



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	<b>19-044</b>
<b>Appellant:</b>	Carfam Holdings Pty Ltd ACN 608 444 248
<b>Respondent:</b>	Gladstone Regional Council
<b>Site Address:</b>	2773 Round Hill Road, Agnes Water and described as Lot 7 on RP616792 – the subject site

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### **Appeal**

This is an appeal under section 229 and Schedule 1, section 1(2)(j) and item 5 of Table 1, of the *Planning Act 2016 (PA)* against the Gladstone Regional Council's (**Respondent**) decision to refuse a conversion application made by the Appellant with respect to certain works conditioned by the Respondent in its decision to approve a development application for reconfiguring a lot to create 21 rural residential lots and a new internal road over the subject site, given by an Amended Negotiated Decision Notice dated 20 June 2018.

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<b>Date and time of hearing:</b>	12pm, 11 March 2020
<b>Place of hearing:</b>	Front Meeting Room, Gladstone City Library, 39 Goondoon Street, Gladstone
<b>Tribunal:</b>	Samantha Hall – Chair Wendy Evans - Member Stafford Hopewell – Member
<b>Present:</b>	<b>Appellant</b> Stephen Enders – Agent for the Appellant  <b>Gladstone Regional Council</b> Helen Robertson – Manager Development Services Celisa Faulkner – Manager Asset Planning Shaunté Farrington – Senior Planning Specialist

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### **Decision:**

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(b) of the PA **changes** the decision of the Respondent to refuse the conversion application by:

- (a) approving the request in the conversion application to convert non-trunk water infrastructure to trunk water infrastructure, being condition 12 of the Amended Negotiated Decision Notice dated 20 June 2018; and

- (b) refusing the request in the conversion application to convert non-trunk road infrastructure to trunk road infrastructure, being condition 18 of the Amended Negotiated Decision Notice dated 20 June 2018.

In respect of the Tribunal's decision to approve the request to convert the non-trunk water infrastructure to trunk water infrastructure:

- (c) the Respondent must, within fourteen (14) days after the date the Tribunal's decision takes effect under the PA,<sup>1</sup> give a notice to the Appellant stating whether an offset or refund applies under Part 2 of Chapter 4 of the PA and if it does, information about the offset or refund<sup>2</sup>;
- (d) for the sake of clarity, section 142 of the PA applies.

### **Background:**

1. By an Amended Negotiated Decision Notice dated 20 June 2018, the Respondent advised the Appellant that it had decided to give a development approval for reconfiguring a lot to create 21 rural residential lots and a new internal road over the subject site, subject to various conditions (**ROL approval**).
2. On or about 29 May 2019, the Appellant made an application to the Respondent to convert non-trunk infrastructure to trunk infrastructure (**conversion application**).
3. The conversion application identified the following two relevant conditions of the ROL approval which required the provision of infrastructure that the conversion application contended was trunk infrastructure:

#### *“Water Infrastructure*

12. *As part of the first Operational Works application, the Applicant must;*

- (a) *Demonstrate and have approved by Council that the reticulated water within the development will achieve the drinking water quality conforming to Australian Drinking Water Guidelines (2011) – updated October 2017 and water quality parameter limits set in Council's Engineering standard at any one time; and*
- (b) *Extend the 150mm water main from Council's existing reticulated water main located at Round Hill Road to the boundary of the subject lot and through the full length of the proposed Rural Collector Road; and*
- (c) *Create a water circulation loop (to be confirmed as part of Operational Works).*

#### *Transportation Services*

18. *As part of Operational Works, the Applicant is to construct a roundabout at the intersection of the proposed Rural Collector Road and Round Hill Road Intersection in accordance with the plans approved by Council as part of the Development Application and Operational Works application for Road works and Council's Engineering Standards at the time of the lodgement of the application and Austroads “Guide to Road Design Part 4B: Roundabouts”. The Applicant must consider the hierarchy of Round Hill Road in the design and construction of the proposed intersection. In accordance with Council's current road hierarchy, the section Round Hill Road along the frontage of the subject lot*

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<sup>1</sup> See section 254(5) of the PA.

<sup>2</sup> See section 141 of the PA.

is classed as Rural Sub Arterial Road where the traffic speed environment is 100km/h and maximum design vehicle access is Class 10 (B-Double).”

4. On 21 August 2019, the Respondent advised the Appellant that it had decided to refuse the conversion application (**conversion refusal**).
5. The reasons given by the Respondent in the conversion refusal, are provided in full below:

**Table 1: Water Infrastructure (Condition 12 of the Negotiated Decision Notice)**

Part 7.2 Criteria for determining an application	Meets Criteria?	Council Comment
<p><b>7.2(i)(a) The relevant infrastructure has been [specifically] designed (i.e. has the capacity) to service other developments in the area.</b></p>	<p>No</p>	<p>The minimum size of the water main required for the development is 150mm as described within the Applicant’s response to Council’s Information Request.</p> <p>Subsequently, this water main has not been specifically designed to service other developments. Whilst it is acknowledged that there is capacity for other developments, this has not occurred via specific design above and beyond that required for this development.</p>
<p><b>7.2(i)(b) The function and purpose of the infrastructure is consistent with other trunk infrastructure identified in a Local government Infrastructure Plan (LGIP), or a charges resolution for the area.</b></p>	<p>Yes</p>	<p>The Local Government Infrastructure Plan (LGIP) identifies other 150mm trunk water mains within the locality.</p>
<p><b>7.2(i)(c) The infrastructure is not consistent with non-trunk infrastructure for which conditions may be imposed in accordance with section 665 of the Sustainable Planning Act 2009.</b></p>	<p>No</p>	<p>The condition relating to the water main is in accordance with s665 of the superseded <i>Sustainable Planning Act 2009</i> and the related s145 of the <i>Planning Act 2016</i>. That is, Condition 12 requires the provision of development infrastructure for the reticulated water network internal to the premises and connection of the premises to existing external reticulated water network. It also requires that the Applicant demonstrate compliance with drinking water quality guidelines which relates to public safety.</p>

<b>Part 7.2 Criteria for determining an application</b>	<b>Meets Criteria?</b>	<b>Council Comment</b>
<b>7.2(i)(d) The infrastructure delivers the desired standard of service.</b>	Yes	Condition 12 and any subsequent Operational Works (Water Infrastructure) approvals would result in infrastructure that was in accordance with the Capricorn Municipal Development Guidelines (CMDG).
<b>7.2(i)(e) The type, size and location of the infrastructure are the most cost-effective option for servicing multiple users in the area.</b>	Yes	The extension of the 150mm water main from Council's existing reticulated water main located at Round Hill Road to the boundary of the subject lot and through the full length of the proposed internal road represents the most direct and cost effective option.

**Table 2: Road Infrastructure (Condition 18 of the Negotiated Decision Notice)**

<b>Part 7.2 Criteria for determining an application</b>	<b>Meets Criteria?</b>	<b>Council Comment</b>
<b>7.2(i)(a) The relevant infrastructure has been [specifically] designed (i.e. has the capacity) to service other developments in the area.</b>	No	Round Hill Road is classed as a sub-arterial road in accordance with the CMDG which specifies that the minimum type of intersection is a T intersection or above for this hierarchy of road. As a 4-legged intersection is not considered acceptable on a sub-arterial road under the CDMG, the roundabout becomes the minimum acceptable intersection design option.  Subsequently, the roundabout has not been specifically designed to accommodate other developments as it is the minimum standard required by this development.
<b>7.2(i)(b) The function and purpose of the infrastructure is consistent with other trunk infrastructure identified in a Local government Infrastructure Plan (LGIP), or a charges resolution for the area.</b>	Yes	The Local Government Infrastructure Plan (LGIP) identifies other roundabouts within the locality that are located on a sub-arterial road.

Part 7.2 Criteria for determining an application	Meets Criteria?	Council Comment
7.2(i)(c) The infrastructure is not consistent with non-trunk infrastructure for which conditions may be imposed in accordance with section 665 of the <i>Sustainable Planning Act 2009</i> .	No	The condition relating to the roundabout is in accordance with the s665 of the superseded Sustainable Planning Act 2009 and the related s145 of the Planning Act 2016. That is, Condition 18 will result (a) in the connection of the development to the external road infrastructure network and (b) requires that the intersection meets the minimum standards to protect and maintains the safety and efficiency of the road network.
7.2(i)(d) The infrastructure delivers the desired standard of service.	Yes	Condition 18 will require the roundabout design to meet Austroads "Guide to Road Design Part 4B: Roundabouts and the relevant Engineering Standards at time of lodgement of the associated Operational Works application".  Subsequently, while the present design of the intersection may not meet desired standards, Condition 28 will require it to do so as part of the Operational Works application process.
7.2(i)(e) The type, size and location of the infrastructure are the most cost-effective option for servicing multiple users in the area.	Yes	The proposed roundabout would be conditioned to meet the minimum standards as part of any Operational Works application.  Subsequently, by meeting the minimum design standards, the infrastructure would provide the most cost effective option.

6. On 25 September 2019, the Appellant filed a Notice of Appeal / Application for Declaration with the Tribunal's Registrar to commence this appeal.
7. This appeal was heard by the Tribunal on 11 March 2020.
8. At the hearing, the parties and the Tribunal agreed to a number of steps to be undertaken to progress the appeal (**agreed steps**).
9. By email dated 11 March 2020, Stephen Enders of Zone Planning Group ACN 608 444 248 (Zone), on behalf of the Appellant, provided the following to the Tribunal's Registrar in accordance with the agreed steps:
  - (a) an electronic copy of Map 19 PFTI-Transport dated 15 November 2016; and

- (b) an electronic copy of Map 19 PFTI – Transport dated 15 September 2017.
10. By email dated 16 March 2020 to the parties, the Tribunal’s Registrar made the following directions (**Tribunal’s directions**) at the request of the Tribunal:
- “1. On or before 4pm on 20 March 2020, the Council is to provide to the Registry the following:
- a) an electronic copy of the Submissions of the Respondent dated 11 March 2020 that were circulated in hard copy at the hearing;
- b) an electronic copy of the maps that the Council officers produced at the hearing;
2. On or before 4pm on 9 April 2020, the Appellant is to provide to the Registry the following:
- a) written submissions providing the Appellant’s response to the Submissions of the Respondent dated 11 March 2020;
- b) written submissions identifying an alternate intersection option for the intersection of the subject site with Round Hill Road.
3. On or before 4pm on 8 May 2020 or 4 weeks from the date of receipt of the written submissions identified in paragraph 2(b) above, whichever is the later, the Council is to provide to the Registry the Council’s attitude toward any alternate intersection option identified by the Appellant in accordance with paragraph 2(b) above.”
11. By email dated 17 March 2020, from Bernadette Le Grand of the Respondent to the Tribunal’s Registrar, the Respondent provided the documents identified in paragraph 1 of the Tribunal’s directions.
12. By email dated 8 April 2020 from Mr Enders of Zone to the Tribunal’s Registrar, the Appellant provided the written submissions identified in paragraph 2 of the Tribunal’s directions (**Appellant’s submissions**).
13. By email dated 8 May 2020 from Ms Le Grand to the Tribunal’s Registrar, the Respondent provided the Respondent’s attitude to the Appellant’s submissions identified in paragraph 3 of the Tribunal’s directions (**Respondent’s response**).

#### **Jurisdiction:**

14. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.<sup>3</sup>
15. Section 1(1) of Schedule 1 of the PA provides that Table 1 states the matters that may be appealed to a tribunal. However, pursuant to section 1(2) of Schedule 1 of the PA, Table 1 only applies to a tribunal if the matter involves one of a list of matters set out in sub-section (2).
16. Section 1(2)(j) of Schedule 1 of the PA, relevantly refers to a decision to refuse, or a deemed refusal, of a conversion application.
17. So, Table 1 of Schedule 1 of the PA applies to the Tribunal.
18. Under item 5 of table 1 of Schedule 1 of the PA, an appeal may be made against the refusal of a conversion application. The appeal is to be made by the applicant, who in

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<sup>3</sup> Section 229(1)(a) of the PA.

this case was the Appellant and the respondent to the appeal is the local government to which the conversion application was made, who in this case is the Respondent.

19. Section 55 of the *Planning Regulation 2017* provides that if a tribunal is to hear only a proceeding about an infrastructure charges notice or conversion application, the chairperson of the tribunal must be a lawyer. The constitution of this Tribunal satisfies that requirement.
20. The decision notice for the conversion application was dated 21 August 2019 and was received by the Appellant's agent, Zone, also on 21 August 2019<sup>4</sup>. In these circumstances, this appeal should have been started on or before 18 September 2019, being within 20 business days of the Respondent's decision being received by the Appellant.<sup>5</sup> As it happened, the Appellant filed a Notice of Appeal on 17 September 2019 naming the Appellant incorrectly<sup>6</sup> and paid the appeal fee the following day. The Appellant lodged a corrected Form 10 on or about 25 September 2019 and an excusal for this late lodged Form 10 was duly given under section 243 of the PA on 2 December 2019.
21. Accordingly, the Tribunal is satisfied that it has the jurisdiction to hear this appeal.

#### **Decision Framework:**

22. The decision notice the subject of this appeal was issued by the Respondent on or about 21 August 2019. At that time, the PA was in force.
23. The Appellant filed a Form 10 – Notice of Appeal / Application for Declaration on 25 September 2019.
24. The appeal is a PA appeal, commenced after 3 July 2017 under section 229 of the PA. As such, the appeal is to be heard and determined under the PA.
25. This is an appeal by the Appellant, the recipient of the conversion refusal and accordingly, the Appellant must establish that the appeal should be upheld.<sup>7</sup>
26. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Respondent which decided to give the conversion refusal the subject of this appeal.<sup>8</sup>
27. The Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal<sup>9</sup>.
28. At the hearing of this appeal, the Respondent sought leave from the Tribunal to present other evidence to the Tribunal comprising a document titled "Submissions of Respondent" dated 11 March 2019 (Respondent's submissions).
29. The Appellant did not oppose the presentation of the other evidence by the Respondent and the Tribunal granted the leave sought by the Respondent during the hearing.

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<sup>4</sup> See Item 3 (Date written notice of decision received) of the Form 10 – Notice of Appeal / Application for Declaration of this appeal.

<sup>5</sup> Section 229(3) of the PA.

<sup>6</sup> The Appellant was described as 'Carfam Pty Ltd' instead of the correct name 'Carfam Holdings Pty Ltd'.

<sup>7</sup> Section 253(2) of the PA.

<sup>8</sup> Section 253(4) of the PA.

<sup>9</sup> Section 253(5)(a) of the PA.

30. The PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting tribunal proceedings and may seek the views of any person<sup>10</sup>.
31. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal.<sup>11</sup>
32. At the hearing of this appeal, the parties and the Tribunal agreed to the parties providing additional information to the Tribunal and a timeline in which that information was to be given.
33. By email dated 11 March 2020, the Appellant provided two plans as anticipated by the agreed steps.
34. The Tribunal's directions, communicated to the parties on 16 March 2020, formalised the agreed steps.
35. By email dated 17 March 2020, the Respondent provided the documents identified in paragraph 1 of the Tribunal's directions.
36. The Appellant's submissions were provided to the Tribunal's Registrar by email dated 8 April 2020 and the Respondent's response was provided to the Tribunal's Registrar by email dated 8 May 2020.
37. The Tribunal is required to decide the appeal in one of the following ways set out in section 254(2) of the PA:
  - (a) *confirming the decision; or*
  - (b) *changing the decision; or*
  - (c) *replacing the decision with another decision; or*
  - (d) *setting the decision aside and ordering the person who made the decision to remake the decision by a stated time; or*
  - (e) *for a deemed refusal of an application:*
    - (i) *ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
    - (ii) *deciding the application.*

**Material Considered:**

38. The material considered in arriving at this decision comprises:
  - (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Development Tribunals Registrar on 25 September 2019.
  - (b) A document titled "Submissions of Respondent" provided to the Tribunal in hard copy at the hearing on 11 March 2020 (**Respondent's submissions**).

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<sup>10</sup> Section 249 of the PA.

<sup>11</sup> Section 253 and section 246 of the PA.



- (c) An email dated 11 March 2020 from Stephen Enders of Zone, on behalf of the Appellant to the Registrar, Development Tribunals with attached:
  - (i) electronic copy of Map 19 PFTI-Transport dated 15 November 2016; and
  - (ii) electronic copy of Map 19 PFTI – Transport dated 15 September 2017.
- (d) An email dated 17 March 2020, from Bernadette Le Grand of the Respondent to the Registrar, Development Tribunals with attached:
  - (i) electronic copy of the Respondent’s submissions;
  - (ii) electronic copy of the maps that the Respondent’s officers produced at the hearing.
- (e) An email dated 8 April 2020, from Mr Enders of Zone to the Registrar, Development Tribunals with attached (**Appellant’s submissions**):
  - (i) written submissions providing the Appellant’s response to the Respondent’s submissions;
  - (ii) written submissions identifying an alternate intersection option for the intersection of the subject site with Round Hill Road.
- (f) An email dated 8 May 2020 from Ms Le Grand to the Registrar, Development Tribunals with attached (**Respondent’s response**):
  - (i) the Respondent’s attitude toward any alternate intersection option identified by the Appellant in the Appellant’s submissions.
- (g) Gladstone Regional Council Adopted Infrastructure Charges Resolution (No. 1) – 2015, Amendment No. 2 (7 March 2017) (**AICR**).
- (h) *Minister’s Guidelines and Rules under the Planning Act 2016*, July 2017 (**Minister’s Guidelines**).
- (i) *Planning Act 2016* (**PA**).
- (j) *Planning Regulation 2017* (**PR**).

### Findings of Fact:

The Tribunal makes the following findings of fact:

#### Application to convert infrastructure to trunk infrastructure

- 39. Section 139 of the PA provides that the applicant for development approval may apply to convert non-trunk infrastructure to trunk infrastructure. The application must be made:
  - (a) to the local government in writing; and
  - (b) within 1 year after the development approval starts to have effect.
- 40. A conversion application is required to be decided in accordance with section 140 of the PA. This requires the conversion application to be considered against the criteria stated in the Respondent’s charges resolution.
- 41. The AICR is the relevant charges resolution for the conversion application.

42. The AICR contains five criteria for determining a conversion application that are set out in section 7.2(i) of the AICR:
- (i) *For infrastructure to be considered trunk infrastructure, each of the following criteria must be met:*
    - (a) *The relevant infrastructure has been specifically designed (i.e. has the capacity) to service other developments in the area;*
    - (b) *The function and purpose of the infrastructure is consistent with other trunk infrastructure identified in a Local Government Infrastructure Plan (LGIP), or a charges resolution for the area;*
    - (c) *The infrastructure is not consistent with non-trunk infrastructure for which conditions may be imposed in accordance with Section 665 of the Sustainable Planning Act 2009;*
    - (d) *The infrastructure delivers the desired standard of service; and*
    - (e) *The type, size and location of the infrastructure are the most cost effective option for servicing multiple users in the area.*
43. The Tribunal notes that the conversion application was made on behalf of the applicant by Zone by letter dated 29 May 2019 to the Respondent, which was within 1 year of the ROL approval dated 20 June 2018.
44. The Respondent considered the application and on 21 August 2019 gave the conversion refusal. The reasons for the conversion refusal are set out at paragraph 5 above.

The application of the criteria to the water infrastructure

45. Condition 12(b) of the ROL approval requires the Appellant to extend the 150mm water main from the Respondent's existing reticulated water main located at Round Hill Road to the boundary of the subject site and through the full length of the proposed Rural Collector Road.
46. The Appellant's material provides that the length of the required extension of the existing 150mm water main from where it ends on Round Hill Road to the boundary of the subject site is approximately 200m.
47. The proposed extension will traverse the frontage of 4 lots along Round Hill Road being:

<b>Address</b>	<b>Description</b>	<b>Current Use</b>
Round Hill Road	Lot 2 SP 257657	State owned - undeveloped
2863 Round Hill Road	Lot 1 on SP 196790	Fire station
Round Hill Road	Lot 214 on SP 262272	Undeveloped
2793 Road Hill Road	Lot 8 on RP 616792	Owned by Respondent - undeveloped

48. The Appellant submitted in its conversion application, and the Respondent agreed in its reasons for refusal, that three of the criteria, being (b), (d) and (e) of section 7.2(i) of the AICR were satisfied by the conversion application in relation to the water infrastructure.
49. The Tribunal is also satisfied that the conversion application complies with these criteria for the following reasons:
- (a) The water infrastructure with a 150mm diameter main is consistent with the function and purpose of other water infrastructure identified in the LGIP (section 7.2(i)(b) of the AICR);
  - (b) The water infrastructure with a 150mm diameter main delivers the desired standard of service (section 7.2(i)(d) of the AICR);
  - (c) The type, size and location of the water infrastructure, being the water main along Road Hill Round, are the most cost-effective option for servicing multiple uses in the area, being the lots fronting Round Hill Road between the subject site and the current extent of the water main (section 7.2(i)(e)).
50. The Respondent however is of the opinion that the conversion application does not satisfy the following criteria:
- (a) The water infrastructure has not been specifically designed to service other developments in the area (section 7.2(i)(a) of the AICR);
  - (b) The water infrastructure is consistent with non-trunk infrastructure for which conditions may be imposed in accordance with section 665 of the SPA (section 7.2(i)(c) of the AICR).

*Section 7.2(i)(a) of the AICR*

51. The Appellant submitted, and the Respondent acknowledged in the conversion refusal, that the 150mm external water main will have the capacity to service other developments in the area. The Tribunal accordingly accepts that the water infrastructure has capacity to service other developments in the area for the purpose of section 7.2(i)(a) of the AICR.
52. The Respondent however is of the opinion that because the capacity in the water infrastructure has not occurred via a specific design, above and beyond that required for the development, it does not satisfy the criterion.
53. The Tribunal does not agree with this interpretation and this is considered below in the Reasons for the Decision.

*Section 7.2(i)(c) of the AICR*

54. The Respondent is also of the opinion that the 150mm external water main, because it is connecting the subject site to the Respondent's external water infrastructure on Round Hill Road, is consistent with non-trunk infrastructure for which a condition may be imposed in accordance with section 665(2)(b) of the SPA.
55. Again, the Tribunal does not agree with the Respondent's interpretation and this is also considered below in the Reasons for the Decision.

The application of the criteria to the road infrastructure

56. Condition 18 of the ROL approval requires the Appellant to construct "a roundabout at the intersection of the proposed Rural Collector Road and Round Hill Intersection" in accordance with approved plans, the Respondent's engineering standards and Austroads 'Guide to Road Design Part 4B: Roundabouts'. In attending to the design, the

condition required the Appellant to consider the hierarchy of Road Hill Road (which, along the frontage of the subject site is classed as a sub arterial road, featuring a traffic speed environment of 100km/hour and maximum design vehicle access of Class 10 (B-double)).

57. The design of the conditioned intersection appears to have a varied history through the development application process, which the Appellant took some issue with, in its material.
58. The Respondent agreed in its reasons for refusal, that three of the criteria, being (b), (d) and (e) of section 7.2(i) of the AICR, were satisfied by the application in relation to the road infrastructure.
59. The Tribunal is satisfied that the conditioned roadworks the subject of this dispute, complies with these criteria for the following reasons:
- (a) The requirement for a roundabout on a sub arterial road is consistent with the function and purpose of other trunk infrastructure identified in the LGIP (section 7.2(i)(b) of the AICR);
  - (b) The conditioned roundabout is required to meet the desired standards of service (section 7.2(i)(d) of the AICR);
  - (c) The conditioned roundabout would, in meeting the minimum standards specified, represent the most cost effective option for servicing multiple users in the area (section 7.2(i)(e) of the AICR).
60. The Respondent however is of the opinion that the conversion application does not satisfy the following criteria:

- (a) The conditioned roundabout has not been specifically designed to service other developments in the area. The Respondent says that “*the minimum standard for an intersection with a sub-arterial road like Round Hill Road, under Capricorn Municipal Development Guidelines is a T-intersection or a roundabout*”, and that “*Council’s preference would have been a T-intersection having regard to the proximity to a possible future access road joining Round Hill Road further to this east*”<sup>12</sup>.

Condition 18 of the Amended Negotiated Decision Notice requires the construction of a minimum 28m diameter roundabout – which the Respondent says is the “*minimum required to meet the needs of connection of the development to the existing road network and to protecting or maintaining the safety and efficiency of the existing road infrastructure at that intersection*”<sup>13</sup>.

(section 7.2(i)(a) of the AICR);

- (b) The conditioned roundabout will result in the connection of the development to the external road infrastructure network, and further, it has been required to comply with the minimum standards. On this basis, the Respondent says condition 18 of the Amended Negotiated Decision Notice is consistent with a non-trunk infrastructure condition (section 7.2(i)(c) of the AICR).

61. The Appellant, subsequent to the hearing of the Tribunal and in response to the orders made, produced an alternate intersection option, for the intersection of the subject site with Round Hill Road in the Appellant’s submissions. That alternate intersection option, was presented in the form of a T-intersection which was located further to the east of the

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<sup>12</sup> See paragraph 2.6 of the Respondent’s Submissions.

<sup>13</sup> See paragraph 2.9 of the Respondent’s Submissions.

subject site and triggered some small internal changes to the subdivision proposed in order to accommodate the changed intersection design.

62. The Respondent provided a response position to the alternate intersection design in the Respondent's response. The Respondent expressed dissatisfaction with the alternate intersection proposal for five reasons. It is not considered necessary to understand these further here, as the amended plan has not been agreed and the Tribunal's decision will accordingly be made on the basis of condition 18 of the Amended Negotiated Decision Notice as presently drafted.

### **Reasons for the Decision:**

#### *Water Infrastructure - section 7.2(i)(a) of the AICR*

63. In its reasons for the conversion refusal, the Respondent stated the "... water main has not been specifically designed to service other developments. Whilst it is acknowledged that there is capacity for other developments, this has not occurred via specific design above and beyond that required for this development".
64. As the Tribunal understood the Respondent's position, the Respondent submitted that it was insufficient that the infrastructure has capacity to service other developments in circumstances where the size of the water infrastructure required to service other developments is also the minimum required to service the proposed development.
65. In this case, because a 150mm diameter water main is required to service the proposed development, it is, in the Respondent's submission, immaterial that this provides capacity to service other developments because it is the minimum water infrastructure required to service the proposed development.
66. The PA requires a conversion application to be determined in accordance with the criteria in the AICR, which in turn must be consistent with the parameters for the criteria provided for under a guideline made by the Minister.
67. The relevant criterion in the Minister's Guideline is "the infrastructure has capacity to service other developments in the area"<sup>14</sup>.
68. The AICR criterion in section 7.2(i)(a), includes the requirement that the infrastructure has been "specifically designed (i.e. has the capacity) to service other developments in the area".
69. Despite the variation in wording of the criterion in the Minister's Guideline and that in the AICR, the Tribunal consider that there is no material difference in the two tests and the question is whether the infrastructure has "capacity" to service other developments in the area.
70. The infrastructure either has capacity to service other developments in the area or not. In the Tribunal's view, the extra wording used by the Respondent in the AICR that the infrastructure must be "specifically designed" does not alter the test and the finding of fact that needs to be made.
71. In this case, it is accepted by both parties that the water infrastructure has capacity to service other developments in the area, being the lots between the subject site and where the Respondent's water main currently terminates in Round Hill Road.

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<sup>14</sup> Minister's Guidelines and Rules under the *Planning Act 2016*, July 2017, section 4.1.a) at page 44.

72. In the Tribunal's opinion, the use of the wording "specifically designed" in the AICR criterion means no more than that the infrastructure has the capacity to service other developments in the area.
73. The Tribunal further considers that the criterion only requires that the infrastructure has capacity to service other developments in the area—there is no requirement imposed by the criterion that the infrastructure required to service the other developments in the area must be "above and beyond" that required to service the subject development.
74. The Respondent, in the Respondent's submissions, also raised the issue that at least two, possibly three, of the four lots the extension of the water main will pass, are unlikely to require connection within the next 10 to 15 years.
75. While the time of future development of these lots is uncertain, they are zoned and intended for urban development being included in either the Emerging Communities or Community Facilities zones. Further, Lot 214 has a development approval for a shopping centre.
76. As it was acknowledged by the parties that the water infrastructure has capacity to service other developments in the area, the Tribunal considers this criterion is satisfied.

*Water Infrastructure - section 7.2(i)(c) of the AICR*

77. The other criterion which the Respondent believes is not met is that the 150mm water main is not consistent with non-trunk infrastructure for which conditions may be imposed in accordance with section 665 of the SPA<sup>15</sup>.
78. Section 665(2) of the SPA relevantly provided that a condition for non-trunk infrastructure "*may be only about providing development infrastructure for 1 or more of the following –*
  - (a) *a network, or part of a network, internal to the premises;*
  - (b) *connecting the premises to external infrastructure networks;*
  - (c) *protecting or maintaining the safety or efficiency of the infrastructure network of which the non-trunk infrastructure is a component.*"
79. The SPA defines "non trunk infrastructure" as "development infrastructure other than trunk infrastructure".
80. In regard to section 7.2(i)(c) of the AICR, the Respondent says that the requirement to provide reticulated water internal to the subject site and the connection of the subject site to the external reticulated water network some 200 metres from the eastern boundary of the subject site, are both consistent with non-trunk infrastructure for which conditions may be imposed in accordance with section 665 of the SPA.
81. The Tribunal accepts that the provision of internal water reticulation is non-trunk infrastructure as set out in section 665(2)(a) of the SPA. However, while the external water infrastructure is necessary to supply water for the internal reticulation, this does not mean that the external water infrastructure required by the Respondent is necessarily consistent with non-trunk for which conditions may be imposed under section 665(2)(b) of the SPA.

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<sup>15</sup> Please note that the AICR refers to section 665 of the now repealed SPA. To avoid any confusion, the Tribunal acknowledges that this appeal is to be heard and determined under the PA and notes that section 145 of the PA is the equivalent to section 665 of the SPA and is in identical terms. The same applies to the definitions of "trunk infrastructure" and "non-trunk infrastructure" in both the SPA and the PA.

82. The Tribunal considers that the issue must be determined by reference to whether the construction of a 150mm diameter and 200 metre long water main external to the subject site is not consistent with non-trunk infrastructure for which conditions may be imposed in accordance with section 665 of the SPA.
83. The Appellant's submissions contend that the fact that the properties between the subject site and the existing water infrastructure network of the Respondent, will be able to connect to the external water infrastructure in the future, gives the external water infrastructure the character of trunk infrastructure.
84. In contrast, while the Respondent acknowledges that the connection to the Respondent's network will pass several properties, the Respondent submits that this does not change the character of the infrastructure, which is merely connecting the subject site to the external water infrastructure network.
85. Further, the Respondent considers that the 150 mm diameter water main being the minimum size required to service the development is relevant to that infrastructure being non-trunk infrastructure.
86. In the Tribunal's opinion, it is necessary to determine the character of the external water infrastructure connection to resolve this issue.
87. In this case, the water infrastructure between the subject site and the Respondent's water network is considered to be trunk infrastructure in nature having regard to the fact that it has the capacity to service other developments in the area and is consistent with the Respondent's trunk infrastructure standards.
88. Although a 150mm diameter water main is also the minimum standard required to service the proposed development, it is considered that this does not detract from the character of the water main as trunk infrastructure.
89. There is no evidence that the 150 mm water main is inadequate to service any future development between the subject site and the existing infrastructure of the Respondent or whether a higher standard will be required for trunk water infrastructure in the area. Indeed, the Respondent's conversion refusal acknowledges that the water infrastructure will provide capacity for other developments.
90. Given that the external water infrastructure will serve a trunk infrastructure purpose, the Tribunal considers the water infrastructure external to the subject site is not consistent with non-trunk infrastructure for which conditions may be imposed in accordance of section 665 of the SPA or 145 of the PA.
91. The Tribunal accordingly considers this criterion is satisfied.

*Road Infrastructure - section 7.2(i)(a) of the AICR*

92. The Appellant's position in relation to criteria 7.2(i)(a) of the AICR concerning road infrastructure, is detailed at page 9 of its Conversion Application as follows:

*“Condition 18 relating to the road intersection upgrade works is of a design standard that exceeds the needs of the subject development (i.e. 21 rural residential lots). The wording of Condition 18 confirms the roundabout must “...consider the hierarchy of Round Hill road in the design and construction of the proposed intersection. In accordance with Council's current road hierarchy, the section Round Hill Road along the frontage of the subject lot is classed as Rural Sub Arterial Road where the traffic speed environment is 100km/hr and maximum design vehicle access is Class 10 (B-Double)”; and thereby will be designed to a sub-arterial road standard with speeds of 100km/hr and accommodating Class 10 (B-Double) heavy vehicles. Accordingly, the*

*infrastructure will be specifically designed (i.e. has the capacity) to service other developments in the area and contribute to the broader road network to a sub-arterial standard which is in excess to the design standard required to meet the needs of the subject development. Furthermore, it is considered this work will form part of the trunk road upgrades currently mapped to the frontage of the site as per Council's LGIP mapping".*

93. There is no material which supports or furthers these assertions made by Appellant, and further, no material disproving the Respondent's position that the conditioned roundabout is only the minimum required to meet the needs of connecting the proposed development to the existing road network and also the minimum required to protect or maintain the safety or efficiency of that existing road infrastructure at the intersection of Round Hill Road with the subject site<sup>16</sup>.
94. In the above circumstances, the Tribunal is not satisfied that the Appellant has established that this appeal should be upheld with respect to criteria 7.2(i)(a) of the AICR, regarding road infrastructure.

*Road Infrastructure - section 7.2(i)(c) of the AICR*

95. The Appellant's position in relation to criteria 7.2(i)(c) of the AICR concerning road infrastructure, is detailed at page 10 of its Conversion Application as follows:

*"As confirmed in Section 2 above, the infrastructure is not consistent with non-trunk infrastructure for which conditions may be imposed as provided for by s145 of PA (equivalent to section 665 of the Sustainable Planning Act 2009).*

*Section 2(i) states that council may condition the provision of infrastructure where it forms the network (or part of a network) 'internal to the premises' – both the water and road works are located external to the site.*

*Section 2(ii) supports provision of infrastructure where it is 'connecting' the premises to external networks. In respect to the water infrastructure, this involves a substantial 'extension' of the water infrastructure (past other properties) in order to ultimately 'connect' to the infrastructure. The 'extension' of the infrastructure required for the development to connect is considered outside the provisions for s145 as a reasonable non-trunk infrastructure condition, and as such, considered trunk infrastructure.*

*Section 2(b)(iii) is applicable in terms of the road intersection; however, the extent of intersection upgrade works conditioned exceeds the needs of the development to provide safe access to/from the site and the conditioned design standard is of direct benefit to the sub-arterial road network more broadly. Furthermore, it is contended the intersection work forms part of the trunk road upgrades as currently mapped along the site frontage in Council's LGIP. Therefore, the road upgrade works (which forms part of the intersection work) is identified as trunk infrastructure by Council's LGIP and is also outside the provisions of s145."*

96. Again, as above, there is no additional material which supports or furthers these assertions made by the Appellant, and further, no material disproving the Respondent's position that the conditioned roundabout will only result in the connection of the proposed development to the external road infrastructure network and that its design was only the minimum required to protect and maintain the safety and efficiency of the road network.

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<sup>16</sup> See paragraph 2.9 of the Respondent's submissions.



97. Indeed, the Respondent afforded the Appellant an opportunity to identify an alternate intersection option, however the Tribunal was disappointed by the Appellant's submissions which, in the Tribunal's view, failed to address issues raised by the Respondent during the hearing of this appeal<sup>17</sup>.
98. Accordingly, the Tribunal is not satisfied that the Appellant has established that this appeal should be upheld with respect to criteria 7.2(i)(c) of the AICR, regarding road infrastructure.

*Conclusion*

99. The Tribunal concludes the following with respect to the conversion application:
- (a) The Tribunal approves the request in the conversion application to convert non-trunk water infrastructure to trunk water infrastructure, being condition 12 of the Amended Negotiated Decision Notice dated 20 June 2018.
  - (b) The Tribunal refuses the request in the conversion application to convert non-trunk road infrastructure to trunk road infrastructure, being condition 18 of the Amended Negotiated Decision Notice dated 20 June 2018.

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**Samantha Hall**

**Development Tribunal Chair**  
**Date: 24 July 2020**

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<sup>17</sup> The Respondent held a similar view as expressed in the Respondent's response.

## **Appeal Rights:**

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

## **Enquiries:**

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