

FILE NOTE

To:	File 1059887-1
From:	Steve Kinsela Senior Planning Officer, Appeals & Plan Sealing
Date:	22 June 2020
File:	Doc #13838265/File No: 1059887-1
Subject:	Resolution of appeal 3629/19 - Hills International College

Background

In October 2017, UG Jimboomba Pty Ltd lodged an application for a preliminary approval (variation request) to override the current zoning of the premises commonly known as Hills International College, located at 105-111, part of 113-119 and 121-137 Johanna Street, Jimboomba.

In August 2019, Council's delegate issued a Decision Notice to UG Jimboomba advising their development application has been approved subject to conditions.

Appeal Process

In October 2019, AV Jennings, the developer for the neighbouring premises to the West filed an appeal in the Planning and Environment Court, exercising their right to do so as a submitter to the development application. The appellant was of the opinion that a development permit for a variation request should not have been approved given, in their opinion, that;

- there is no flood-free access for the premises and to obtain such access it relies on a future road connection in the appellant's land;
- there is insufficient certainty around the delivery of that road connection over the appellant's land;
- the development is unable to provide flood-free access;
- the development application is premature; and
- there is insufficient certainty about the development given the need (as conditioned) to provide an amended flood study and amended plans.

As part of the appeal process, Council officers appointed experts in the fields of town planning, hydrology and civil engineering to advise Council on the issues in dispute. The parties engaged in a without prejudice meeting, mediated by the Court's Alternative Dispute Resolution Registrar. Following this, the experts for Council and the appellant entered into a joint expert meeting. This meeting resulted in joint expert reports being produced, which sought to address the issues in dispute.

The joint experts agreed on a set of amended conditions that, in their expert opinion -

- Are reasonable and relevant;
- Amends condition 2.4 to restrict any further development approvals (other than operational work approvals) from being issued until a Reconfiguration of a Lot approval is in effect that approves a road through AV Jennings' site giving flood-free access to the development; and
- Includes a new condition (Condition 4.1.7.7) that is an assessment benchmark that future development applications on the development land must be assessed against. The benchmark is that the development must have flood free road access via the connecting road.

Resolution

On this basis, Council's solicitors and experts recommended resolving the appeal based on an amended conditions package. The Judge made a slight amendment to condition 2.4 to ensure that a flood-free, fully functional and dedicated road is available to the Hills International College prior to any survey plan being sealed or any material change of use occurring, to which all parties agreed to. The Judgment approving the development application (variation request) was made on 14 May 2020, and is available on the eCourts website.