

17 August 2026

Brisbane City Council

Development Services

GPO Box 1434

Brisbane QLD 4001

By email: DSPlanningSupport@brisbane.qld.gov.au

Attention: Joel Wake, Senior Urban Planner, Planning Services South

Application reference: A006908849

Address of site: 68 Browning Street, South Brisbane QLD 4101

Dear Mr Wake,

SUPPLEMENTARY MATERIAL TO PROPERLY MADE SUBMISSIONS: MATTERS ARISING FROM THE APPLICANT'S POST NOTIFICATION MATERIAL

1. Introduction

Each entity lodged a properly made submission during the public notification period. Both entities repeat and rely on those submissions in full. This letter addresses matters arising from material that post dates those submissions: the applicant's Response to Submissions and Further Advice Response, each received by Council on 2 July 2026, and the revised Attachment B architectural plans received by Council on 10 July 2026. The entities ask that Council have regard to this material in deciding the application.

2. Building height

1. Council's further advice of 10 June 2026 states that further changes to the development are required to demonstrate compliance with the planning scheme. Item 1(e) required a revised justification against PO1 of the South Brisbane Riverside Neighbourhood Plan Code and, where necessary, amendment of the design to reduce amenity impacts on neighbouring properties. Item 3(a) required a greater setback and a lower scaled built form at the heritage interface. The Further Advice Response amends neither the building height nor the scale of the tower: the development remains ten storeys and RL50.2m, having been increased during assessment from nine storeys and RL47.1m, and from 27 to 31 units, as Council's further advice itself records.

2. The height justification in the Further Advice Response asserts that the neighbourhood plan anticipates development of up to 15 storeys in the Boundary and Vulture Street Precinct, including the site, pursuant to Acceptable Outcome AO1.1 and Table 7.2.19.4.3.B.

The table itself says otherwise. Table 7.2.19.4.3.B, in the version in force when that assertion was made (v36, effective 12 June 2026), and in identical terms in each earlier version in force during the life of this application (v35, effective 5 December 2025; v34, effective 19 September 2025, in force at lodgement), prescribes for the Boundary and Vulture precinct, in the area bound by Edmondstone, Vulture, O'Connell and Russell streets in which the site is located, a maximum building height of six storeys for a site of 1,000m² or greater and six storeys for a site in the High density residential zone.

The site is in the High density residential zone. The 15 storey entry in the table applies only to a site of 10,000m² or greater outside that area; the application site is approximately 898m². The applicant's own Code Compliance Report lodged with the application read the table the same way, stating that the maximum building height for the site's area is six storeys. The applicant relied on the six storey figure when demonstrating code compliance and asserted a fifteen storey figure, unavailable to this site on the face of the table, when justifying its exceedance. The height justification should be given the weight that warrants.¹

3. The precinct's overall outcomes reinforce the table. Overall outcome 6(a) provides that the precinct maintains a human scale built form at the street level. Overall outcome 6(b) provides, for the block between Russell Street, Vulture Street, O'Connell Street and Edmondstone Street specifically, that development accommodates a broad range of medium density residential units, with compatible community and educational uses, such as a childcare centre and retirement facility, interspersed amidst medium density residential units.²
4. PO3 of the neighbourhood plan code provides that buildings over 8 storeys are made up of a podium and clearly defined slender tower. The Code Compliance Report answers the corresponding acceptable outcomes as not applicable on the stated basis that the proposed development does not have a tower and podium form. For a ten storey building, that is not an exemption from the provision; it is a statement of non compliance with it, made in the applicant's own document.³
5. The Code Compliance Report further concedes a total site cover of 81 per cent at ground level against the 80 per cent maximum in AO1.3, being the ground plane at which the heritage and childcare interfaces sit. The Response to Submissions instead quotes a 70 per cent tower site cover as compliant with the same provision.⁴
6. The height justification otherwise relies on the anticipated scale of the Kurilpa South and Musgrave Park Area precincts, on the far sides of Musgrave Park, under a separate Temporary Local Planning Instrument ("TLPI"), and on approvals elsewhere. Development anticipated in other precinct plan areas does not inform the height anticipated for this block, which the applicant's own code assessment identifies.
7. Council has taken proactive measures to support the delivery of housing in the catchment via the Kurilpa Sustainable Growth Precinct Temporary Local Planning Instrument, which substantially increases development densities.

¹ Table 7.2.19.4.3.B, South Brisbane riverside neighbourhood plan code, s.7.2.19.4.3, City Plan 2014 v34 to v36; Code Compliance Report, App A, s.7.2.19.4.3, PO1/AO1.1 response; Further Advice Response, 2 July 2026; the same assertion appears in the Information Request response of 2 April 2026.

² South Brisbane riverside neighbourhood plan code, s.7.2.19.4.2(6)(a) and (6)(b), City Plan 2014 v34 to v36.

³ Code Compliance Report, App A, PO3/AO3.1 response.

⁴ Code Compliance Report, App A, AO1.3 response; Response to Submissions, 2 July 2026.

8. It is through these considered measures for which public consultation and feedback has been sought, that Council should support additional height and scale for housing supply, and not via the approval of development applications which grossly exceed the prescribed Neighbourhood Plan Code. The site at 68 Browning Street does not fall within Council's TLPI catchment and should not be permitted to exceed the parameters within Council's own planning scheme for the site.

3. Overshadowing and the character of the receiving use

1. The applicant concedes that the primary overshadowing impacts of the development fall on the childcare land, and contends that this is acceptable because the receiver is a commercial land use and PO3 of the Multiple Dwelling Code is directed to residential amenity.

That contention mischaracterises the receiving use. A licensed early childhood education and care service accommodating infants and young children is a sensitive use, not a mere commercial neighbour. Schedule 1 of the Environmental Protection (Noise) Policy 2019 (Qld) lists a childcare centre or kindergarten as a sensitive receptor, with acoustic quality objectives prescribed separately for its indoor spaces when open, for the periods when children usually sleep, and for its outdoor play areas, each protecting the environmental value of health and wellbeing.

Outdoor space is likewise a condition of the service's operation: regulation 108 of the Education and Care Services National Regulations requires at least 7 square metres of unencumbered outdoor space for each child, regulation 113 requires that outdoor spaces allow children to explore and experience the natural environment, and regulation 110 requires adequate natural light. Access to sunlight in the outdoor play space accordingly goes to the lawful utility and regulated operation of the adjoining land, not merely to comfort.

The planning scheme itself forecloses the characterisation: overall outcome 6(b) of the neighbourhood plan code names a childcare centre as a compatible community and educational use interspersed amidst medium density residential units for the very block in which both sites sit, so the receiving use is part of the intended character of the area, not an incident to be discounted.⁵

2. In any event, the absence of an overshadowing control directed at non residential receivers in one performance outcome of one code is not an authorisation to overshadow. PO1 of the neighbourhood plan code, set out in Council's own further advice, requires development that improves the amenity of the neighbourhood plan area, and is not confined to residential receivers, and the overall outcomes of both codes remain engaged.
3. The applicant's own revised shadow study quantifies the impact it describes as limited. The winter solstice sheet within the revised Attachment B plans records, for Lot A, which the applicant's own diagram annotates as the heritage sub category lot including the kids' playground, a first shadow impact at 9am, a last impact at 3pm, and a duration of 6 hours, while every other neighbouring lot in the same table records a duration of zero or under one hour.

On the shortest day of the year, on the applicant's own figures, the childcare outdoor areas lose effectively the whole usable outdoor day, and the overshadowing burden of the development falls almost exclusively on the one adjoining lot occupied by young children.

The characterisation of these shadows in the written responses as fast moving and of limited impact cannot stand with the applicant's own table. Nor is the pattern seasonal: the

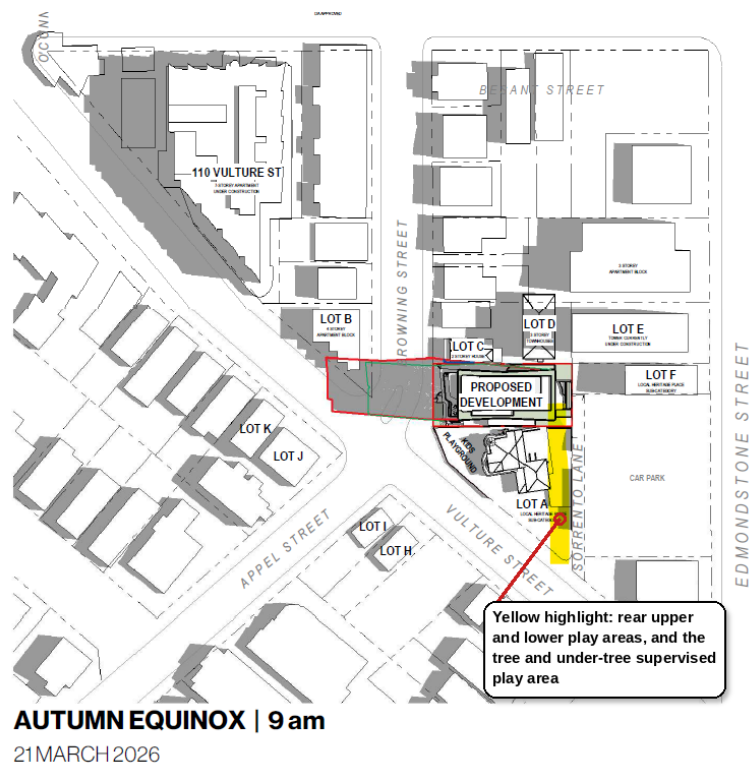
⁵ Response to Submissions, 2 July 2026, Privacy and Overshadowing Impacts; Further Advice Response, 2 July 2026, Item 1 Response; s.7.2.19.4.2(6)(b), City Plan 2014 v36.

corresponding tables record durations on Lot A of 5 hours at the spring equinox, 4 hours at the autumn equinox and 3 hours at the summer solstice, in every case ending at 3pm, and in every season Lot A records the longest duration of any neighbouring lot. On the applicant's own tables, there is no day of the year on which the development does not shadow the childcare land through the afternoon.⁶

4. The shadow study also understates the sensitive area it measures. The outdoor play areas of the childcare service are defined and dimensioned on the approved plans for the service held in Council's own records (Opus Architecture drawings DA03 and DA04, plans and documents referred to in the approval dated 15 June 2018).

They comprise: at ground level, a 44 place external play area of 308.6m² and a 15 place undercover external play area of 105.3m² beneath the podium deck; and at podium level above, a 15 place external play area of 110.6m² and a 12 place external play area of 86.2m² adjoining the 0 to 2 years room at the Sorrento Lane end of the site. That is approximately 610m² of licensed outdoor play space in total.

The shadow study depicts only the western playground and treats the balance as though it were not a sensitive receiving area. Daylight to the lower level spaces is delivered through the podium itself: an open void in the podium play deck admits daylight directly to the undercover play area beneath it, and two skylights are built into the podium play deck, one illuminating that undercover play area and the other illuminating the education room known as the 3 to 5 year old room below.



The shadow study assesses none of this. Neither the podium level play areas along Sorrento Lane, nor the void, nor the skylights are identified or analysed, so the impacts tabled in the study, understate the true effect of the development on the service's outdoor play space and

⁶ Revised Attachment B plans received 10 July 2026, Shadow Study, Winter Solstice sheet and the corresponding Autumn Equinox, Spring Equinox and Summer Solstice sheets and tables.

on natural light to its education rooms, which regulation 110 of the Education and Care Services National Regulations makes a compliance requirement of the service.⁷



5. The receiving land carries a further protected feature the shadow study does not address. A significant tree, a mature Poinciana (*Delonix regia*) in good condition and vigour, stands at the Vulture Street and Sorrento Lane . Council required its

⁷ Approved plans, childcare development at , Opus Architecture DA03 and DA04, plans and documents referred to in the approval dated 15 June 2018; Revised Attachment B plans received 10 July 2026, Shadow Study; the illumination function of the void and skylights is within the entities' direct knowledge as owner and operator.

retention as a condition of the childcare approval, the heritage citation for the place identifying the tree as part of its picturesque garden setting, and it meets the City Plan 2014 definition of significant vegetation as mature vegetation contributing to local landscape character values through shade, cooling and subtropicality.

Children undertake supervised outdoor play beneath its canopy. The afternoon overshadowing established above extends across the southern and western part of the lot to that corner, so the development reduces solar access both to a further area of the service's outdoor play space and to vegetation retained for the very shade and character value the scheme protects.⁸

6. The same revised shadow study overlays the shadow of a compliant six storey building on each sheet, and that overlay tells against rather than assists the applicant's contention that the childcare land would be subject to shadow regardless of any height above an acceptable outcome.

The overlay concedes the correct analytical question, which is the additional overshadowing attributable to the height above the acceptable outcome, and the study then declines to answer it: first impact, last impact and duration are tabled for the proposed development only, and no duration, extent or area is quantified for the six storey overlay at any interval.

What the panels show visually is the answer the tables avoid. At 2pm on the autumn equinox, on the applicant's own panel, the six storey overlay crosses Lot A at approximately the mid line of the childcare building, while the shadow of the proposed development extends across the balance of the lot to its southern boundary. The band between the two envelopes, which includes the southern external play area, is shadow over the childcare land attributable solely to the height above the acceptable outcome.

A compliant building's shadow is the baseline the planning scheme accepts; it cannot be relied upon to authorise the additional shadow of a non compliant building, or the height provisions of the code would have no work to do.⁹

4. Setbacks and privacy

1. The Further Advice Response asserts a minimum 3 metre setback to habitable rooms on the south eastern boundary across Levels 1 to 9, with the balance of that facade comprising blank walls. The revised plans do not bear the assertion out.

Drawing DA101 (Level 01, Issue 13, 23 June 2026) annotates setbacks to the south eastern boundary of 2500mm to a balcony at the western end of the facade, with habitable room setbacks of 3000mm along substantial parts of the facade, against the 5 metre outcome in AO4.2 of the neighbourhood plan code for habitable room windows facing a side boundary.

At ground level, the boundary interface sections on drawing DA230 dimension the built form at 460mm from the boundary, consistent with the 400mm recorded in Council's further advice, so the setback relief commences only above ground.

2. The compliance pathway the applicant has chosen makes the position worse, not better. PO3(b) of the Multiple Dwelling Code, on which the applicant relies in substitution for the acceptable outcomes, requires that where building height is greater than the acceptable

⁸ Tree Management Plan, Litoria Consulting, 24 January 2018; BCC Information Request, 24 October 2017, requiring retention of the Poinciana under PO1 of the Heritage Overlay Code and PO5 of the Childcare centre code; significant vegetation definition, City Plan 2014; Revised Attachment B plans received 10 July 2026, Shadow Study.

⁹ Revised Attachment B plans received 10 July 2026, Shadow Study sheets and legend (overlaid proposed 6 storey building shadow); impact tables record the proposed development only.

outcome for building height on adjoining sites, the development sensitively reduces height towards the site boundaries to a compatible scale.

This design carries full height to a 3 metre habitable window setback and closer for blank wall elements, above a ground level built substantially to the boundary. The development simultaneously exceeds the height acceptable outcome and reduces separation, which is the opposite of the design response the performance based framework contemplates.

3. The privacy analysis in the application material is framed entirely around dwellings. The overlooking provisions concerning adjacent dwelling houses are answered as not applicable because the site does not adjoin any dwelling houses, and the reliance on AO14.1 of the Multiple Dwelling Code and a cone of vision opinion is directed to the habitable rooms of residential neighbours, while habitable windows within 5 metres of the side boundary above Level 05 are acknowledged to be unscreened.

Nowhere in the Code Compliance Report, the Information Request response, or the 2 July material is overlooking into the sleep rooms and outdoor play areas of the childcare service assessed. The applicant's own revised drawings annotate the adjoining 0 to 2 years childcare room, its outdoor play areas, and the sill and lintel heights of its windows immediately across the boundary. The most sensitive receptor on any boundary of the site is the one the privacy analysis never reaches.¹⁰

4. The revised plans do not cure the overlooking they create. Notwithstanding the privacy screening adopted at Levels 1 to 5, the balconies on the facade remain open on those lower levels and, on the applicant's own drawings, look directly over the outdoor play areas of the childcare service. If overlooking of residential habitable rooms is treated as warranting screening, overlooking of the outdoor play areas and sleep rooms of infants and young children warrants it at least as much, and the screening should be extended to those balconies.¹¹

5. Heritage setting

1. Council's further advice records its assessment that the proposed setbacks of 400mm, the extent of basement excavation, the site cover, and the built to boundary walls have the potential to adversely impact the cultural heritage significance of the local heritage place at _____, identified under Criterion B with significance derived from both its built form and its setting, and that the development does not adequately address PO16 of the Heritage Overlay Code.

It further records that the excavation works introduce potential risk to the structural stability and integrity of the heritage place. The 2 July response answers those findings with landscaping, a reduced boundary wall, and a 3 metre habitable window setback. It delivers neither the greater setback nor the lower scaled built form that Item 3(a) required, and the revised sections show basement construction extending to the boundary over two basement levels.¹²

2. The applicant's response to amenity impacts on the same land contends that there is minimal to no prospect that _____ will be redeveloped, by reason of its heritage listing, while asserting elsewhere that the development will not adversely affect the setting of that

¹⁰ Code Compliance Report, App A, PO14/AO14.1 and PO17/AO17 responses; Further Advice Response, 2 July 2026, Item 2 Response; DA230 South Boundary Interface Sections and DA101, revised Attachment B plans.

¹¹ Revised Attachment B plans received 10 July 2026, balconies to the facade facing _____, Levels 1 to 5.

¹² BCC further advice, 10 June 2026, Item 3; Further Advice Response, 2 July 2026, Item 3 Response; DA220 and DA221 sections, revised Attachment B plans.

heritage place and that viewsheds are retained or significantly improved. The first contention concedes the permanence of the existing sensitive use and its heritage setting, and strengthens rather than diminishes the case for protecting both. It cannot sit alongside the second.¹³

6. Conditions in the event of any approval

The entities maintain the position in their submissions that the application should be refused. If Council is nonetheless minded to approve the application in any form, then, consistently with Council's own finding that the excavation works introduce potential risk to the structural stability and integrity of the heritage place, and with the applicant's own Code Compliance Report, which acknowledges that ground anchors extending beyond the site boundary require the written consent of the adjoining owner under the Filling and Excavation Code, conditions should include, at a minimum:

- (a) a pre commencement dilapidation survey of the Tolarno building, undertaken by a suitably qualified structural engineer, with a copy provided to the registered proprietor;
- (b) vibration and ground movement monitoring at the shared boundary and the heritage building for the duration of excavation and piling, with trigger levels and a stop work protocol;
- (c) no ground anchors, and no other works of any kind, extending beyond the boundary of the application site into or beneath _____ without the prior written consent of the registered proprietor.
- (d) a construction management plan, approved by Council prior to the commencement of works and complied with for the duration of construction, addressing at a minimum the permitted hours of construction, noise, vibration and dust controls at the shared boundary, delivery, loading and set down arrangements, crane operation and any oversailing of Street, and site access, and having regard to the continued operation of the licensed childcare service on the adjoining land throughout the construction period.

7. Conclusion

The matters set out above are drawn from the applicant's and Council's own documents. The entities repeat and rely on their submissions in full, and reserve all rights. Please contact me should Council require any further information.

Yours faithfully,

cc: Justin Lynham, Senior Urban Planner, Planning Services South, Brisbane City Council

¹³ Response to Submissions, 2 July 2026, Privacy and Overshadowing Impacts and Adjoining Local Heritage Values: Further Advice Response, 2 July 2026. Item 1 Response.