

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Dreamline Development Corporation Pty Ltd v Brisbane City Council & Ors* [2021] QPEC 13

PARTIES: **DREAMLINE DEVELOPMENT CORPORATION PTY LTD**
(Appellant)

v

BRISBANE CITY COUNCIL
(Respondent)

AND

THERESA SCRIBA
(First Co-Respondent by Election)

AND

CHRISTINE AND FRANCIS O’KANE
(Second Co-Respondents by Election)

AND

LEILA TATE
(Third Co-Respondent by Election)

FILE NO/S: 2807 of 2019

DIVISION: Planning and Environment

PROCEEDING: Appeal

ORIGINATING COURT: Planning and Environment Court, Brisbane

DELIVERED ON: 5 March 2021

DELIVERED AT: Brisbane

HEARING DATE: 23, 24 and 25 November 2020

JUDGE: Kefford DCJ

ORDER: **I order:**

- 1. The appeal is allowed.**
- 2. The decision of Brisbane City Council’s delegate made on 11 July 2019 and notified by a decision notice of that date is set aside.**
- 3. The development application is remitted to Brisbane City Council.**
- 4. Brisbane City Council is to give a decision notice**

**approving the proposed development subject to
lawful development conditions by 7 April 2021.**

- CATCHWORDS:** PLANNING AND ENVIRONMENT – APPEAL – DEVELOPMENT APPLICATION – where the Council refused an application to develop land for multiple dwellings – where the land was in the Low density residential zone – where the land had an area of 8,910 square metres – where the Council conceded that the proposed development does not create any adverse amenity or character consequences for the surrounding area – where the Council conceded that the development does not create any internal amenity issues or traffic issues that warrant its refusal – whether the proposed development was of a house scale – whether the proposed development was low density – whether the proposed development will deliver appropriately located infill development that furthers the planning goals in City Plan – whether the proposed development should be approved in the exercise of the planning discretion
- LEGISLATION:** *Planning Act 2016* (Qld) ss 45, 59, 60
Planning and Environment Court Act 2016 (Qld) ss 43, 45, 47
Planning Regulation 2017 (Qld) s 31
- CASES:** *Abeleda & Anor v Brisbane City Council & Anor* [2020] QCA 257, applied
Ashvan Investments Unit Trust v Brisbane City Council [2019] QPEC 16; [2019] QPELR 793, approved
Brisbane City Council v YQ Property Pty Ltd [2020] QCA 253, applied
District Council of Munno Para v Remove-All-Rubbish Co Pty Ltd (1985) 41 SASR 188, considered
Lennium Group Pty Ltd v Brisbane City Council & Ors [2019] QPEC 17; [2019] QPELR 835, approved
Magree & Ors v Landsborough Shire Council & Anor [1987] QPLR 149, approved
Murphy v Moreton Bay Regional Council & Anor; Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor [2019] QPEC 46; [2020] QPELR 328, approved
Walters & Ors v Brisbane City Council & Anor [2019] QPEC 3; [2019] QPELR 487, approved
Zappala Family Co Pty Ltd v Brisbane City Council & Ors [2014] QCA 147; (2014) 201 LGERA 82, applied
- COUNSEL:** K Wylie for the Appellant

R Bain QC and R Yuen for the Respondent

SOLICITORS: Property Law Partners for the Appellant
Brisbane City Legal Practice for the Respondent
First, Second and Third Co-Respondents by Election were self-represented

TABLE OF CONTENTS

Introduction	3
What is the relevant framework for the decision?.....	4
What are the relevant assessment benchmarks?.....	6
What are the aspects of the proposed development that are compliant?.....	6
What are the assessment benchmarks about which there is dispute?.....	9
Does the proposed development reflect the intended density , intensity, scale and built form?	9
Is the proposed development at a house scale?	11
Is the proposed development consistent with the intended scale, form and intensity? ...	12
Should the development application be approved in the exercise of the planning discretion?	18
Does the proposed development comply with quantitative standards?.....	19
Does the proposed development deliver appropriately located infill development that furthers planning goals about housing choice?	20
Is there an absence of adverse impacts?.....	23
Does the exercise of the planning discretion favour approval?	24
Conclusion.....	25

Introduction

- [1] The land at 1 Trudigan Street, Sunnybank has an area of 8,910 square metres (“*the subject land*”). It is currently improved by a two-storey house and ancillary structures, including a swimming pool and a separate garage structure. It is within the Low density residential zone under Brisbane City Plan 2014 (“*City Plan*”).
- [2] Dreamline Development Corporation Pty Ltd (“*Dreamline Development Corporation*”) wants to develop the subject land for 42 units comprising 18 units in the form of two-storey, vertically stacked apartments, and 24 detached dwelling units that are split into two, closely spaced groups of 12 units. There is an extensive basement carpark, which will provide 100 carparks for the residents and visitors. Dreamline Development Corporation made a development application to facilitate its development goal. Brisbane City Council (“*the Council*”) refused the application. The Council contends that the proposed development is too intense to

be a low-density development and, as such, represents an overdevelopment of the subject land.

- [3] The First, Second and Third Co-Respondents by Election are residents of Sunnybank. They support the Council's position.
- [4] The issues for me to decide are:
- (a) whether the proposed development complies with the assessment benchmarks that applied at the time the application was made, particularly with respect to its density, intensity, scale and built form;
 - (b) whether there are relevant matters that support approval of the proposed development; and
 - (c) ultimately, whether, in the exercise of the planning discretion, the development application for the proposed development should be approved.¹

What is the relevant framework for the decision?

- [5] The statutory framework in the *Planning and Environment Court Act 2016* (Qld) and the *Planning Act 2016* (Qld) applies. In deciding the appeal, the Court must confirm the decision appealed against, change the decision appealed against, or set it aside and either make a decision replacing it or return the matter to the Council with directions the Court considers appropriate.²
- [6] The appeal proceeds by way of hearing anew.³ Dreamline Development Corporation bears the onus.⁴
- [7] Dreamline Development Corporation seeks a development permit to authorise it to carry out a material change of use of the subject land from its present state to use for the proposed 42 dwelling units in accordance with the design reflected in the relevant plans.⁵ The proposed development is to comprise 24 townhouses, each with four bedrooms, and an apartment building containing 16 apartments with three bedrooms and two apartments with two bedrooms.
- [8] There is a broad discretion in determining this appeal.⁶ The exercise of the discretion must be based on an assessment that:
- (a) must be carried out:
 - (i) against the assessment benchmarks in City Plan version 10 to the extent relevant;⁷

¹ The issues narrowed during the hearing. The Council now accepts that traffic and amenity issues are matters for conditions, rather than matters that warrant refusal.

² *Planning and Environment Court Act 2016* s 47.

³ *Planning and Environment Court Act 2016* s 43.

⁴ *Planning and Environment Court Act 2016* s 45.

⁵ Exhibit 14 pp 7-25.

⁶ *Planning and Environment Court Act 2016* s 47; *Planning Act 2016* s 60(3); *Brisbane City Council v YQ Property Pty Ltd* [2020] QCA 253, [59].

⁷ It is common ground that version 10 of City Plan was the categorising instrument for the development in effect when Dreamline Development Corporation's application was properly made.

- (ii) having regard to any matters prescribed by the *Planning Regulation 2017* (Qld), which include the lawful use of the premises or adjacent premises and the common material (including the 92 properly made submissions that oppose the proposed development);⁸ and
- (b) may be carried out against, or having regard to, any other relevant matter, other than a person’s personal circumstances (financial or otherwise).⁹

[9] It was common ground between the parties that his Honour Judge Williamson QC comprehensively, and correctly, analysed how impact assessable development applications are to be assessed and decided in *Ashvan Investments Unit Trust v Brisbane City Council*¹⁰. That approach was endorsed by the Court of Appeal in *Brisbane City Council v YQ Property Pty Ltd*¹¹ and *Abeleda & Anor v Brisbane City Council & Anor*.¹² I have also considered the approach in *Murphy v Moreton Bay Regional Council & Anor; Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor* (“*Murphy*”).¹³

[10] As is apparent from those decisions, the *Planning Act 2016* affords greater flexibility for an assessment manager, or the Court on appeal, in deciding an impact assessable development application.¹⁴ The flexibility promulgated by the *Planning Act 2016* is to enable

“a ‘*balanced decision in the public interest*’ to be reached, based on an assessment of the merits of an application having regard to established policy and other relevant considerations”.¹⁵

⁸ *Planning Regulation 2017* s 31(1)(f)-(g).

⁹ *Planning Act 2016* ss 59, 45(5).

¹⁰ [2019] QPEC 16; [2019] QPELR 793, 803-813 [35]-[86].

¹¹ [2020] QCA 253.

¹² [2020] QCA 257.

¹³ [2019] QPEC 46; [2020] QPELR 328, 333-7 [12]-[22].

¹⁴ *Ashvan Investments Unit Trust v Brisbane City Council* [2019] QPEC 16; [2019] QPELR 793, 804-6 [40]-[51]; *Murphy v Moreton Bay Regional Council & Anor; Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor* [2019] QPEC 46; [2020] QPELR 328, 334 [13]-[14].

¹⁵ *Ashvan Investments Unit Trust v Brisbane City Council* [2019] QPEC 16; [2019] QPELR 793, 806 [51].

- [11] To that end, the starting point generally remains that the planning scheme is taken to be an embodiment of the public interest.¹⁶ Further, as I observed in *Murphy*:

“Under the *Planning Act 2016*, the discretion is to be exercised based on the assessment carried out under s 45. Its exercise is not a matter of mere caprice. The decision must withstand scrutiny against the background of the planning scheme and proper planning practice. Not every non-compliance will warrant refusal. It will be necessary to examine the verbiage of the planning scheme to ascertain the planning policy or purpose of relevant provisions and the degree of importance the planning scheme attaches to them. The extent to which a flexible approach will prevail in the face of any given non-compliance with a planning scheme (or other assessment benchmark) will turn on the facts and circumstances of each case.”¹⁷

What are the relevant assessment benchmarks?

- [12] Section 5.3.3 of City Plan requires the development application to be assessed against the whole planning scheme, to the extent relevant. There are many benchmarks that are relevant to the proposed development. However, only a handful are potentially determinative of the ultimate outcome of the appeal.
- [13] Before considering those assessment benchmarks in dispute, it is helpful to appreciate the extent to which there is undisputed compliance with quantifiable assessment benchmarks in the Low density residential zone code and the Multiple dwelling code.

What are the aspects of the proposed development that are compliant?

- [14] Overall outcome (4)(c) of the Low density residential zone code states:

“Development, other than a dwelling house, including dual occupancy or a multiple dwelling is not accommodated within this suburban setting unless on a well-located site of over 3,000m².”

- [15] Guidance on what might be considered a “*well-located site*” is provided by performance outcome PO51 and acceptable outcome AO51 of the Multiple dwelling code. Those outcomes relate to land in the Low density residential zone and state:

PO51	AO51
Development is located on a site that:	Development is located:
(a) has a sufficient area to achieve an integrated development outcome with built form transitions to the character of the adjoining neighbourhood dwelling houses or low density area;	(a) on a site with a minimum site area of 3,000m ² ;
	(b) within 400m walking distance of a public transport stop with 20-minute frequency peak-hour services;

¹⁶ *Abeleda & Anor v Brisbane City Council & Anor* [2020] QCA 257, [42], [54].

¹⁷ *Murphy v Moreton Bay Regional Council & Anor; Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor* [2019] QPEC 46; [2020] QPELR 328, 337 [22] (citations omitted).

(b) is conveniently located near shops, public transport services and other community facilities;	(c) within 800m walking distance of an existing neighbourhood, district, major or principal centre;
(c) has sufficient infrastructure capacity.	(d) that is not gated; (e) with sufficient infrastructure capacity.

[16] These outcomes are also consistent with overall outcomes (2)(a) and (c) of the Multiple dwelling code, which state:

“(a) Development has a site area and frontage width that is sufficient for the scale and form of a multiple dwelling development, to deliver a comfortable living environment with minimal impact on neighbours.

...

(c) Development in the Low density residential zone is located on larger sites that are accessible and well serviced by public transport and infrastructure.”

[17] The subject land has an area of 8,910 square metres. At its north-eastern corner, the subject land has a frontage of approximately 15 metres to Trudgian Street. This frontage provides access to the subject land. The northern boundary of the subject land adjoins the Gold Coast to Beenleigh Line rail corridor. To the east and south, the subject land adjoins the rear boundaries of one and two storey residential dwellings on standard lots. Adjoining the subject land to the west are two large residential allotments containing dwellings with footprints of 530 square metres and 754 square metres.

[18] The subject land is within 350 metres walking distance of a bus stop on Mains Road that is serviced by 20 different bus routes and has an approximate 3-minute frequency of service during peak hour. In addition, it is approximately 600 metres from the pedestrian entry to the Altandi train station, which is on the Gold Coast to Beenleigh Line. The subject land is also within 500 metres walking distance of the Sunny Central Shopping Centre, which functions as a neighbourhood centre. It is approximately 300 metres from Our Lady of Lourdes Primary School, 950 metres from Runcorn State School and 1.1 kilometres from Sunnybank High School.

[19] There is no dispute about the matters in paragraphs [14] to [18] above, nor that the subject land is a well-located site of over 3,000 square metres. As such, its use for multiple dwellings is within contemplation as a potential planning outcome under City Plan. The proposed development accords with overall outcome (4)(c) of the Low density residential zone code, and overall outcomes (2)(a) and (c), performance outcome PO51 and acceptable outcome AO51 of the Multiple dwelling code.

- [20] The proposed development also complies with many of the metrics set out in acceptable outcomes in the Multiple dwelling code that guide the form and intensity of development in the Low density residential zone. It complies with development parameters with respect to:
- (a) site cover – the proposed development has a site cover of 43.75 per cent as compared to the maximum site cover standard for the Low density residential zone of 45 per cent;¹⁸
 - (b) height – the proposed development complies with the maximum standard of two storeys and 9.5 metres;¹⁹
 - (c) dwelling density – the proposed development has one dwelling per 212 square metres, which does not exceed the maximum one dwelling per 200 square metres of site area stipulated for the Low density residential zone;²⁰
 - (d) communal open space – the proposed development provides 850 square metres (or 9.5 per cent of the site area), which complies with the requirement for the greater of 40 square metres or 5 per cent of site area;²¹
 - (e) deep-planting areas – the proposed development provides 1,280 square metres (or 14.4 per cent of the site area), which complies with the requirement that development provide a minimum of 10 per cent of the site area for deep-planting areas that are:
 - (i) exclusively for landscaping;
 - (ii) able to accommodate trees planted in natural ground;
 - (iii) 100 per cent open to the sky; and
 - (iv) accessible for maintenance purposes;²²
 - (f) the maximum length of a wall – the proposed development complies with the requirement that the maximum length of a wall in any direction is 30 metres with substantial articulation provided every 15 metres;²³
 - (g) front boundary setback – the proposed development has a front boundary setback of 11 metres, which complies with the requirement of a minimum of 4 metres to a balcony and 6 metres to a wall;²⁴
 - (h) rear boundary setback for the proposed townhouses – the proposed townhouses comply with the requirement of a minimum of 4.5 metres to a balcony and 6 metres to a wall;²⁵
 - (i) side boundary setback – the proposed development complies with the requirement of a minimum of 4.5 metres to a balcony and 6 metres to a wall;²⁶ and

¹⁸ Multiple dwelling code AO14(b)(ii)(A).

¹⁹ Multiple dwelling code s 9.3.14.2(2)(h)(viii), AO6.1(b).

²⁰ Multiple dwelling code AO53.1.

²¹ Multiple dwelling code AO27.1.

²² Multiple dwelling code AO30.2.

²³ Multiple dwelling code AO15.1.

²⁴ Multiple dwelling code AO9.1(b).

²⁵ Multiple dwelling code AO10(b).

²⁶ Multiple dwelling code AO52.5.

- (j) building separation to external buildings – the proposed development complies with the requirements for separation distances between buildings on the subject land and those on adjoining sites.²⁷

[21] The relevant dimensions of the proposed development are evident from the plans. They are also identified by Mr Ovenden, the town planner retained by Dreamline Development Corporation. The Council does not dispute these aspects of compliance with City Plan.

What are the assessment benchmarks about which there is dispute?

[22] The Council is to be commended for confining the City Plan provisions with which it alleges non-compliance to those that reflect the real issues between the parties on which the outcome of the appeal will likely turn. They are:

- (a) overall outcomes (4)(a) and (b) and (5)(a) of the Low density residential zone code; and
- (b) overall outcomes (2)(e) and (g) and performance outcome PO52 of the Multiple dwelling code.

[23] The Council contends that the proposed development does not comply with these provisions as it is not of an appropriate density, intensity, scale and built form. It says the development is too intense to be a low density development and, as such, represents an overdevelopment of the subject land.

[24] Dreamline Development Corporation joins issue with the Council’s allegations of non-compliance.

Does the proposed development reflect the intended density , intensity, scale and built form?

[25] The purpose of the Low density residential zone is, relevantly, to provide for a variety of low-density dwelling types, including dwelling houses.²⁸ It is to be achieved through compliance with the overall outcomes about the zone’s role, development location and uses, and development form.²⁹

[26] Development location and uses overall outcomes (4)(a) and (b) of the Low density residential zone code state:

- “(a) Development provides for suburban living in dwelling houses of predominantly 1 or 2 storeys in height, on appropriately sized and configured vacant lots, which maintain the low density detached housing suburban identity of the Low density residential zone.
- (b) Development provides for other housing types at house scale to provide housing diversity offering choice to different household types and individuals to suit residents through different life-cycle stages.”

²⁷ Multiple dwelling code AO8.1.

²⁸ Low density residential zone code s 6.2.1.1(1).

²⁹ Low density residential zone code s 6.2.1.1(2).

- [27] I accept the Council’s submission that the reference to “*other housing types*” in overall outcome (4)(b) requires that overall outcome to be read in conjunction with overall outcome (4)(a).
- [28] Overall outcome (4)(a) is concerned with development of dwelling houses that maintain the low density detached housing suburban identity of the Low density residential zone. Overall outcome (4)(b) is concerned with development of housing types that are not dwelling houses, such as townhouses and multiple dwellings.³⁰ It requires that the other housing types be at a “*house scale*”. Although overall outcome (4)(c) enables multiple dwellings to be developed on land that is well-located and over 3,000 square metres in area, it does not change the scale and density of multiple dwellings expected in the Low density residential zone, namely those at a “*house scale*” and low density.
- [29] In assessing the proposed development against this provision, Mr Ovenden opines that the proposed development complies as it is a “*house compatible scale*”. This is not the test called up by overall outcome (4)(b). Further, when that outcome is read in context with overall outcome (4)(a), it supports that the focus is on development that is low density in nature.
- [30] This construction sits comfortably with overall outcome (5)(a) of the Low density residential zone code. It relates to development form and states:
- “Development is of a form and scale that reinforces a distinctive subtropical character of low rise, low density buildings set in green landscaped areas.”
- [31] The intended density, intensity, scale and built form for multiple dwellings in the Low density residential zone is also informed by the provisions of the Multiple dwelling code. The purpose of that code is to “*assess the suitability of development to which this code applies*” and is achieved through the overall outcomes.³¹
- [32] Overall outcomes (2)(e) and (g) of the Multiple dwelling code provide that:
- “(e) Development has a bulk, scale, form and intensity that integrates with the existing and intended neighbourhood structure for the area as expressed by zone, zone precinct and neighbourhood plan outcomes, and is consistent with:
- (i) the location and street context of the site;
- (ii) its proximity to an activity centre, higher capacity public transport services, or other community facilities;
- (iii) the capacity of infrastructure.
- ...
- (g) Development in the Low density residential zone or Infill housing zone precinct of the Character residential zone includes a range of detached and attached building forms and

³⁰ *Walters & Ors v Brisbane City Council & Anor* [2019] QPEC 3; [2019] QPELR 487, 516-7 [199].

³¹ Multiple dwelling code ss 9.3.14.2(1)-(2).

is of an intensity that reflects the lower density form and character of these zones.”

- [33] The planning outcomes sought by overall outcomes (2)(e) and (g) are also reflected in performance outcome PO52 of the Multiple dwelling code, which applies to development in the Low density residential zone. It states:

“Development in the Low density residential zone supports neighbourhood structure, and a lower intensity residential character and integrates with adjoining sites through:

- (a) a mix of dwelling types and building forms such as freestanding dwelling houses and townhouses;
- (b) dwelling houses addressing existing streets;
- (c) the proportion of dwelling houses increasing for larger sites;
- (d) connection to the existing or proposed local street and park network;
- (e) legible and direct pedestrian and cyclist access to surrounding and future community facilities in the area such as schools, parks, neighbourhood shops and public transport;
- (f) appropriate development interfaces to side boundaries and adjacent sites;
- (g) new public roads and parks as appropriate to the scale of the site.

Refer to Figure a.”

- [34] These provisions of the Multiple dwelling code effectively tie back to the scale, intensity and building forms anticipated in the Low density residential zone, which anticipates multiple dwellings that are of a house scale and low density.

Is the proposed development at a house scale?

- [35] There was little evidence before me directly addressing whether the proposed development is at a house scale.

- [36] Dreamline Development Corporation submits that the proposed development complies with overall outcome (4)(b) of the Low density residential zone code. In this respect, it relies on the evidence of Mr Ovenden. He opines that the proposed development appears as a dwelling house compatible scale when viewed from the Trudgian Street entry. Dreamline Development Corporation says this opinion is further explained by Mr Ovenden in his statement of evidence, where he says:

“2.1.6 Importantly, where there is an interface with adjacent dwelling houses the proposal has been designed to be at a house compatible scale at 2 storeys, with sufficient separation to those houses through the provision of private courtyards and appropriate building setbacks and separation between the units within the site, helping to break down the massing of development. This enables the proposed development to

comfortably co-exist with neighbouring dwelling houses. It will not be incongruous with or sit in contrast with the established character of the locality.

...

2.1.10 In relation to the proposal's non-compliance with AO52.1, in my opinion the exclusion of vertically stacked apartment land use and built form is to avoid an outcome whereby a proposal appears as a typical multi-storey development in a multi storey or tower configuration, which would sit directly in contrast with adjacent dwelling houses and would compromise the rhythm of the streetscape character. This would not be reflective of a built form which integrates with dwelling houses as the scheme intends. In my opinion, the portion of the proposal which involves a 2 storey unit configuration with separate units at ground and first floor, still maintains a house compatible scale, being 2 storeys and under 9.5m and does not present to Trudgian Street or the neighbouring dwelling houses as stacked apartments."

[37] Although I accept Mr Ovenden's evidence of the interrelationship with neighbouring dwelling houses, his evidence does not demonstrate compliance with overall outcome (4)(b) of the Low density residential zone code. Mr Ovenden focuses on "*house compatible scale*", where the applicable test is "*house scale*".

[38] In relation to the apartment building, Dreamline Development Corporation also relies on the evidence of Mr Curtis, the visual amenity expert retained by it. In the Joint Experts' Report for Visual Amenity, he says:

"81. The proposed development is articulated along its north and south facing façade by a significant variation in the external wall setbacks and balcony alignments. These elements modulate the built form providing depth and visual complexity that fragments the visual bulk and reflects the human scale ..."

82. Individual dwelling units are clearly identified by the architectural framing elements that 'contain' the balconies and provide a visual focus that projects above the line of the roof parapet. The general visual composition and articulation of the proposed built form shares some similarities to the 'figure I' referenced by PO15."

[39] This evidence also does not assist in demonstrating compliance with overall outcome (4)(b) of the Low density residential zone code. Dreamline Development Corporation has not discharged its onus in this respect.

Is the proposed development consistent with the intended scale, form and intensity?

[40] Overall outcome (5)(a) of the Low density residential zone code and overall outcomes (2)(e) and (g) and performance outcome PO52 of the Multiple dwelling code anticipate multiple dwellings that are of a scale, intensity and form that is low

density and that reinforces a distinctive subtropical character of low rise, low density buildings set in green landscaped areas. For the reasons that follow, I am not satisfied that the proposed development complies with these planned outcomes.

- [41] The plans and other visual aids provide an impression as to the scale, intensity and built form of the proposed development. The proposed development is low rise in appearance, comprising only two storeys above ground. It presents as a group of buildings surrounded by green landscaped areas. However, my impression from the plans and visual aids is that those design attributes will not overcome the sense of overcrowding within the proposed development. As a matter of impression, the design is one that leaves each dwelling starved of “*breathing space*” immediately surrounding it. There are two design aspects that inform that impression.
- [42] The first is the limited separation between the townhouses. The townhouses appear to be “*caged in*” on three sides. There is as little as 1.8 metres between some of them. Many of the townhouses have a front door that is directly opposite the front door of another townhouse with little more than a corridor between them. This gives the impression of rooms along a hotel corridor, albeit a corridor that is open to the sky. Mrs Tate, the Third Co-respondent by Election, cross-examined Mr Ovenden about how this residential character is different from low density housing. She suggested to him that a key difference relates to spacing. She put to him that this was apparent from the fact that children would not be able to play with a basketball hoop in front of their homes, as there is not the space that a driveway and street would create. Mr Ovenden’s response was unconvincing. He pointed to the existence of a communal open space area. That does not satisfactorily address the absence of “*breathing space*” for each dwelling and the consequent impression that the proposed development is not low density in character.
- [43] The second design aspect that informs my impressions is the minimal private open space provided for some of the ground level apartments. The private open space for the apartments is paltry, particularly those ground floor units adjacent the internal roadway. They have the appearance of being crammed beside the internal roadway. The plans give me the impression that the design has sacrificed the amenity of future residents to wedge extra units in the available space between the internal road and the adjacent rail corridor.
- [44] For the reasons provided above, I am not satisfied that the proposed development could fairly be described as development of a form and scale that “*reinforces a distinctive subtropical character of low rise, low density buildings set in green landscaped areas*”. The proposed development is discordant with the outcome sought in overall outcome (5)(a) of the Low density residential zone code.
- [45] Despite the shortcomings of the design in terms of density experienced internally to the subject land, and the consequential impact on the amenity of future residents, during the hearing the Council conceded that there were no internal amenity issues or traffic issues that warrant refusal of the proposed development. Further, both Dreamline Development Corporation and the Council say the proposed development will not result in adverse external amenity or character consequences. In this respect, I was assisted by the evidence of Mr Curtis and Dr McGowan, the visual amenity experts retained by Dreamline Development Corporation and the Council respectively.

- [46] Mr Curtis and Dr McGowan both opine that the proposed development will not generate unacceptable impacts on neighbouring residential amenity. They agree that the proposed development represents an outcome that is more intense than the existing detached housing that characterises the area. However, they both opine that impacts on the character and structure of the area will be appropriately limited by virtue of the limited visual accessibility of the subject land and the proposed landscaping between the townhouses and the property boundaries. Their opinions are supported by credible explanations.
- [47] As is noted by the visual amenity experts, the only street frontage of the subject land is an approximate 15-metre-wide “*driveway*” entrance from Trudgian Street. The “*frontage*” cannot be seen from almost the entire length of Trudgian Street. This is because the formed portion of Trudgian Street ends in a cul-de-sac. That part of Trudgian Street to which the subject land has frontage is a short east-west “*dog leg*” to Trudgian Street, that appears to be a driveway along the side of the last house at the north-western extent of Trudgian Street. In fact, it is a paved area of the Trudgian Street road reserve. This arrangement has the visual effect of removing the subject land from the visual catchment of the formed part of Trudgian Street.
- [48] Other than adjoining this “*driveway*” onto Trudgian Street, the subject land adjoins the rear of 12 residential properties to the east, south and west. There are two-metre-high boundary fences between those residential properties and the subject land. Along its northern boundary, the subject land adjoins the Gold Coast – Beenleigh Line rail corridor, which is screened from the subject land by an acoustic barrier of approximately three metres in height.
- [49] These features mean the proposed development will have very limited visibility to the public. Mr Curtis opines that the proposed development will therefore have very little impact on the public’s impression of the proposed development’s form and character. He also notes that the proposed development is of a comparable height to the adjoining properties and is set back from the common boundaries behind landscaping.
- [50] Mr Curtis opines that, to the extent that the proposed development will be visible, it will appear to have a bulk and scale that is consistent with the intended form and character of the local area and will appear to be in keeping with the intended form and character intensity of the local area and immediate streetscape. Mr Curtis supports these opinions with a detailed analysis of the views available from the rear of the adjoining residential properties, including by reference to the separation distance between adjoining houses and the proposed development and the impact of intervening built form or vegetation. Based on his analysis, Mr Curtis opines that any views of the subject land from the adjoining properties will be at an oblique angle. He says the existing vegetation on the neighbouring properties will provide partial, but accentuated, screening of the proposed development due to the parallax effect of the viewing angle. The viewing angle visually compresses the appearance of elements and aggregates the vegetation’s bulk. In addition, he says the proposed development’s built form will be partially screened by the landscaping provided in the private open space that adjoins the boundaries.
- [51] With respect to the apartment building proposed along the northern boundary of the subject land, Mr Curtis says articulation along the north and south façade modulate

the built form. This provides depth and visual complexity that will fragment the visual bulk and reflect the human scale. Further, he says individual dwelling units will be clearly identified by the architectural framing elements that contain the balconies and provide a visual focus that projects above the line of the roof parapet.

[52] Mr Curtis' opinions were not challenged. In response to them, Dr McGowan states:

“NM agrees that the proposed development, despite being relatively intense, would have limited impacts upon the character of the local area, particularly because the site has limited visual exposure. Development of the scale proposed would not be plainly visible from Trudgian Street or other local streets. While parts of the development would be seen from the train, it would be seen as part of a journey which, in the vicinity of the site, takes in a range of built form and land uses, and in views that are neither cohesive nor of particular quality.”

[53] I accept the evidence of the visual amenity experts. It satisfies me that the proposed development will integrate with the existing neighbourhood structure and will be consistent with the location and street context of the subject land. However, their evidence does not demonstrate that the proposed development will have a bulk, scale, form, and intensity that integrates with the intended neighbourhood structure. As such, the proposed development is discordant with overall outcome (2)(e) of the Multiple dwelling code. The evidence also does not demonstrate that the intensity of the proposed development will reflect the lower density form and character intended for the Low density residential zone. As such, the proposed development is also discordant with the planning outcomes sought in overall outcome (2)(g) and performance outcome PO52 of the Multiple dwelling code.

[54] At first blush, my findings of non-compliance may seem incongruous with my observations in paragraphs [14] to [21] above about the significant degree of compliance with the City Plan provisions that guide the intended built form of multiple dwellings in the Low density residential zone. Mr Perkins, the town planner retained by the Council, explains why compliance with the metrics in acceptable outcomes does not assist the proposed development to achieve the planning goals in the overall outcomes.

[55] Mr Perkins opines that the acceptable outcomes of the Multiple dwelling code reflect an assumption that multiple dwelling development in the Low density residential zone will take on a conventional townhouse-style development form on a conventional site. He explains that in a conventional townhouse-style development form, the separation between buildings is augmented by internal driveways and vehicle parking and manoeuvring areas at ground surface level. Mr Perkins says that a conventional site also contributes to the separation between buildings. It does so through a wide frontage and its associated verge and footpath areas.

[56] I accept this evidence of Mr Perkins. It is supported by reading the acceptable outcomes with which the proposed development complies³² in the context of the other acceptable outcomes in the Multiple dwelling code. Relevantly:

- (a) with respect to frontage width, acceptable outcome AO1 of the Multiple dwelling code refers to a minimum frontage width of 40 metres for land in the Low density residential zone. That can be contrasted with the minimum of 15 metres specified for land in the Low-medium density residential zone;
- (b) with respect to building separation requirements, acceptable outcomes AO5(d) and AO8.1(a) of the Multiple dwelling code set minimum building separations for existing and proposed future buildings by reference to dimensions in Table 9.3.14.3.F as follows:

Building height	Minimum building separation (m)		
	Facing habitable rooms or balconies	Habitable rooms or balconies facing non-habitable rooms or blank walls	Non-habitable rooms or blank walls
Ground and up to 4.5m	3	1.5	1.5m or where built to boundary walls permitted – 0.0m
2 storeys and up to 7.5m	9	6	3

- (c) with respect to private open space, acceptable outcome AO28.1 of the Multiple dwelling code seeks a minimum area of 35 square metres for ground-storey dwellings with a minimum dimension of 3 metres;
- (d) with respect to dwelling types, acceptable outcome AO52.1 of the Multiple dwelling code contemplates development that is not vertically stacked in an apartment form but is attached or freestanding and visually recognisable as such.³³

[57] As the written submissions for Dreamline Development Corporation acknowledge, each provision of a planning scheme should not be considered in isolation. Rather, the planning scheme should be read as a whole.³⁴ When read together, the acceptable outcomes referred to in paragraph [20] above and those referred to in paragraph [56] provide a more complete picture of the “*typical*” form of multiple dwelling that is contemplated as an acceptable outcome for the Low density residential zone. A development that complied with all these acceptable outcomes

³² See paragraph [20] above.

³³ Although many of these provisions were not put in issue by the Council as provisions that would be determinative of the outcome of the appeal, they are nevertheless relevant to the proper construction of City Plan.

³⁴ *Zappala Family Co Pty Ltd v Brisbane City Council & Ors* [2014] QCA 147; (2014) 201 LGERA 82, 94-5 [52]-[56].

would provide greater area between the buildings on the subject land, providing them with more “*breathing space*”.

- [58] Further, although acceptable outcome AO53.1 of the Multiple dwelling code stipulates that development in the Low density residential zone should not exceed one dwelling per 200 square metres, that provision does not stand alone. The possibility of a greater site density is tempered by other considerations, such as the requirements in performance outcome PO52 of the Multiple dwelling code that development support a lower intensity residential character and integrate with adjoining sites through the proportion of dwelling houses increasing for larger sites.
- [59] In contrast to this typical situation, Mr Perkins says that the subject land has a very small frontage width compared to that anticipated by the acceptable outcomes of the Multiple dwelling code. His opinion is supported by the plans of development. They show that the subject land has an irregular shape and minimal road frontage. The eastern boundary is over 105 metres in length, yet the subject land has an external road frontage of only approximately 15 metres to Trudgian Street. There is no external road frontage on the northern, southern or western boundaries, which are approximately 95 metres, 76 metres and 87 metres in length respectively.
- [60] In addition, the proposed development has parking and vehicle circulation in a basement under the buildings, not between them. Mr Perkins opines that the extensive use of basements is not ordinarily a feature of multiple dwelling development in the Low density residential zone. It is a feature that is typically encountered in a higher density residential zone. During cross-examination, Mr Ovenden agreed with these observations. I accept their evidence.
- [61] That the design approach is atypical or unorthodox does not, of itself, demonstrate that the proposed development is not low-density in nature. However, it provides insight into why the development can comply with many of the metrics in the acceptable outcomes for multiple dwellings in the Low density residential zone, yet not produce a low density outcome.
- [62] Mr Perkins’ opinion about the unorthodox nature of the proposed development is supported by the aerial photographs of the area and the plans of the development. It also accords with the written submissions made on behalf of Dreamline Development Corporation, which state:
- “A feature of the proposed development that permits such high levels of compliance with the City Plan provisions is the provision of basement car parking for all units, which permit at-grade access to lifts to access each level of each townhouse and unit.”³⁵
- [63] I accept the evidence of Mr Perkins referred to above. It supports my view that, despite the extent of compliance with acceptable outcomes in the Multiple dwelling code, the proposed development is discordant with the planning goals articulated in overall outcomes (4)(b) and (5)(a) of the Low density residential zone code and overall outcomes (2)(e) and (g) and performance outcome PO52 of the Multiple dwelling code.

³⁵ Save for units 6 and 11 of the northern unit complex, which only enjoy lift access to their ground floor.

Should the development application be approved in the exercise of the planning discretion?

[64] In *Abeleda & Anor v Brisbane City Council & Anor*,³⁶ Mullins JA (with whom Brown and Wilson JJ agreed) observed:

“[54] Subject to recognition that the Act has not changed the characterisation of a planning scheme as the embodiment of the community interest, I also agree with the observations of Williamson QC DCJ at [53]-[54] of *Ashvan* on the role of non-compliance with a planning scheme in the exercise of the planning discretion under s 60(3) of the Act:

“[53] An application must be assessed against the applicable assessment benchmarks, which will invariably include a planning scheme for appeals before this Court. That assessment will inform whether an approval would be consistent, or otherwise, with adopted statutory planning controls. **The existence of a non-compliance with such a document will be a relevant ‘fact and circumstance’ in the exercise of the planning discretion under s 60(3) of the [Act]. Whether that fact and circumstance warrants refusal of an application, or is determinative one way or another, is a separate and distinct question.** That question is no longer answered by a provision such as s 326(1)(b) of the SPA. It will be a matter for the assessment manager (or this Court on appeal) to determine how, and in what way, non-compliance with an adopted statutory planning control informs the exercise of the discretion conferred by s 60(3) of the [Act]. **It should not be assumed that non-compliance with an assessment benchmark automatically warrants refusal. This must be established, just as the non-compliance must itself be established.**

[54] In practical terms, the change to the statutory assessment and decision making framework may call for an assessment manager (or this Court on appeal) to reach a balanced decision in the public interest where two competing considerations are at play: (1) the need for the rigid application of planning documents on the one hand; as against (2) the adoption of a flexible approach to the application of planning documents to, inter alia, exercise the discretion in a manner that advances the purpose of the [Act].”³⁷

[65] In support of an approval under s 60(3) of the *Planning Act 2016*, Dreamline Development Corporation advances a case that the proposed development complies with City Plan. For reasons provided above, I accept that the subject land is a well-

³⁶ [2020] QCA 257.

³⁷ *Abeleda & Anor v Brisbane City Council & Anor* [2020] QCA 257, [54] (emphasis added).

located site that is appropriate for multiple dwellings. I also accept that the proposed development complies with many of the metrics in acceptable outcomes that guide the density, intensity, scale and built form of multiple dwelling developments in a Low density residential zone. However, the proposed development does not fully align with City Plan in that it is of a greater density than that which is encouraged in the Low density residential zone. As such, a decision to approve the proposed development does not sit comfortably with all aspects of the adopted planning controls in force at the time the development application was made. Dreamline Development Corporation has not discharged its onus with respect to this aspect of its case.

- [66] In addition to its primary case of compliance, Dreamline Development Corporation advances an alternative case for approval. In effect, it raises three factors that it says support approval of the proposed development. They are:
- (a) the proposed development has a high degree of compliance with the quantitative standards set for development of this type;
 - (b) the proposed development will deliver appropriately located infill development that furthers the planning goals in City Plan with respect to housing choice; and
 - (c) there is an absence of off-site adverse amenity impacts.

- [67] I accept that each of these factors are relevant matters for the purposes of assessing the application under s 45(5)(b) of the *Planning Act 2016*. The issue is whether they have been established on the evidence and, if so, how they inform the exercise of the discretion.

Does the proposed development comply with quantitative standards?

- [68] Where City Plan neither permits nor prohibits a particular development,³⁸ it is relevant to consider the proposed development's failure to comply with certain development standards in City Plan in combination with the many standards with which it complies. The observations of Jacobs J in *District Council of Munno Para v Remove-All-Rubbish Co Pty Ltd*³⁹ are apposite in this regard. His Honour said:

“The *Planning Act*, incorporating the Development Plan, is a practical code calling for practical application; and where the Development Plan neither permits nor prohibits a particular development, the task of the planning authority is to weigh up the “pros” and “cons” with due regard to the guidance afforded by such of the general planning precepts and policies in the Plan as may be relevant. But to suppose that the “pros” and “cons” are in watertight compartments, or that they do not overlap, is to ignore the complexity of the subject matter and the competing elements which have to be weighed in deciding where the planning balance lies.⁴⁰

- [69] As I have already identified in paragraphs [14] to [21] above, it is not disputed that the proposed development complies with many of the quantifiable assessment

³⁸ By this I mean a development identified by reference to the combination of all its design attributes.

³⁹ (1985) 41 SASR 188; (1985) 60 LGRA 1.

⁴⁰ *District Council of Munno Para v Remove-All-Rubbish Co Pty Ltd* (1985) 41 SASR 188, 201.

benchmarks in the Low density residential zone code and the Multiple dwelling code, including those with respect to site area, site location (and its accessibility by public transport and servicing by infrastructure), site cover, height, dwelling density, area provided for communal open space, deep-planting areas, building length, front boundary setback, rear boundary setback for the proposed townhouses, side boundary setback, and building separation to external buildings.

- [70] The aspects of City Plan with which the proposed development complies are, generally, acceptable outcomes. Under City Plan, compliance with a code will only be achieved if the proposed development complies with either:
- (a) the purpose, overall outcomes, and performance outcomes of the code; or
 - (b) the purpose, overall outcomes, and acceptable outcomes of the code.⁴¹
- [71] In those circumstances, I am not satisfied that the extent of compliance with the metrics in the acceptable outcomes, of itself, tips the balance towards approval of the proposed development. Nevertheless, it is a relevant matter in determining how to exercise the planning discretion.

Does the proposed development deliver appropriately located infill development that furthers planning goals about housing choice?

- [72] Dreamline Development Corporation submits that the proposed development will provide infill development on a well-located site. It says that it will also deliver a product that provides diverse housing choices to residents of the locality, and in a form that is suitable for different life cycle stages for residents. In doing so, it submits the proposed development advances relevant planning goals in City Plan.
- [73] The planning goals that Dreamline Development Corporation says will be advanced by the proposed development include:
- (a) the strategic outcomes in s 3.4.1(1)(g) and (h) in Theme 2: Brisbane’s outstanding lifestyle, which state:
 - “(g) Brisbane provides housing choice which allows people to live in close proximity to their place of work and support their local economies, services and businesses.
 - (h) Brisbane’s major new housing opportunities will be provided within the existing urban area and form of the city by infill and other types of redevelopment. This will ensure opportunities for residents to enjoy easy access to employment, goods, services, community facilities and also to protect Brisbane’s green edges.”

⁴¹ See s 5.3.3(4) of City Plan. Although this section relates to code assessable development, it remains applicable in the context of impact assessable development: see *Lennium Group Pty Ltd v Brisbane City Council & Ors* [2019] QPEC 17; [2019] QPELR 835, 865 [201] citing *United Petroleum Pty Ltd v Gold Coast City Council* [2018] QPEC 8; [2018] QPELR 510.

- (b) specific outcome SO2 and land use strategy L2 in Table 3.4.3.1 (that relate to Strategic framework Theme 2, Element 2.2 – Brisbane’s housing and accommodation choices), which state:

<p>SO2</p> <p>Brisbane’s housing is diverse in type and form, offering choice to different household types and income levels and individuals with specific housing needs.</p>	<p>L2</p> <p>Residential development contributes to housing diversity, particularly supporting ageing in place and assisted living and housing suited to households on different incomes, within each neighbourhood and across the city, as outlined in the applicable zone or neighbourhood plan.</p>
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- (c) overall outcome (4)(c) of the Low density residential zone code; and
- (d) provisions of the Multiple dwelling code that prescribe the type of development sought to be achieved in the Low density residential zone, particularly:
- (i) overall outcome (2)(b), which seeks development that is transit supportive;
 - (ii) overall outcome (2)(c), which seeks multiple dwelling development in the Low density residential zone on larger sites that are accessible and well serviced by public transport and infrastructure;
 - (iii) overall outcome (2)(h)(viii), which seeks to limit multiple dwelling development to two storeys in the Low density residential zone;
 - (iv) overall outcome (2)(q), which seeks to ensure that development interfaces appropriately with adjoining residential uses through appropriate separation of buildings and screening;
 - (v) performance outcome PO51;⁴²
 - (vi) performance outcome PO52, to the extent that it requires an appropriate interface between the proposed development and the surrounding locality; and
 - (vii) performance outcome PO53, which requires development to respect the intensity and form of the neighbourhood and demonstrate an appropriate site density and which, in acceptable outcome AO53.1, indicates that an appropriate site density would be less than one dwelling per 200 square metres.

[74] Dreamline Development Corporation relies on the evidence of Mr Ovenden about the benefits of the proposed development. In the Joint Expert Report of Town Planners, Mr Ovenden opines:

“5.8 The proposal is an appropriate form of infill development, well located and within reasonable proximity to Altandi train

⁴² This is set out in paragraph [15] above.

station and high frequency bus services along Mains Road, schools, shops, parks and local services. The proposal results in a dwelling density consistent with that nominated as an acceptable outcome for the Low density residential zone, and therefore consistent with reasonable community expectation for the zone and locality having regard to the City Plan 2014.

5.9 As a matter of planning principle, the proposal represents sound, orderly development in this part of the City.”

[75] Mr Ovenden says that there are very limited sites in the locality that are of an appropriate size to accommodate multiple dwellings. As such, the proposed development will assist in providing housing choice that is not otherwise available. He also says that the subject land is well serviced by existing infrastructure to cater for the proposed development. It is located close to public open space, which can be accessed via Mulgowie Street. Mr Ovenden further opines:

“6.10 I consider the proposal achieves overall outcome (4)(b) of the Low density residential zone code in relation to the nature of the use and development form. The building design is tailored to its location and provides an alternative housing choice to the predominant dwelling houses in the locality. The proposal incorporates, 2, 3 and 4 bedroom dwelling options to provide housing choice to meet the needs of the community through different life-cycle stages.

...

6.27 In light of the above factors, in my opinion the form and density of development is appropriate in its context. The siting of the development and its compatibility with the surrounding low density context are strong pointers to the consistency with the planning principles that underpin the City Plan 2014, expressed through the strategic framework as follows:

- i) It provides for housing choice on a well-located site in close proximity to places of work and in support of the local Sunnybank economy, services and businesses;
- ii) Within the development itself, it provides diversity in housing type and form which will offer choice to different household types and income levels in the Sunnybank community;
- iii) It represents a sustainable infill development opportunity within an established urban area, where detached houses will remain the dominant housing type in the area;
- iv) It will be well integrated, in terms of built form and access, appropriate to the locality;
- v) It will not undermine the identity of this part of Sunnybank, rather it will complement and strengthen

the neighbourhood in terms of land use, built form, character and infrastructure utilisation; and

- vi) it achieves an appropriate balance between open space and built form, such that each detached dwelling unit has a back yard that will complement local character, with the proposed layout overall, supporting outdoor living.”

- [76] Dreamline Development Corporation submits that, having regard to the above evidence of Mr Ovenden, the Court would find that the positive matters advanced by it would separately support the approval of the proposed development.
- [77] For reasons already provided, I do not accept the evidence of Mr Ovenden that the proposed development achieves complete compliance with City Plan. I also do not accept that each detached dwelling unit has a backyard that will complement local character. However, in this case I do not consider the non-compliance to be deserving of substantial weight. The outcomes with which there is non-compliance are of general application to all developments for multiple dwellings on land in the Low density residential zone. Each parcel of land so zoned presents its own challenges and opportunities, which must be considered when assessing the significance of any non-compliance.
- [78] As I have already mentioned above, the subject land is appropriately located to provide infill development in the form of multiple dwellings. Further, I accept the evidence of Mr Ovenden that the proposed development provides an alternative housing choice by way of a design that has been carefully tailored to its location and that the form and density of development is appropriate in its context. All the buildings are limited to two storeys in height. The apartment building, which is the most imposing in terms of its scale, has been located at the part of the land that is furthest removed from the adjoining residences. It runs parallel to the northern boundary, adjoining the rail corridor. The smaller townhouse components are generally aligned to be parallel to the eastern and angled western boundaries of the subject land. They are appropriately set back and there is generous landscaping proposed between the built form and the boundaries. These design elements, coupled with the subject land’s setback from Trudgian Street such that it will not readily be seen from the surrounding area, satisfy me that the proposed development achieves an appropriate interface with neighbouring properties, and integrates with the existing neighbourhood.
- [79] Apart from the evidence referred to in paragraph [77] above, I accept the evidence of Mr Ovenden. His evidence, together with the other evidence referred to earlier in these reasons, establishes that the proposed development will further those planning goals in City Plan referred to in paragraph [73] above.

Is there an absence of adverse impacts?

- [80] In *Abeleda & Anor v Brisbane City Council & Anor*,⁴³ Mullins JA relevantly explained, in the context of an absence of off-site impacts:

“[61] The Council submits a relevant matter for the purpose of s 45(5)(b) of the Act that is not included as an example may be the absence of any negative impact from, or detrimental effect of a proposed development, in reliance on the observation of Holmes JA (as her Honour then was) in *Lockyer Valley Regional Council v Westlink Pty Ltd* [2013] 2 Qd R 302 at [25]. *Westlink* concerned a development application made when legislation that preceded the SPA was in force, but there was a similar provision in that legislation to s 326(1)(b) of the SPA. It was accepted by Holmes JA at [25] consistent with previous authority “that the mere absence of adverse effects will not amount to sufficient grounds to outweigh a conflict with the planning scheme; but it does not follow that the absence of a negative impact or detrimental effect is not a relevant consideration”. The terms of s 45(5)(b) of the Act are wide enough in an appropriate case for the absence of a negative impact or detrimental effect to be taken into account as a relevant matter on an impact assessment.”

- [81] Although I am of the view that the proposed development exhibits a lack of “*breathing space*” such that it is not properly regarded as low density in nature, the design is not attended by the usual symptoms of overdevelopment.
- [82] As I have already noted in paragraphs [45] to [53] above, the visual amenity experts agree that the proposed development will not have an adverse impact upon, or affect the character of, the existing locality. The Council does not contest these matters. It also acknowledges that there are no adverse amenity impacts for future residents or traffic issues associated with the proposed development that warrant its refusal.
- [83] The absence of adverse planning consequences is a feature of two things. First, the unusual attributes of the subject land, particularly its large size, its extensive frontage to a rail corridor, its minimal external road frontage, and the small number of adjoining neighbours. Second, the atypical design feature of a basement carpark.
- [84] The absence of adverse planning consequences is a relevant matter to be considered in the exercise of the planning discretion.

Does the exercise of the planning discretion favour approval?

- [85] Despite the absence of an identifiable adverse planning consequence occasioned by the non-compliance and the absence of any other relevant matter, such as proper planning practice, that suggests the non-compliance warrants refusal, the Council nevertheless submits that the proposed development should be refused. In effect, the Council’s case rests on the fact of non-compliance with City Plan. It says that the proposed development is too intense to be a low-density development.

⁴³ [2020] QCA 257.

- [86] In *Magree & Ors v Landsborough Shire Council & Anor*, Quirk DCJ observed:
- “In the majority of town planning schemes [density] is the matter which, together with building height and bulk, forms the basis of difference between various residential zonings. To deny the importance of residential density is, in my view, to betray a lack of appreciation of a very elementary planning concept.”⁴⁴
- [87] When one looks to the structure of City Plan, it seems to me that the allocation of land to a zone with a particular residential density is a planning decision of some moment. Leaving aside the role of local plans, which are not in play in this case, the zoning of land is the planning tool used in City Plan to distinguish between the intensity of residential use intended for different areas of the city. As such, the allocation of land to a zone is an important planning decision. However, the importance of such a planning decision is not always appropriately respected by insisting on rigid adherence to the assessment benchmarks consequently called up without reference to their underlying planning purpose.⁴⁵
- [88] A broader reading of City Plan, including the Strategic framework provisions, indicates that the residential density provisions reflect a planning intention to encourage an identified urban form in particular residential zones for the purpose of protecting and enhancing the planned character and amenity of an area. The allocation of land to a particular residential zone can also be informed by factors that affect the real capacity of the area, such as the level of available transport, infrastructure for essential services and community facilities; and the ease of access to employment, goods and services and the like.⁴⁶
- [89] As I have already mentioned, the Council accepts that, having regard to the design attributes of the proposed development and the peculiarities of the subject land, the proposed development does not create any adverse amenity or character consequences for the surrounding area, nor any internal amenity issues or traffic issues that warrant its refusal. Further, there is no suggestion that the infrastructure in the area, including community services, are inadequate to cater for the increased density. To the contrary, the subject land is well-located to provide easy access to high frequency transport, schools, essential services, community facilities, employment and goods and services.
- [90] In those circumstances, the Council’s case that the density of the proposed development is higher than City Plan intends is not an argument that, unqualified, should be afforded much weight. Although the proposed development is of a density higher than that planned under City Plan, it does not offend the broader planning goals that underpin allocation of land to the Low density residential zone.
- [91] The lack of offence to the broader planning goals that inform the density provisions, coupled with the three relevant matters supportive of approval established by

⁴⁴ *Magree & Ors v Landsborough Shire Council & Anor* [1987] QPLR 149, 153.

⁴⁵ *Ashvan Investments Unit Trust v Brisbane City Council* [2019] QPEC 16; [2019] QPELR 793, 810 [67].

⁴⁶ See the role of the Low density residential zone: Low density residential zone code s 6.2.1.1(3). See also Strategic framework s 3.4, in particular ss 3.4.1(1)(a), (d), (g), (h) and (i), s 3.4.2 SO9, SO17, and s 3.4.3 SO2; and s 3.7.6 SO1-SO4.

Dreamline Development Corporation, justify approval of the proposed development.

Conclusion

[92] Dreamline Development Corporation has discharged its onus. The appeal should be allowed and the application approved.

[93] The orders of the Court will be:

1. The appeal is allowed.
2. The decision of Brisbane City Council's delegate made on 11 July 2019 and notified by a decision notice of that date is set aside.
3. The development application is remitted to Brisbane City Council.
4. Brisbane City Council is to give a decision notice approving the proposed development subject to lawful development conditions by 7 April 2021.