

Submission

I have not been involved in any development approval processes under the *Planning Act of 2016* (PA16). My experiences principally rest with the *Integrated Planning Act* of 1997 and the *Sustainable Planning Act* of 2009 although I think from my reading of the legislation (PA16) that much of the process has remained the same.

According to the explanatory notes which accompany PA16 a **code** assessment process is **only** to be undertaken to determine compliance with the prescribed assessment benchmarks and a matter prescribed by regulation¹

Further I see the legislation still provides that a development application for a code assessment must be approved if it complies with all the relevant *assessment criteria* within the defined *assessment benchmarks* and cannot be refused if compliance can be achieved by conditioning within the approval,

My conclusion, viewing the relevant material, is that under the *Planning Regulations* of 2016 development application (DA) for reconfiguring of a lot (RAL21-0138) is **code** assessable development

My interpretation of the *local planning instrument* (Council's planning scheme) is that under **Part 5** [5.7] for the DA there are only three (3) *assessment benchmarks* associated with the **code** assessable development for *reconfiguring a lot*. [RAL]

They are:

- | | | |
|--|----------------|--------------|
| 1. Low Density Residential code | [6.2] | {ZC} |
| 2. Reconfiguring a lot code | [9.4.3] | {RC} |
| 3. Transport and parking code | [9.4.4] | {TPC} |

I have attached a copy of the Council's prescribed conditions for RAL21-0138, including a column on the right-hand side Titled *Assessment Benchmark Reference* for a reference to where the applied conditions address the requirements to comply with a provision of those *assessment benchmarks* for a RAL.

Council policy documents are not *assessment benchmarks*.²

It would be of great assistance if you could provide these references in that column for the ones, I have been unable to identify as *relevant* to this DA.

The development application submitted on 6 December 2021 clearly states that development approval for only **one** development type, RAL.

When I first become involved in this project, I noted that salient fact. I advise my clients that a further development application would be needed to undertake the civil works that were clearly

¹ PA16-S45(3)

² Explanatory Notes-P49

indicated by a number of requirements within Council's assessment benchmark for reconfiguring a lot [Section 5.7 of Part 5]

Looking down the list of conditions I notice several conditions that would be relevant to a development application for Operational Works.

I hold the view that there is no legislative authority to incorporate those conditions into a development application for a RAL other than the condition requiring the submission of such a development application.

Towards the end of the 1990s and following the implication of the *Integrated Planning Act*, the Department then responsible for that legislation issued advice in relation to the drafting of conditions to be attached to development approvals

That drafted advice clearly indicated that conditions requiring compliance with existing legislation were not appropriate, for a number of reasons, also conditions that were seen to be considered in many cases 'gratuitous advice', were also not to be included within a formal development condition.

The position of the department at that time was that if a planning authority wished to perform the function as an 'advice agency' to applicants then that documentation was to be excluded from the statutory development conditions and included as an addendum or attachment to the statutory documentation that was provided

I see nothing that would suggest that that advice is still not relevant and applicable

Therefore, I hold the view the only *relevant* conditions for this development application are:

- Those required by the referral agency; and
- Councils' conditions 14, 17, 19, 21, 25, 28, and 29

Those relevant to a development application for ***Operational Works*** should be included as conditions for that approval (If they are not detailed in the development application) and gratuitous advice such as those that remind the applicant of their statutory and common law obligations, outside of development approval, should be contained within a separate document and form no part of a statutory condition.

That our position.

Regards

Warren Bolton

Wednesday, 15 January 2025.

