

Document Title: **BASIS of APPEAL – Internal Working Document only**

Purpose: To document an initial basis of SORB's Appeal; and to enable critical review and refinement of the arguments through consultation with interested parties, as below.

Target Audience: SORB Committee
CRAC Management Committee
Legal advisers: Jo Bragg, Rob Stevenson, EDO (Qld) Inc.
Planning adviser: Brian Feeney, Planning Aid
Other advisers and expert witnesses
Interested members of environmental community

Reference Documents:

- SORB's Notice of Appeal No. 1625 of 2000 dated 20 Apr 2000.
- Brisbane Town Plan 1987, as currently amended
- Other documents are referenced in the Bibliography

Overview:

As part of negotiating this development with QCL (the owner) and Wingate Properties (the applicant), Brisbane City Council (BCC) has approved that the east-west, vegetated bushland ridge between Fremont Street and the Brisbane River be committed for private residential development.

This concession to the owner and applicant has been negotiated as part of complex series of land exchanges and financial arrangements whereby degraded industrial-zoned riverfront land is to come into public ownership for the purpose of a large new urban parkland. SORB is unaware of the details of the financial arrangements and has not analysed the land tenure swaps.

While the principle of providing significant new parkland is laudable, SORB is concerned that this has been at the expense of bushland and its biodiversity and landscape values, in particular at the Fremont St ridge.

The Fremont St ridge is recognised as having high conservation, scenic and landscape value. In adopting the present proposal BCC has chosen to ignore this documented fact and has ignored community concerns at the potential loss of this bushland. Several community groups, including SORB, Centenary Riverfront Advisory Committee (CRAC) and The Rocks Progress Association are known to have made submissions when this application was originally advertised in (?) Sep 1998. <<<< **check file**

BCC has not adequately addressed the substance of these community submissions in approving the development. SORB has therefore taken the step of lodging a Notice of Appeal to challenge the approval upon planning and legal grounds.

This document outlines the basis of the case supporting the Appeal, arguing primarily from the current BCC Town Plan which was the basis of the approval. This is done via the tabulated analysis which follows. Each of the numbered points of appeal is documented with relevant extracts from the Town Plan, with an explanation of where SORB believes the approved proposal contravenes the Town Plan or good planning principles, and stating possible remedies.

See also SORB info circular to submitters.

Ref No.	Town Plan Requirements (extracts)	How the Approval meets or contravenes reqts	Possible remedy and/or Comments
	Appeal Item 1(a) The proposed development Conflicts with the Strategic Plan		The following extracts from the Strategic Plan identifies the broad intent of the Town Plan in respect of items relevant to the subject land.
1	3.2 The Focus 3.2.1.7 securing, maintaining and enhancing the City's biodiversity through: (a) indentifying, assessing and protecting ... significant natural and semi-natural environments; ...	The Town Plan variously designates the subject land as: <ul style="list-style-type: none"> • Natural Areas – category A (see items) • Subject to Scenic and Landscape Constraints. 	Later comments address these issues specifically.
2	3.2.3.5 providing a wide range of high quality, useable open spaces offering a variety of environments ... through: (d) establishing parks and bushland reserves containing different landforms, fauna communities, vegetation types and features; ...	ditto	ditto
3	3.2.4.1 identifying, maintaining and enhancing the scenic and visual amenity ... through: (b) limiting development within the Brisbane Green Space System ... (ensuring) protection of important scenic attributes ... including forested hills and ridge lines..	ditto	ditto
4	3.3.1 Brisbane Green Space System 3.3.1.1 Statement of Intent <i>Habitat Value</i>	(These are further background comments re intent of Town Plan in respect of the specific zoning and site designations of the subject land.)	ditto
5	<i>Natural Scenic Value</i> ... typically include bushland and wetlands throughout the City, ... and the Brisbane River and adjoining lands.		
6	<i>Corridor Value</i> ... link lands with habitat or open space and recreation value. As well as providing for fauna movement, they can provide visual relief, screening or separation..., provide a recreational resource ...		
7	Lands with Environmental or Scenic Constraints ... for	ditto	

	3.4 Non Urban Zone		
11	To ensure appropriate management and protection of lands within the Non Urban Zone, all land has been identified as being within one of the following categories: Category A: natural or semi-natural areas having high value for habitat conservation, landscape protection or water quality protection; or Category B: rural or semi-rural ...; or Category C: areas having minor landscape or ecological values.	Fremont St ridge area <i>is</i> designated Category A in the Town Plan.	
12	... shown on Figures 7.1 to 7.10 (or Fig's 6.1 to 6.9?? in Section 5).		
13	... further discussed in Section 5.		
	3.5.4.2 Areas Subject to Environmental and Scenic Constraints <i>(key, minimal quotes only included here - refer Town Plan for full words)</i>	The Future Urban zone along Fremont St falls into this category.	See also 3.3.1.4
14	... intention to deliver a high degree of scenic amenity, protect environmental values and retain bushland values.		
15	... only low impact development forms that ensure least disturbance to these natural areas...	SORB contends that the residential development, as proposed, will almost entirely obliterate the natural and scenic values on the slope between Fremont St and the ridge.	Cross sections will be tabled demonstrating the impact of cut and fill earthworks for roads. These, taken in conjunction with the predominantly small (~600m ²) allotments, will virtually eliminate all natural vegetation.
16	... detailed environmental assessment and visual amenity studies to satisfy Council that existing values will not be compromised ...	Need to check whether the applicant's documentation included visual amenity data and impacts.	Photo montages are to be tabled, showing the likely impact of housing between Fremont St and the ridgetop/escarpment.
17	Certain lands ... gradients in excess of 1 in 4 ... require environmental and geotechnical assessment ...	Grade on Fremont St slope from ridgetop is 1 in 5 max., therefore not caught by these clauses.	Refer cross sections tabled per item 15 above.
18	The majority of lands above a gradient of 1 in 3 are intended to be retained in an undeveloped state.	Grade on riverside escarpment face is approx. 1 in 2 max. The proposal leaves this face undeveloped.	

19	In order to protect scenic values, sites for dwellings will not be approved where the subsequent dwelling would protrude above ridgelines.	Our interpretation of the information available suggests that the residential development, as proposed, encroaching upon the Fremont St ridge will indeed protrude above the level of the ridge. Indeed, it can be inferred that views of the city and river from the proposed housing is the very reason that development rights so close to the ridge and escarpment are permitted under the approval.	See also comments re photo montages at item 16 above. If "ridgelines" refers to treetops, then there is no guarantee that trees will not be removed, poisoned, etc. (Evidence of such actions elsewhere in similar situations can be tabled.)
20	Development proposals will also be required to take into account bushfire hazard.	While the approved proposal provides certain bushfire management measures, these are inconsistent within themselves, and conflict with the objective of meeting the environmental and scenic objectives. We contend there are significant conflicts between this and items 14 and 15 above.	We also contend that this is an example of contravention of good planning, in that incompatible uses of residential and env/scenic constraint are permitted to abut without adequate buffer.
21	3.5.4.3 Natural Area Corridors <i>(discussed under Planning Policy 19.07 below)</i>		
	Appeal Item 1(b) ... Conflicts with Western Gateway LAOP		The following extracts from the LAOP identify the intent of the Town Plan in respect of specific items relevant to the subject land.
22	3.5.13.3 Potential Development Areas <i>(Under "Darra/Seventeen Miles Rocks" refers to development in Non Urban Category C areas)</i>		See also 3.3.1.1 (Ref 11 above) and Section 5
23	3.5.13.7 Unresolved The intention of the Council is to balance development opportunities with the likely impacts of adjoining existing and committed industrial development, and with the open space, ecological and landscape values of this area.		
24	No development will be permitted forward of the ridge overlooking the Brisbane River.		Issue of "ridge" (ie. watershed) versus "escarpment" which proposal defines as boundary of fenced lots.

			See also Ref 19 above.
25	3.5.13.10 Non-Urban Zoned Land Land in Seventeen Miles Rocks contained in the Non-Urban Zone Category "A" ... has important natural area values that should be preserved.		
26	Proposals for the redevelopment of this parcel will be assessed on a performance based approach as set out in the intent of the Non-Urban Zone.		
	3.5.13.13 Desirable Parklands Development proposals adjoining the Brisbane River in Seventeen Miles Rocks will be required to provide a publicly accessible corridor along the Brisbane River. The indicative width ... is 120m from the high bank ...		
	3.5.13.15 Natural Area Corridors		
	3.5.13.16 Env and Scenic Constraints		
	<i>Appeal Item 1(c) ... Conflicts with intent of Non Urban Zone</i>		
	<i>Appeal Item 1(d) ... Conflicts with intent of Future Urban Zone</i>		
	<i>Appeal Item 1(e) ... Contrary to good town planning principles and practice</i>		

	Appeal Item 1(f) ... Contrary to various BCC Planning Policies		
	Planning Policy 5.02 Non Urban Zone		
	Planning Policy 6.01 Future Urban Zone		
	Planning Policy 19.07 Natural Areas Policy		
		Proposal ignores Brisbane Conservation Atlas designation as a natural area	Check wording
	Appeal Item 1(g) ... Adverse impact on environment		
	Appeal Item 1(h) ... Adverse impact on scenic and landscape of the site and surrounding area		
	Appeal Item 1(i) ... Will not advance purpose of IPA 1997 which seeks to achieve ecological sustainability		

	<i>Appeal Item 1(j) ... Is not needed</i>		