

Northeast Business Parks perspective of issues raised at the Chamber of Commerce Presentation:

Following the presentation provided to Members of the Caboolture Chamber of Commerce meeting Northeast Business Park Pty Ltd has been asked to respond to some of the issues raised. Our response is as follows:

- **the reference to "just who is delaying this project ? "**

It is correct that Northeast Business Park lodged appeals against the Council decisions on applications in reference to Northeast Business Park. Yes we are taking the Council to Court.

Following the filing of our appeal against the Council's decision to refuse the marina and residential application, two preliminary issues of law were raised by Council and their solicitors that did not go in any way towards the merits of the proposal.

Despite the application having been made in 2004, amended in 2007 and undergone a rigorous assessment by the State and Council, these preliminary issues were only raised once the appeal was filed. They were raised by Council.

They were not raised by the State, despite one of them being an issue relevant to State interests.

Whilst NEBP appealed Council's decision to refuse the development application it was Council who raised the preliminary issues of law. Council stated last night they do not take themselves to Court however they refused the development application and then subsequently delayed the hearing on the merits of the proposal by raising preliminary issues of law.

We are now almost 15 months since the appeal was first filed and no closer to actually knowing why the Council are so adamantly opposed to the application.

The Council have indeed refused the application and provided their grounds for refusal however the effect of the appeal is that these grounds are likely and will inevitably be changed.

It is the preliminary issues that generated a hearing last year and have taken up the time and massive legal costs to date.

There were 2 preliminary issues raised by Council however the focus of the presentation last night was on only one. Perhaps this is because the Court dismissed the second point.

The unsuccessful point raised by Council related to the application not containing sufficient detail as to how it proposed to vary Council's planning scheme. This point occupied at least half of the court time and soaked up considerable dollars in legal costs - ultimately going nowhere.

A couple of key quotes from the decision of the Court in relation to the preliminary points that were not mentioned last night-

"The appellant developer is the latest in a line of developers to face arguments of a broadly similar kind that they've fallen foul of hitherto unsuspected traps in the application process under the Integrated Planning Act"

"The two difficulties the appellant (NEBP) faces which the Council, not having alluded to either of them in the course of receiving and acknowledging the application; making information requests and the like.."

The Court exercised their discretion *"essentially to the effect that the appellant (NEBP) may proceed on the basis of providing evidence of allocation or entitlement to relevant State resources"*

The State resource entitlement point raised by Council was said to apply in "exactly the same way as the role of the owner of the land in providing consent to the application."

The States consent and need for resource entitlement has little, if anything, to do with the overall merits of the proposal. It does not give the State an ability to assess an application before it is made. It simply allows an application to be made and then undergo the appropriate assessment. The State retains the ability, as a concurrence agency, to direct refusal or approval of the application with conditions.

"This is not a context in which the State departments are likely to be excluded. They will have their full opportunity when development permits are applied for to determine what ought to happen in respect of the State resources within their purview"

"It may well be that a recognition that the Coordinator General and, likewise, the Council, in allowing to pass without comment the appellant's prescription of its proposed timetable as one according to which State resources issues will be considered later, after preliminary approvals, underlies the generous attitude taken to the application..." of the Court in exercising their discretion.

- the reference to "defective" applications lodged by NEBP mentioned at the October hearing

We can find no mention anywhere in the Court decision to the words quoted by the Mayor - "the application was defective" - link to judgment

<http://archive.sclqld.org.au/qjudgment/2010/QPEC10-112.pdf>

- the outcomes of the directions hearing held 14 December 2010 appear to have been forgotten?

Orders were made on 14 December 2010 that stated -

1. The development application did state the way in which the Appellant seeks approval to vary the effect of local planning instruments for the land as required by section 3.1.6 of the *Integrated Planning Act 1997*.
2. The development application was not supported by evidence required by section 3.2.1(5) of the *Integrated Planning Act 1997*.
3. The further hearing of the appeal and the Appellant's application to the court for discretionary relief is adjourned to a date to be fixed.

NEBP now have the support of the State for the appeal to proceed without the Resource entitlement and are seeking the support of Council to also agree to move forward on this basis.