



Redland
CITY COUNCIL

PREVIOUSLY CONFIDENTIAL INFORMATION

Item 20.1

*Status of Community Residence Court Appeal -
2081/24 Redland City Council -V- Boutique
Capital & Others*

GENERAL MEETING

Thursday, 18 April 2024

Released 22 April 2024

20 CONFIDENTIAL ITEMS**20.1 STATUS OF COMMUNITY RESIDENCE COURT APPEAL - 2081/24 REDLAND CITY COUNCIL -V- BOUTIQUE CAPITAL & OTHERS****Objective Reference:** A8274688**Authorising Officer:** Amanda Pafumi, General Manager Organisational Services**Responsible Officer:** Amanda Pafumi, General Manager Organisational Services**Report Author:** Andrew Ross, Executive Group Manager Risk & Legal Services**Attachments:** Nil

The Council is satisfied that, pursuant to section 254J(3) of the *Local Government Regulation 2012*, the information to be received, discussed or considered in relation to this agenda item is:

- (e) *legal advice obtained by the local government or legal proceedings involving the local government including, for example, legal proceedings that may be taken by or against the local government.*

PURPOSE

To provide a status update on the Community Residence Court Appeal - 2081/24 Redland City Council -v- Boutique Capital & Others.

To continue to advocate to the Queensland State Government to change the *Planning Regulation 2017* (PR) Schedule 24 definition of "Community Residence" by considering the design and location of the Community Residences within:

- At-risk planning overlays including fire and flood risk areas.
- Protective planning overlays including Heritage and Conservation areas.
- Proximity to urban transport and support services and facilities.
- Consistency with the Queensland Development Code and local amenity provisions.

BACKGROUND

On 6 March 2024 Council unanimously supported a Mayoral Minute resolving in summary to advocate to the Queensland State Government to join the Community Residence Court Appeal or modify the *Planning Regulation 2017* so that a "Community Residence" must consider the building design and scale, and the amenity of the existing community and local planning overlays.

The State Government representatives have not joined the Appeal and continue to express their views against changing planning controls in the State Planning Regulation exemption for a Community Residence. The Appeal is expected to be listed for trial in late April or May.

The Community Residence Appeal has started to discharge Council's duty of care to uphold planning laws for Community Resident users and the reasonable expectations of the community, whilst advocating to the State Government that planning laws should not arbitrarily impact the human rights to the enjoyment of property and potentially allow Community Resident Investment Schemes to place some of the most vulnerable community members into low value or at risk lands (eg flood and fire prone) lacking infrastructure or proximity to support services.

The Appeal and advocacy is aligned to recent Council decisions regarding social policy positions on Affordable Housing and Community Housing Providers made on 19 April 2023, 19 July 2023, 11 October 2023 and 13 December 2023. The social policy decisions recognise continued support for Community Housing providers by reviewing Council landholdings and identifying opportunities to partner with Community Housing Providers and to expedite planning decisions and provide service discounts and fee waivers.

Further Background:

On 21 February 2024 Council officers lodged an Appeal against a Planning and Environment Court decision authorising a two storey Community Residence Apartment block, containing four separate two bedroom apartments, plus a support worker studio apartment, on a 708m2 site in a low-density residential cul-de-sac area at Danielle Street Cleveland.

The apartment building, when completed, is intended to be used for Specialist Disability Accommodation (SDA) for persons with disabilities, and who would be supported under the National Disability Insurance Scheme (NDIS).

The Court gave a broad interpretation to the *Planning Regulation 2017* where a “Community Residence” is defined as follows:

- (a) *Means the use of premises for residential accommodation for –*

No more than –

(A) 6 children, if the accommodation is provided as part of a program or service under the Youth Justice Act 1992; or

(B) 6 persons who require assistance of support with daily living needs; and

No more than 1 support worker; and

- (b) *Includes a building or structure that is reasonably associated with the use in paragraph (a).*
(For emphasis)

The Court gave a broad interpretation to a “Community Residence” building in a low-density residential zone that can comprise a multistorey serviced apartment where a maximum of six residents (plus separate support worker apartment) can have their individual serviced apartments with multiple bedrooms for family, guests, storage, treatment, and ancillary purposes. The Court noted that just because the Danielle Street building provided for eight support bedrooms, being two bedrooms above the six person maximum, this did not mean they would also be used for support bedrooms or were an unreasonable association to supporting six persons as per the Community Residence definition under the legislation.

The Planning Court decision sets a Statewide, and potentially unintended precedent, unless clarified by the Appeal Court or the State Government as:

Planning Hierarchy/Public Consultation/Amenity: State Planning laws override Local Planning laws and design requirements to authorise Community Housing Apartments and Youth Justice facilities as of right or exempt development in low density residential areas (and other zones) with little or no boundary setbacks or height restrictions, and without public consultation or consideration of the local amenity. For example the Danielle Street Community Residence:

- Site Cover: is 76% noting design codes and surrounding sites at between 40% to 50%.
- Front Setback: is 2.25m noting design codes are at 6m (i.e. for landscaping and carparking).
- Rear Setback: is 1.64m noting design codes are at 4m (i.e. for privacy and overshadowing).
- Side Setback: 1.55 to western boundary and eastern boundary is built to boundary.
- Facilities: is located on a local road with no footpaths and 400m to the nearest bus stop.

Residential Dwelling v Apartment Building: That Community Housing Apartments and Youth Justice facilities can potentially if "reasonably associated" with housing a maximum of six persons, are not limited to a residential dwelling house and may potentially be a multistorey serviced apartment with each apartment having two or more bedrooms.

Apartment Building Scale: That persons housed in Community Housing Apartments and Youth Justice facilities is not limited to housing a maximum of six persons and a support worker but may include multiple dwellings and facilities for family, guests, storage and treatment specialists. The Danielle Street Appeal involves a two storey building with five self-contained two- and one-bedroom apartments. However, the legislation and Court reasoning could potentially see a six to seven storey apartment building structure if 'reasonably associated' with servicing six persons.

Exemption from Planning Risk Overlays (eg flood and fire): The 'Community Residence' exemption in the Planning Regulation can by default override local planning overlays to place Community Residence buildings in low value lands covered by local flood and fire risk overlays, locating some of the most vulnerable community members in the highest risk areas.

Commercial Investment Schemes v Community Housing: The 'Community Residence' exemption in the Planning Regulation has deregulated planning and building design controls and increasing the commercial investment schemes to construct Community Residences that are advertised as public investment schemes with a potential 15% financial return based on larger development footprints and site cover.

State Planning v National Issues: The State Planning exemption uses a broad phrase for a building structure to be 'reasonably associated' with the Community Residence use. The State Planning Regulation exemption does not refer to any National, State or Local standard or specialist development design codes from the NDIS, SDA, QDC, Local City Plan overlay to assist and inform a reasonable opinion for the location, design, scale, siting of a Community Residence.

Resident Impact Statements

_____ Court impact statements that attested to the building impacts including loss of privacy; loss of sunlight and decrease in solar power; loss of mental health and wellbeing; loss of property value and loss of enjoyment _____

Several disabled residents waiting to occupy “Community Residences” attested to the importance of living in community and not in hospital beds and unsuitable accommodation. The residents attested to the needs for housing to have multiple rooms and bedrooms.

ISSUES

Model Litigant Principles:

The Appeal involves a compliance investigation from customer complaints as the developer submits the proposal is exempt from Council planning controls and the Redlands City Plan.

The Appeal is aligned with Council’s duty of care and the model litigant principles for upholding and testing the *Planning Act 2016*, *Planning Regulation 2017*, Redlands City Plan and reasonable expectation of the community for development in a low-density residential zone.

STRATEGIC IMPLICATIONS

Legislative Requirements

The Appeal has been assessed in accordance with legislation

Risk Management

A compliance investigation carries interrelated risks aligned to the recommendation:

Financial

People

There are no implications for staff associated with this report.

Environmental

An overdevelopment of the site will generally lead to adverse environmental impacts.

Social

An overdevelopment of the site will generally lead to adverse social impacts.

Human Rights

The report is aligned to Section 24 (2) of the *Human Rights Act 2019* titled Property rights and states 'A person must not be arbitrarily deprived of the person's property.'

The Queensland Human Rights Commission has produced a fact sheet (July 2019) on section 24 which refers to the restriction of the use of property from planning laws. It is noted that Property Rights can be limited which in this case the surrounding residents have provided impact statements that the comfortable enjoyment of their property rights is adversely affected by the State Planning Regulation lack of planning and design controls for a Community Residence.

Alignment with Council's Policy and Plans

The officer compliance and [REDACTED] is aligned to Council's duty of care to uphold the *Planning Act 2016*, *Planning Regulation 2017* and City Plan.

CONSULTATION

Consulted	Consultation Date	Comments/Actions
Queensland Department of State Development, Infrastructure, Local Government and Planning (DSDILGP)	Various	DSDILGP is continually consulted as part of the SEQ Development Assessment Manager Working Group
Queensland State Assessment and Referral Agency (SARA)	Various	SARA is continually consulted as part of the SEQ Development Assessment Manager Working Group
Local Government Association of Queensland (LGAQ)	Various	LGAQ has proactively advocated for many issues to the Queensland State Government over the issues raised in this report and is continuing to advocate to State Government.
Councillors	Various	Councillors are briefed monthly on the proceeding
Internal Stakeholders	Various	Internal stakeholders principally from Development Control and Planning Assessment
Enquiry: Qld Community Support and Services Committee	Future Advocacy	Note for future Advocacy: Inquiry into the Provision and Regulation of Supported Accommodation in Qld closed submissions on 2 Feb 2024 with report being prepared for Parliament by 7 June 2024.

OPTIONS**Option One**

That Council resolves as follows:

1. To note the status update on the Community Residence Court Appeal - 2081/24 Redland City Council -V- Boutique Capital & Others, with an anticipated Trial in late April or May 2024 with published information available on the Queensland E-Court website.
2. To continue to progress and negotiate the Appeal consistent with legal and planning advice to achieve improved planning and amenity outcomes to surrounding residents.
3. To continue to advocate to the Queensland Government to change the *Planning Regulation 2017* Schedule 24 definition of "Community Residence" to consider:
 - (a) At-risk planning overlays including fire and flood risk areas;
 - (b) Protective planning overlays including Heritage and Conservation areas;
 - (c) Proximity to urban transport and support services and facilities; and
 - (d) Consistency with the Queensland Development Code and local amenity provisions.
4. To publish the report consistent with the *Right to Information Act 2009* but for redacting private, commercial in confidence or legally privileged information.

Option Two

That Council resolves as follows:

1. To request a further briefing on the Community Residence Court Appeal - 2081/24 Redland City Council -V- Boutique Capital & Others; and submission to the Queensland State Government on the *Planning Regulation 2017* Schedule 24 definition of "Community Residence".
2. To publish the report consistent with the *Right to Information Act 2009* but for redacting private, commercial in confidence and privileged information.

OFFICER'S RECOMMENDATION

That Council resolves as follows:

1. To note the status update on the Community Residence Court Appeal - 2081/24 Redland City Council -V- Boutique Capital & Others, with an anticipated Trial in late April or May 2024 with published information available on the Queensland E-Court website.
2. To continue to progress and negotiate the Appeal consistent with legal and planning advice to achieve improved planning and amenity outcomes to surrounding residents.
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 - (c) Proximity to urban transport and support services and facilities; and
 - (d) Consistency with the Queensland Development Code and local amenity provisions.
4. To publish the report consistent with the *Right to Information Act 2009* but for redacting private, commercial in confidence or legally privileged information.

COUNCIL RESOLUTION 2024/52

Moved by: Cr Peter Mitchell

Seconded by: Cr Julie Talty

That Council resolves as follows:

1. To note the status update on the Community Residence Court Appeal - 2081/24 Redland City Council -V- Boutique Capital & Others, with an anticipated Trial on 19 July 2024 with published information available on the Queensland E-Court website.
2. To continue to progress and negotiate the Appeal consistent with legal and planning advice to achieve improved planning and amenity outcomes to surrounding residents.
3. To continue to advocate to the Queensland Government to change the *Planning Regulation 2017* Schedule 24 definition of "Community Residence" to consider:
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 - (b) Protective planning overlays including Heritage and Conservation areas;
 - (c) Proximity to urban transport and support services and facilities; and
 - (d) Consistency with the Queensland Development Code and local amenity provisions.
4. To publish the report consistent with the *Right to Information Act 2009* but for redacting private, commercial in confidence or legally privileged information.

CARRIED 11/0

Crs Jos Mitchell, Wendy Boglary, Peter Mitchell, Paul Gollè, Lance Hewlett, Shane Rendalls, Julie Talty, Rowanne McKenzie, Tracey Huges, Jason Colley and Paul Bishop voted FOR the motion.