

Wilmar Trading Australia

Wilmar Trading (Australia) Pty Ltd
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27 July 2022

Chief Executive Officer
Brisbane City Council
GPO Box 1434
Brisbane QLD 4001

Attention: Adam Mewing, Senior Urban Planner, Planning Services East

Dear Sir

Submission in accordance with the *Planning Act 2016* about the Application for a Development Permit for a Material Change of Use for Shop and Food and Drink Outlet at 82 & 90 Colmslie Road, Morningside Qld 4170 on Lot 1 on RP126491 and Lot 6 on RP201432, Application Number A005804996

- 1 Wilmar Trading (Australia) Pty Ltd ACN 128 080 455 (***Wilmar Trading***) makes this adverse submission to the development application described above. The address for service of Wilmar Trading is PO Box 220, Archerfield QLD 4108. The street address for the business is Level 1, 26 Kiln Street, Darra Qld 4076.
- 2 Queensland Bulk Terminals Pty Ltd, a wholly owned subsidiary of Wilmar Trading, owns and operates the Queensland Bulk Terminal (***QBT***) located at 156 Colmslie Road, Morningside Qld 4170 on Lot 3 on RP201432.
- 3 QBT is a vertically integrated port facility that imports and exports bulk commodities such as grains and liquid oils and fats. QBT also undertakes bulk storage and handling.
- 4 Wilmar Trading has a genuine interest in the Brisbane City Council (***Council***) upholding the integrity of its planning scheme and refusing the development application described above.
- 5 The grounds of this adverse submission, and the facts and circumstances on which it is based, are set out below.

Proposed development

- 6 This submission relates to an application by Dunhill Properties Pty Ltd for a development permit for a material change of use for a shop and food and drink outlet at 82 & 90 Colmslie Road, Morningside Qld 4170 on Lot 1 on RP126491 and Lot 6 on RP201432 (***Subject Land***) (***Development Application***).
- 7 Under Brisbane City Plan 2014 (***City Plan***), the Subject Land:
 - (a) is zoned IN2 Industry (General industry B);
 - (b) forms part of the Industry precinct - NPP-005 of the River gateway neighbourhood plan; and
 - (c) is located within the Major Industry Area.¹

¹ City Plan map SFM-001.

- 8 The Subject Land is also located within the Industry zone in the Colmslie Road Industry Precinct (**CRIP**) and therefore Temporary Local Planning Instrument 02/21 – Colmslie Road Industry Precinct (**CRIP TLPI**) is relevant to the assessment of the Development Application.
- 9 The proposed material change of use, being for a shop and food and drink outlet, is a material change of use to which the CRIP TLPI applies,² meaning the category of assessment for the Development Application is impact assessment and the application must be assessed against the entire planning scheme and the CRIP TLPI.

Grounds, facts and circumstances

- 10 The Development Application is inconsistent with the Council's planning intent for the future development of the Subject Land having regard to:
- (a) the Strategic Framework of City Plan;
 - (b) the purpose and overall outcomes of the Industry zone code in City Plan; and
 - (c) the CRIP TLPI.

Strategic Framework

- 11 The proposed development is inconsistent with the Strategic Framework, including in the following material respects:

- (a) With respect to Theme 1: Brisbane's globally competitive economy, the proposed development is inconsistent with strategic outcome 1(h) which states (emphasis added):³

h. Brisbane's Major Industry Areas do not expand significantly during the life of the planning scheme, however they are preserved and will intensify. The importance of Major Industry Areas in generating economic value and employment for Brisbane requires their maximum opportunity to be realised. The Major Industry Areas are used solely for their intended purpose to enable their ongoing operation and to protect them from incompatible land uses.

The proposed development will introduce incompatible, non-industrial land uses into a Major Industry Area, and will reduce the land that is available for industrial uses on the Subject Land.

As stated by Judge Kefford in *Cannon Hill Investments Pty Ltd and Australian Country Choice Production Pty Ltd v Brisbane City Council & Anor; Wilmar Trading (Australia) Pty Ltd v Brisbane City Council & Anor*⁴:

[166] ... The lost opportunity to utilise land in the Industry zone for industrial uses is not to be lightly swept aside on the basis that the area is but a small portion of the area otherwise available. As would be apparent from the provisions of City Plan and the South East Queensland Regional Plan to which I have already referred, at the local government and State government level there is strongly expressed planning policy to preserve and protect land in the Major Industry Area from encroachment by non-industrial uses and to prioritise and maximise the use of such land for industrial purposes. ...

To approve the Development Application would be in conflict with this policy.

² See paragraph 6.3 of the CRIP TLPI.

³ Section 3.3.1(1)(h) of City Plan.

⁴ [2022] QPEC 16; see also [432].

- (b) With respect to Theme 5: Brisbane's CityShape, the proposed development is inconsistent with strategic outcomes 1(c)(ii) and (v) which state (emphasis added):⁵

c. Brisbane's Major Industry Areas are significant employment generators for the city and Queensland which:

ii. comprise low, medium and high impact industrial-based economic development that is always evolving with Brisbane's changing economy;

...

v. do not provide opportunities for non-industrial based land uses that are otherwise adequately provided for elsewhere in the city or other parts of the region other than critical infrastructure;

The proposed land uses, being for a shop and food and drink outlet, do not comprise a low, medium or high impact industrial-based economic development, and are otherwise adequately provided for elsewhere in the City, including in Centre and Mixed use zoned land.

Accordingly, the proposed development is inconsistent with the strategic outcomes stated for Theme 5: Brisbane's CityShape.

Industry zone

12 The Subject Land is located in the General industry B zone precinct in the Industry zone, and therefore section 6.2.5.2 - Industry zone code of City Plan is relevant to assessment of the Development Application.

13 The proposed development is inconsistent with the Industry zone code, including in the following material respects:

- (a) The proposed development is inconsistent with the stated purpose of the Industry zone, which is to provide for:⁶

a. a variety of industry activities; and

b. other uses and activities that:

i. support industry activities; and

ii. do not compromise the future use of premises for industry activities.

The proposed uses of the Subject Land for shop and food and drink outlet are not an industry activity, nor are they an activity that supports industry activities.

The use of the Subject Land for a non-industrial purpose will occupy valuable industrial-zoned land, compromising the future use of the premises for industry activities.

For these reasons, the proposed development is inconsistent with the purpose of the Industry zone.

⁵ Section 3.7.1(1)(c) of City Plan.

⁶ Section 6.2.5.2(1) of City Plan.

- (b) The proposed development is inconsistent with the development location and uses overall outcomes stated for the Industry zone code which relevantly provide:⁷

b. Development provides for industrial uses appropriate to the zone precinct.

...

e. Development protects the viability of existing and future industry by excluding incompatible development

Relevantly, the General industry B zone precinct overall outcomes also provides as follows:⁸

a. Development provides for low impact industry and medium impact industry throughout the General industry B zone precinct.

Having regard to the General industry B zone precinct overall outcomes, the proposed development is not appropriate to the zone precinct (being General industry B), and ought be excluded as incompatible development on the basis that it is not development for low impact industry or medium impact industry.

CRIP TLPI

- 14 The CRIP TLPI took effect on 29 June 2021. The Development Application was properly made on 16 August 2021. The Council must therefore assess the Development Application against the CRIP TLPI.

- 15 The proposed development is inconsistent with the CRIP TLPI, including in the following material respects:

- (a) The proposed development is inconsistent with the stated purpose of the CRIP TLPI, which is to, relevantly (emphasis added):⁹

i. Continue to protect the integrity of land in the Industry zone within the CRIP for new and existing industry uses and enable new investment in industry to occur within the CRIP to provide economic benefits to the region and local area.

The introduction of non-industrial uses on the Subject Land does not protect the integrity of land in the Industry zone within the CRIP.

- (b) The proposed development is also inconsistent with the following overall outcomes stated in the CRIP TLPI (emphasis added):¹⁰

i. land in the Industry zone within the CRIP is used for new and existing industry uses; and

ii. land in the Industry zone within the CRIP is protected from use for inappropriate non-industrial activities; and

The proposed development is an inappropriate non-industrial activity, and should not be located in the Industry zone within the CRIP TLPI.

⁷ Section 6.2.5.2(4) of City Plan.

⁸ Section 6.2.5.2(7) of City Plan.

⁹ Section 3.1 of the CRIP TLPI.

¹⁰ Section 3.1 of Attachment A to the CRIP TLPI.

- (c) With respect to development for a food and drink outlet, the CRIP TLPI relevantly states, as an assessment benchmark, that development:¹¹
- i. serves the local industrial workforce in the CRIP and does not serve a broader catchment in non-industrial zones outside of the CRIP; and*
 - ...
 - iii. does not contain any outdoor seating or outdoor dining area;*

Similarly, with respect to development for a shop,¹² the CRIP TLPI relevantly states, as an assessment benchmark, that development:

- i. serves the local industrial workforce or industry businesses in the CRIP and does not serve a broader catchment in non-industrial zones outside o the CRIP;*

There is no evidence included as part of the Development Application documents that the proposed uses will serve only the local industrial workforce in the CRIP. To the contrary, the proposed uses appear to be intended to serve a catchment beyond the industrial workforce in the CRIP, and are therefore inconsistent with the CRIP TLPI.

Furthermore, having regard to the Proposal Plan submitted as part of the Development Application, and the Request for Change Application received by the Council on 5 April 2022, it is apparent that the proposed development includes an outdoor dining area associated with the food and drink outlet, and is therefore inconsistent with the assessment benchmark stated in the CRIP TLPI.


Conclusion

- 16 For the reasons discussed above, the proposed development is inconsistent with the Strategic Framework of City Plan, the purpose and overall outcomes comprising the zone code of the Industry zone (General industry B zone precinct), and the CRIP TLPI.
- 17 Accordingly, the Development Application ought to be refused in the exercise of Council's broad discretion, in circumstances where there are no relevant matters that favour approval of the Development Application.
- 18 If you wish to discuss this submission, please contact Sean Tully, General Counsel & Company Secretary, Goodman Fielder Pty Limited on T: +61 2 8899 7181, M: +61 (0) 418 277 455 or E: sean.tully@goodmanfielder.com.au.

¹¹ Section 3.2((i) and (iii) of Attachment A to the CRIP TLPI.

¹² Section 3.2(i) of Attachment A to the CRIP TLPI.

Yours sincerely,



Director Signature

Matthew FOSCO

Print Name

Wilmar Trading (Australia) Pty Ltd



Director/Secretary Signature

PAUL KENNY

Print Name

Wilmar Trading (Australia) Pty Ltd