



“(x) The subdivision design shall take into account the requirements of the Queensland Department of Transport for the Southern Brisbane Bypass Corridor.”

Proposed condition (1) relates to the provision of a parkland contribution not on the subject land, but on land being the balance area of lot 416 on SK312007. That is within the area referred to as stage 3 of the proposed overall development.

The application on which the Court heard evidence and on which it pronounced judgment related to an application for rezoning of the subject land.

Whilst there may be circumstances in which it is appropriate for the Court to consider the provision of parkland at a time other than subdivision, unless there are special circumstances the provision of a parkland contribution ought more appropriately be made at the time of a subdivision application.

There are no special circumstances here which would, in my view, render it necessary and desirable to consider a parkland contribution at the rezoning stage. It ought more appropriately and properly be considered at a time when an application for the subdivision of the subject land is made.

However, it should be noted that on the application for subdivision the respondent may consider it appropriate and desirable to take into account what use is proposed in relation to the balance of what has been called the Paratz land and the availability of land within that area for the purposes of satisfying a parkland contribution in relation to the subject land.

In my view Condition (L) should be deleted.

Proposed Condition (p) requires that upon the gazettal of the rezoning the vegetation protection order is to be removed.

As presently exists in the locality, the vegetation protection order covers land including part of the subject land. Proposed Condition (o), which is agreed between the parties, provides for a vegetation management plan for the whole of the subject land which requires the approval of the Manager, Department of Recreation and Health of the respondent. The condition in itself sets out certain parameters in relation to the proposed vegetation management plan. The vegetation management plan encompassing the matters which are referred to in proposed Condition (o) will establish to the satisfaction of the Manager, Department of Recreation and Health what is required in order that the rezoning approval be subsequently gazetted. It will further require the appellant to identify in detail certain vegetation which is proposed to be retained and the method of dealing with the retention of vegetation and the other matters as specified.

The statement by Mr Oliver in relation to the environmental requirement, in my view, is inconsistent with the judgment of the Court relative to the environmental value of the subject land. Compliance with the vegetation management plan is of such significance that I see no reason why in those circumstances the vegetation protection order ought to be retained relative to the entirety part of the subject land. Compliance with the vegetation management plan relative to part of the subject land ought to ensure adequate protection of the environment.

In my view, having regard to proposed Condition (o) and the requirements of the management vegetation plan, a reasonable and relevant condition which would require the retention of the Vegetation Protection Order is excessive and not reasonably required. In my opinion, the condition should be retained in its present form being a reasonable and relevant condition.

Condition (x), it may be said, relates to any proposed subsequent subdivisional application in that it requires the subdivision design to take into account the requirements of the Department of Transport as set out in

its letter dated 20 June 1994 (Exhibit 36). No notice of intention to resume any part of the subject land has been given by the department. The department has ample statutory powers to resume land in relation to the carrying out of its duties under its legislation.

The letter of 20 June states that the plan shows preliminary resumption line subject to final design. It is clearly not intended to convey to the parties that what is set out in plan 40993/SK153, is finally determined for the proposed Southern Brisbane bypass corridor.

In those circumstances, the requirement is uncertain. In addition, such a condition at this stage is not reasonably required or is it relevant on the application for rezoning. In my opinion, condition (x) should be deleted.

The application for rezoning is approved, subject to the conditions set out in Exhibit 34 with the deletion of condition (1).

Gentlemen, anything further?

MR HAYDON: There is provision in the Act now that seems to require that another order be made, that is, that the matter, the approved application, be referred to the respondent and that comes in section five point - 4.5.

HIS HONOUR: Bracket-----

MR HAYDON: Paragraph - subs 1, paragraph (b).

HIS HONOUR: What does it say?

MR HAYDON: It says, "The Court upon hearing of an appeal determines that the application should be approved and referred to the local authority." They have slipped those words in. Perhaps it is appropriate that Your Honour order that the approved application should be referred to the respondent.

HIS HONOUR: I further order that the approved application be referred to the respondent.

MR HAYDON: Thank you, Your Honour.

HIS HONOUR: You do not want me to do anything about time; within which by Statute the Local Authority has to take steps to effect the rezoning.

MR HINSON: I think 4.5(ii) goes on to talk about the time limits for the application to be made by the Council, to the department.

HIS HONOUR: It is very constrained.

MR HAYDON: 14 days.

HIS HONOUR: I know. I am not raising the point; if you can do it within 14 days, I am happy with that.

MR HAYDON: The difficulty in formulating a longer period, relates to proceedings which are before the Court of Appeal. I am not seeking any particular order at this stage.

HIS HONOUR: This is your last chance, Mr Haydon.

MR HAYDON: The only other thing I thought of was this; it be from a time specified from the filing of the judgment of the Court of Appeal.

HIS HONOUR: I am not happy with that. If there is an appeal to the Court of Appeal I would certainly want constraints put on to have that prosecuted forthwith.

MR HAYDON: Sure. I am not sure what has been happening in my absence. I know things have progressed before I went away. Mr Chadwick is not here. Miss Quinn is not able to tell me exactly what the position is today.

HIS HONOUR: The form of the order you suggest could determine or delay things for 12 months or indefinitely?

MR HAYDON: The Court of Appeal likes to clean up its list.

HIS HONOUR: I had one of my judgments before the Court for some time.

MR HAYDON: No comment. That is the only other thing I could think of that would cover the situation, that it be within, say, 21 days of the filing of the judgment with the Court of Appeal.

What is the last Wording of the section? The last four or five words.

MR HAYDON: "Or such further time, for such longer period as the Court may order, or as may be ordered by the Court."

HIS HONOUR: I further order -----

MR HAYDON: I can give you some of the words. "Further order that the respondent is to apply to the Chief Executive for such amendment of the plan, if made, to effect the application and the respondent shall commence to take and do the steps and things prescribed by the Act to be done and taken."

HIS HONOUR: That is under the old Act?

MR HAYDON: It is still pretty good now.

HIS HONOUR: I don't think so.

MR HINSON: Can I suggest the alternative, and go through it?

HIS HONOUR: The last little part of (b)(i).

MR HINSON: 4.5(i) talks about -----

HIS HONOUR: What are the words?

MR HINSON: "The Local Authority is to apply to the Chief Executive for approval by the Governor in Council of the approved application."

HIS HONOUR: Within 40 days of today.

MR HINSON: The statutory - the date and determination by the Court.

HIS HONOUR: Any other application?

MR HAYDON: No.

MR HINSON: No.

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HIS HONOUR: If necessary.

MR HAYDON: Just to be on the safe side, it is appropriate perhaps to ask Your Honour to order, that the time referred to in section 4.5, subs 2(b)-----

HIS HONOUR: Arabic two or Roman two?

MR HAYDON: Roman two - sorry, Arabic. Roman two, paragraph (b).

HIS HONOUR: Roman or Arabic?

MR HAYDON: Arabic, then (i).

HIS HONOUR: Section 4.5(ii) - (2)(i)(b).

MR HAYDON: "B" and Roman one.

HIS HONOUR: Capital "B"?

MR HAYDON: Small "B" It talks about 14 days from the date of the determination by the Court on appeal.

HIS HONOUR: The Court is defined as the P & E Court.

MR HAYDON: Or such longer period as Your Honour orders. Once again, Your Honour, perhaps we should ask in the circumstances for an order that that application be made within 30 days.

HIS HONOUR: I normally give 40 days.

MR HAYDON: Sorry.

HIS HONOUR: If you want 40. That will allow the parties to endeavour to persuade the Court of Appeal to hear the matter speedily. When was the appeal instituted? It ought to have been within 30 days after 2 February.

MR HAYDON: Some time in February.

HIS HONOUR: It has been around for a while.

MR HAYDON: Outlines of argument have been exchanged. I don't know whereabouts on the list it is.

MR HINSON: I told Mr Haydon that this morning. We have not given the Council our outline of argument.

MR HAYDON: Have we given ours?

HIS HONOUR: What is your attitude Mr Hinson towards amending section 4.5(2)(b)(i) to 40 days?

MR HINSON: No objection to that.

HIS HONOUR: I further order that the time specified under section 4.5(2)(b)(i) of the Local Government (Planning & Environment) Act, be amended to 40 days.