



## Save Our Riverfront Bushland

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### Media Release

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## Bushland Planning Appeal win for community

**Centenary Suburbs community group, Save Our Riverfront Bushland (SORB) has been successful in a major planning appeal against a development that would have destroyed bushland on a ridge overlooking the Brisbane River riverfront at Seventeen Mile Rocks.**

The appeal was against an approval by Brisbane City Council of the development proposal by Queensland Cement Limited (QCL) and Wingate Properties Pty Ltd that would have allowed up to 90 residential allotments on 7.355 hectares of QCL-owned land.

The land included a bushland ridge, north of Fremont St, Seventeen Mile Rocks, which had been zoned in the 1987 Town Plan as Non Urban, Category A, a category for "natural or semi-natural areas having high value for habitat conservation, landscape protection or waterway protection".

In a David and Goliath action, SORB led the appeal in the Brisbane's Planning & Environment Court which heard evidence in seven days of hearing in October and November 2000. Two other community groups were co-respondents in the court action. They were Centenary Riverfront Advisory Council (CRAC) and Seventeen Mile Rocks Progress Association.

The judgment handed down by the P&E Court vindicates the action taken by SORB in challenging the development approval. The public consultation process undertaken by the developers encouraged residents to believe that unless residential was permitted on the bushland ridge, the proposal for a riverfront park could be replaced by industrial development.

"A large riverfront park at Seventeen Mile Rocks was a grand vision. Unfortunately, as determined by the P&E Court, it was flawed in planning terms", a spokesperson for SORB said.

"A grander vision is for Council to acquire the bushland ridge and slope as a 'scenic rim' to the proposed riverfront park."

SORB calls upon Brisbane City Council to honour the spirit of the judgment and acquire the bushland ridge as part of an enlarged riverfront park proposal.

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## Backgrounder

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### The Judgment

On Friday, 2 February 2001, Judge Brabazon in the Planning and Environment Court, Brisbane, handed down his 44-page judgment which allowed SORB's appeal and dismissed the development approval. The Judgment came after seven (7) days of hearing in October and November, 2000.

SORB's website provides background information on the case but the Judgment is not available in electronic form and therefore has not been posted at this time. Refer the public website at: <http://www.sorb.org.au/qcl/index.htm>

A map of the subject site and the development as previously approved is at: <http://www.sorb.org.au/qcl/maps/overlay02c.jpg>

### Initial Comments from SORB

The judgment is still being reviewed and a more extensive summary will be published on our website in due course, but some initial learnings and principles gleaned, and implications of the successful appeal, are listed here:

- Community groups CAN mount a successful challenge with persistence, having a well researched case and pulling in appropriate key resources in a timely and cost effective manner. Obviously there need to be flaws in the case being opposed, and these need to be precisely identified and effectively exploited. Logic does not always prevail, but there are legal and planning principles which can help or hinder, depending upon the state of one's knowledge;
- The judgment sends a strong message to Council planners and assessment managers who will be reminded that it is not acceptable to contravene planning intents in one location (bushland ridgetop in this case) for the sake of achieving planning outcomes elsewhere (a possible riverfront parkland on derelict industrial land);
- It also sends a strong message to expert witnesses, who under P&E Court rules are servants of the Court, not their paying Clients, in having their primary obligation to the Court to give impartial advice and to assist the Court in eliciting the true facts. SORB-engaged expert witnesses, who were harshly denigrated by opposition counsel in the hearing, in the Judgment gained the imprimatur of His Honour on several key points where their evidence "was preferred" against the evidence of experts engaged by Council and the Developers - a significant win for fairness and justice. SORB's experts' evidence was preferred against that of three major consultancy firms in the fields of planning, landscape architecture and visual assessment.
- Among those personal attacks launched in the court room was the implication that some of SORB's experts, by virtue of the fact they had sat in the past in a voluntary capacity on other unrelated BCC community advisory committees, somehow were tainted in providing the Court with objective, expert witness statements. (Of course, expert witnesses who earn a living from giving expert advice (and may be members of sectional industry groups) and happen to be employed by the developer somehow are immune from such tainting!) The Judge clearly was not swayed by those attempts to discredit SORB's experts.

Incidentally, of interest and concern, was the fact that BCC must have trawled the files of other BCC public participation activities for the express purpose of obtain documentation to attempt to show these (community-minded) voluntary participants in those other BCC activities must be too tainted to express impartial expert advice in this case;

The planning and legal implications, and learnings, from the Judge's discretion exercised - in the degree of weight given to the 1987 Town Plan vis-a-vis the new City Plan which came into force on 30 October 2000 (during the 7 days of hearing) - have yet to analysed.

## **The Development and SORB's response to same**

The part of the development which was the subject of the appeal by SORB would have allowed up to 90 residential allotments on 7.355 hectares of QCL-owned land. The subject land included a bushland ridge, north of Fremont St, Seventeen Mile Rocks, overlooking the Brisbane River, which had been zoned in the recently superseded City of Brisbane 1987 Town Plan as Non Urban, Category A, a category for "natural or semi-natural areas having high value for habitat conservation, landscape protection or waterway protection".

The comprehensive 2-year Western Gateway Strategy planning and public participation process, culminating in 1998, reconfirmed those natural values and town plan zoning of the subject land. The Draft City Plan issued for public comment in March 1999 sought in part to negate those findings, and further tinkering with subsequent drafts, without public consultation, sought to further revise the draft City Plan until the new City Plan 2000 of 30 Oct 2000 had almost entirely modified the relevant area's classifications and boundaries to coincide virtually exactly with the boundaries and intent of the development proposal.

The basis of SORB's appeal is summarised in the Notice of Appeal dated 20 April 2000.

<http://www.sorb.org.au/qcl/docs/noa1.pdf>

In a nutshell, SORB believed BCC had unreasonably ignored key, explicit elements of the Brisbane 1987 Town Plan in relation to the zones and issues mentioned in the Notice of Appeal. SORB opposed the extent of loss of bushland and other natural values due to the proposed housing development on top of the ridge and the bushland slope down from the ridge to Fremont St.

SORB contended BCC's approval contravened a number of key elements in the various sections of the town plan which exist to protect the natural and scenic values of the bushland in question.

## **Where to from here**

It seems that the developer and Council have the option of appealing the decision, only on the following bases:

- Cannot appeal against facts established in the Judgment;
- Cannot appeal against the Judge's discretion where exercised, eg. in how much weight His Honour gave to the new City Plan;
- Appeals possible only on errors in points of law; and
- Appeal is not as of right; the intending Appellant against the judgment must seek and obtain leave to appeal.

Initial indications are that the thoroughness of the 44-page Judgment mean it is unlikely there is any basis for appeal.

**For the Developer**, if he does not appeal, he may consider submitting a new application. But the new City Plan classifies all the riverfront land (some 16 hectares) as Open Space (was Industrial in the superseded Town Plan) and presumably this intent will be adhered to.

**For the Council**, the community will be seeking that it purchase the bushland ridge to give effect to the protection envisaged in the Town Plan in force at the time the application was lodged and approved.

Any attempt by Developer to submit or Council to approve a future new development application which seeks an equal or worse result (from the community's and environment's perspective) compared with the now-rejected proposal will be met by a now-emboldened community response. That response is potentially from some four (4) local community groups, apart from potential support from Brisbane region and other community groups.

## **Acknowledgements**

SORB mounted and prepared its case from within its own resources, with the assistance of the Environmental Defenders Office Qld who provided advice on legal processes and issues. Once it became clear the other parties were not willing to enter into meaningful discussions for a negotiated solution, and the case was clearly going to go to a full hearing, SORB engaged the following:

Barrister - Mr Stephen Keliher  
Instructing Solicitor - Mr Rob Stevenson, Environmental Defenders Office (Qld)

SORB also commissioned the following to produce expert witness reports and appear in Court:

Planning - Mr Brian Feeney (Humphreys Reynolds Perkins)  
Visual Assessment - Ms Raquel Bitá  
Landscape Architect - Ms Shealagh Savage  
Ecological - Mr Chris Wiley

## **Disclaimer**

This initial explanation is intended for interested community-minded individuals only. It covers honestly held, lay person's interpretation and does not purport to be a rigorous or complete analysis of the planning or legal implications of the case of the Judgment. Nor does it attempt to summarise the detail of the Judgment. The contents of this, in whole or in part, should not be used or circulated by others for any purposes not envisaged by this disclaimer, and not without the agreement of the undersigned.

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