading 'Proposal - Precinct B'. The condition has not been updated for the reasons described in the report.

k) **Acoustic Management**: At page 6 of the draft officer's report, Council notes that an amended acoustic assessment will be required. This is not reflected in draft condition 20.

For a condition like draft condition 20, which is quantifiable, the panel recommends a more

specific approach to its drafting. Where compliance with the provisions of the WSP report are being conditioned, importing the key features of that report into the body of the condition would be appropriate (and specific reference made to the report itself, rather than the 'part 3' approach used in the condition). This applies for both parts (a) and (b) to draft condition 20.

The same comments apply for the monitoring requirements here, as above for air quality. Like the air quality condition, it is suggested that the condition regarding acoustic management ought to be wholly revisited in light of the WSP report and the Cardno response to the Council's information request on this point, and a more specific condition created to set clear and measurable requirements.

Assessment Manager Response: Report updated to address this matter under heading 'Proposal - Precinct B'. The corresponding condition has also been updated.

l) **Union Place/Nicholas Street (Ipswich City Mall) works**: Draft condition 4(a) addresses the points raised at page 12 of the draft officer's report. However, it contains some level of ambiguity which should ideally be corrected.

If this application were being attended to by a private developer, would the reinstatement works discussed at page 12 of the draft officer's report be conditioned? If yes, would it not be appropriate to condition them here aswell?

Further, the draft condition 4(a) simply refers back again to "as indicated on the approved plans outlined in Part 3". As indicated above, it is respectfully observed that this is not entirely helpful. If a specific plan can be referenced for these conditions, it would add clarity to the condition and what works in particular are required. If the works are not properly detailed on the plans – words in the condition need to be added. Detail as to the nature of this condition, including both of its sub-limbs (a) and (b), (e.g. non-trunk works condition if appropriate) ought to be provided.

Assessment Manager Response: Report updated to address this matter under heading 'Other Relevant Information - Municipal Works'. Condition 4 has also been updated.

m) **Hours of operation of the uses**: Draft condition 6 only purports to apply to the applicant. Whilst the approval runs with the land, it is suggested that the wording of this condition be revisited to attach to the operating hours of the uses, as opposed to the applicant's conduct.

Assessment Manager Response: Condition 6 has been updated to address this matter.

n) **Bottle Alley works**: At page 7 of the draft officer's report, there is attention paid to the development involving works to include the widening of Bottle Alley (capitals missing from the first use of this reference term on page 7). It indicates that the works at this location are an interim solution only.

Draft condition 10 relates to the Bottle Alley works. There is nothing in that condition which indicates they are an interim solution and wherever the conditions generically refer back to "as outlined in Part 3 of this development permit", it is less than clear where specifically the reference is being made to. It is suggested that greater clarity be built around this matter and its corresponding condition (including its nature as possibly non-trunk works if appropriate).

Assessment Manager Response: Report updated to address this matter under heading 'Proposal - Precinct B'. Condition 10 has also been updated.

o) **Hazardous Substances**: Draft condition 21 addresses hazardous substances. Based on the material considered as part of this panel review, it is unclear what is being conditioned and addressed here. For completeness, the panel questions whether any Environmental Authority is triggered, and further what approval is meant in draft condition 21(i).

Assessment Manager Response: Report updated to address this matter under heading 'Proposal - Precinct B'.

In addition to the above, it would appear that the whole of Lot 1 on SP300605 forms part of the subject site. Despite this, it is unclear how or to what extent the proposed development will

impact that part of this allotment bound by Bremer Street and Bell Street. Clarification in this regard is also suggested in the report.

Assessment Manager Response: Report updated to address this matter under heading 'Proposal'

Finally, owners' consent was clearly an issue at some point during the Council's receipt of the application. The draft report addresses this briefly at page 12 – concluding that the issue was addressed. This panel review has not interrogated the sufficiency of the properly made nature of the development application at large.

Assessment Manager Response: No further action required.

**3. Compliance of the recommended decision with relevant legislation, assessment benchmarks etc.**

The panel refers again here, to its observations made above in terms of 'Core Issues'.

The recommended decision is to approve, subject to conditions. This is an available option for code assessable development, pursuant to 60(2) of the *Planning Act 2016*.

Assessment Manager Response: No further action required.

**4. Submissions**

This application was subject to code assessment and accordingly, did not attract properly made submissions. It is therefore unnecessary to consider whether any submissions have been properly considered in the draft decision.

Assessment Manager Response: No further action required.

**5. Administrative matters**

a) It is noted for completeness that the leasing plans do not form part of the approved plans.

Assessment Manager Response: Leasing plans have now been included in approved plans set.

b) The reference in Part 3 of the draft approval (page 16) to drawing 718093 A-R-MB-4101 indicates that the name of that plan is "Union Place Dining Precinct – Part Floor/Ceiling & Roof Plan – Sheet 2 Revision F". The version of that plan provided to the panel is described only as "Union Place Dining Precinct – Part Floor Plan – Sheet 2 Revision F".

Assessment Manager Response: Part 3 of the Decision Notice has been updated to correct this anomally.

c) The outdoor dining appears to be intended for approval as part of this draft package. If a separate licence or other internal Council approval is required to properly allow this to occur, the relevant advice note ought to be included (or an indicator about the same embedded in draft condition 17).

Assessment Manager Response: An advice clause titled Outdoor/Footpath Dining has been included.

d) The panel understands that one of the allotments is contained on the environmental management register. The panel has assumed that no accessible underground facility is associated with the proposed development for this allotment, thereby obviating the need to consider Schedule 10, Part 4 of the *Planning Regulation 2017*. If this assumption is incorrect, this will need to be addressed.

Assessment Manager Response: Assumption is accurate, no further action required.

e) The Cardno town planning report at page 14, with respect to water quality, indicated that "*the proposed development involves the reconfiguration of existing buildings and will not result in an increase in the impervious area provided. Existing stormwater arrangements will be utilised without alteration*". The accuracy of this statement is questioned where outdoor dining and other streetworks are proposed.

Assessment Manager Response: Report updated to address this matter under heading 'Other Relevant Information - Stormwater (including Water Quality)'. The works identified do not form part of the application itself and will be occurring as exempt Municipal Works.

## RECOMMENDATION

Despite the issues raised above in terms of the draft report, the panel, in considering the material before it**, is satisfied with the intention of the proposed Council recommendation, that being to recommend approval of the application subject to conditions**.

However, as detailed above, the **panel recommends that further work be attended to by the Council in terms of the draft officer report, and also the draft conditions** – to ensure the decision is completely robust.

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Signature of IDRP Chairperson

Name: Wendy Evans
Discipline: Planning (Chairperson)