
**CALL IN NOTICE FOR A DEVELOPMENT APPLICATION UNDER THE
SUSTAINABLE PLANNING ACT 2009**

**216-218, 230, 234, 236, 238-256 and 258-262 EDUARDES STREET, ROMA,
MARANOA REGIONAL COUNCIL**

Pursuant to section 425 of the *Sustainable Planning Act 2009* (SPA), I hereby call in to reassess and re-decide a development application made by the Maranoa Regional Council (the council) for a flood levee at Roma.

The levee is to be constructed on land at 216-218, 230, 234, 236, 238-256 and 258-262 Edwardes Street, Roma.

The development application is for a development permit for operational work for the construction of a Category 3 Levee in Roma. It forms that part of stage 2 of the Roma flood mitigation project which is assessable development (the **Western Levee**).

On 24 June 2016, the council issued its decision notice, approving the development application subject to conditions.

On 22 July 2016, Ms Mary (Molly) Stevens and Mr Paul Stevens filed a submitter appeal in the Planning and Environment Court (P&E Court) against the council's decision to approve the development application (P&E Court Reference: 2850/16).

On 22 August 2016, the council wrote to me, requesting I exercise my ministerial call in powers for the abovementioned development application (the request).

By Notice dated 31 August 2016, I gave written notice of the proposed call in of the development application, pursuant to section 424A of SPA. A total of 5 representations were received in response to the proposed call in notice.

State interests

Under section 424 of SPA, I may call in a development application only if the development involves a state interest.

A state interest is defined in Schedule 3 of SPA as:

- (a) *an interest that the Minister considers affects an economic or environmental interest of the State or a part of the State, including sustainable development; or*
- (b) *an interest that the Minister considers affects the interest of ensuring there is an efficient, effective and accountable planning and development assessment system.*

A State Planning Policy advances the purpose of SPA by stating the state's policy about a matter of state interest (section 22(b) of SPA). A designated region's regional plan is also taken to be a state interest (section 35 of SPA).

I consider the proposed development involves the following state interests:

1. *The development affects an economic and environmental interest of the State or a part of the State*
 - A. I consider the development involves substantial economic investment in the area:
 - I. In that the State Government has made the following financial contributions to the Roma Flood Mitigation Project to date:

- 1) For Stage 1, a total of \$7,808,334 including:
 - a) \$88,334 from the 'National Disaster Resilience' program in 2010-11 which was administered by the Department of Community Safety
 - b) \$2,720,000 from the 'Local Governments Grant and Subsidies Program' in 2013, which was administered by the Department of Local Government, Community Recovery and Resilience
 - c) \$5,000,000 from the 'Royalties for the Regions' program in 2012 which was administered by the Department of State Development.
 - 2) For Stage 2, a total of \$3,090,000 from the '*Building our Regions program*' in 2016.
- II. The Federal Government has made the following financial contributions to the Roma Flood Mitigation Project to date:
- 1) For Stage 1, about a total of \$6,808,333 including:
 - a) \$4,700,000 from the 'South West Queensland Flood Mitigation Fund' in 2012 which was administered by the Department of Community Safety
 - b) \$88,333 from the 'National Disaster Resilience' program in 2010/11 which was administered by the Department of Community Safety.
 - c) \$2,020,000 from the 'National Insurance Affordability Initiative' in 2014.
 - 2) For Stage 2, about a total of \$4,980,000 from the 'National Insurance Affordability Initiative' in 2014.
- III. The council states that it has made the following financial contribution to the Roma Flood Mitigation Project to date:
- 1) For Stage 1, a total of \$4,570,000
 - 2) For Stage 2, a total of \$250,000 with an additional allowance of \$416,000 available from reserve funds should they be necessary.
- B. I consider the development involves an environmental interest of the state:
- I. In that the proposed development is located within a flood hazard area identified as the council's Adopted Flood Hazard Map and also the Bushfire hazard area
 - II. In that the State Planning Policy April 2016 (the SPP) identifies the state interest of Natural hazard, risks and resilience, and states at page 34:
 - 1) *that natural hazard, risks and resilience is of interest to the state as 'A natural hazard is a naturally occurring event that may cause harm to people and our social wellbeing, damage to property and/or infrastructure and impact our economy and the environment.'*
 - 2) *'Planning for these natural hazards through land use planning can also significantly reduce the financial and other resource pressures placed on all levels of government, industry and the community, to respond to and recover from natural disasters.'*
 - III. In that the request purports at page 10 that the western levee meets the SPP State interest for Natural Hazards, Risk and Resilience by:
 - 1) *'significantly mitigating flood impacts within Roma, including a reduction of flood water levels, flood water velocities and the duration and frequency of flood water inundation in Roma;'*
 - 2) *'reducing the risks of a flood event, being a natural hazard, in Roma to provide additional protection of people and property from flood hazards in and around Roma;'*
 - 3) *'enhancing Roma's long-term resilience to flooding;'*
 - 4) *'reducing the cost and time of flood recovery work, repair of impacted infrastructure and the like;'*

- 5) *'lowering demand for State and volunteer emergency services during flood events as a consequence of reduced impacts, which will ensure that these very important and finite community resources can respond to and deal with incidents as quickly and as effectively as possible, and assist similar services in other affected localities as required;'*
 - 6) *'providing a long-term and sustainable response to disaster management and responses through the provision of permanent, resilient and low maintenance infrastructure;'*
 - 7) *'reducing the extent and magnitude of major flood events experienced within Roma, ultimately providing increased protection to persons and property, and minimising the adverse impacts of flooding within the town; and'*
 - 8) *'increasing community resilience to flood risks in Roma through the completion of a well designed and effective levee system.'*
- IV. In that the Darling Downs Regional Plan (DD Regional Plan) states at page 34 the following:
- 1) The Regional Plan provides that *'within the Darling Downs region, a number of opportunities exist to minimise the impact natural hazards have on people, property, the economy, the environment and infrastructure. Such opportunities include:*
 - *the ability to improve the long-term flood resilience of the region by rebuilding to a higher standard of flood immunity with options such as redesigning, upgrading and/or relocating infrastructure and communities*
 - *the ability to improve and update local government flood mapping, with further information from data and more detailed flood studies*
 - *the ability to use new information to better avoid development in high risk areas or development which increases the impact or risk of flooding elsewhere.'*
 - 2) Editor's note of pp.34 states *'Achieving this state interest in the Darling Downs region is not reliant on a strategic direction established through a statutory regional plan. In addition to the local government involvement in delivering this interest, the state government has a range of complementary initiatives which may assist in achieving this state interest, including:*
 - *Royalties for the Regions*
A four-year program to invest \$495 million in new and improved community infrastructure, roads and flood mitigation projects that benefit those who live, work and invest in resource regions. There is an ongoing commitment of \$200 million each year for subsequent years. The program includes funding for councils to build flood mitigation measures such as levees, flood bypasses, flood mitigation dams, flood retention basins and other key projects to protect these communities from flooding.'
- V. In that the council purports that:
- 1) *'the selection of the most appropriate Stage 2 flood mitigation option and alignment was informed by an environmental assessment of the Stage 2 flood mitigation investigation area together with the upstream and downstream reaches of Bungil Creek';*
 - 2) *'the Western Levee provides for the mitigation of adverse impacts on the majority of the built environment in Roma when major flood hazards arise; and'*
 - 3) *'the Western Levee provides an additional refuge from flood water for wildlife and stock.'*

2. *Ensuring there is an efficient, effective and accountable planning and development assessment system.*
 - I. In that the SPP April 2016 identifies the state interest of Natural hazard, risks and resilience, and states at page 34:
 - 1) *'Effective land use planning and development decisions can ensure development avoids, mitigates or manages the impacts of certain natural hazards including flood, bushfire, landslide, storm tide inundation and coastal erosion.'*
 - II. In that this development has attracted community interest as evidenced by the lodgement of 5 submissions and the filing of a submitter appeal. Resolution of this appeal is likely to take considerable time, delaying a clear decision on the development prospects of this decision for this site.

Representations

I gave a proposed call in notice for the development application which was dated 31 August 2016.

The proposed call in notice invited representations about whether or not the proposed development involves a state interest, whether or not I should exercise my powers to call in the development application and any matter stated in the proposed call in notice.

The representation period was for 15 business days, closing on 26 September 2016.

There were five written representations received in response to the proposed call in notice. I have considered the five representations received in response to the proposed call in notice, I am not persuaded by these representations that I should decide not to call in the development application. Having considered the representations, I have decided to call in this development application for the reasons set out below.

The information in the call in notice about the funding information for the levee is different to what was in the proposed call in notice. The reason for this is because of clarification about the funding which has been provided in one of the representations.

Reasons for the call in

I am calling in this application for the following reasons:

1. I consider that the proposed development involves the state interests set out above.
2. There is a significant need for flood mitigation works in Roma. The 2012 flood event resulted in adverse impacts to a significant number of premises within Roma, including one fatality. The council's records indicate that the flooding across Roma affected approximately 1,028 residential properties, with about 580 of those properties being flooded above the floor level of the building.
3. The Western Levee will improve the flood immunity to home owners, reduce the impacts on state and volunteer emergency services and reduce the reconstruction costs in the long term.
4. The planning for natural hazards, risk and resilience for the community of Roma is of strong community benefit, warranting a timely consideration and resolution of this complex application in the interests of ensuring an effective, efficient and accountable planning and development assessment system.
5. There is significant committed funding and resource for the Roma's flood mitigation project from local government, state government and federal government.
6. The development application seeks to provide a long-term and sustainable response to disaster management and responses in Roma by the provision of permanent, resilient and low maintenance infrastructure.

Merit assessment or state interest assessment

I do not intend to re-assess and re-decide the application having regard only to the State interests for which I am calling in the application I intend to reassess and re-decide the development application under the normal assessment and decision provisions of SPA. This option allows me to reassess the development application on its merits against, amongst other things, all relevant planning instruments.

My reason for this is that a merit assessment would allow me to address key issues. I consider these matters are best dealt with through a merit assessment, rather than a state interest assessment.

Integrated Development Assessment System

I propose to restart the Integrated Development Assessment System (IDAS) process for the development application at the start of the Decision stage, as adequate information has been provided about the development, it has been publically notified and submissions received. I may also ask any person for advice or comments about the application during the decision stage under section 256 of SPA.

Planning and Environment Court Appeals

On 22 July 2016, Ms Mary (Molly) Stevens and Mr Paul Stevens filed a submitter appeal in the P&E Court against the council's decision to approve the development application (P&E Court Reference: 2850/16).

As a result of my decision to call in the development application, this appeal and any further P&E Court appeals made before the application is called in are of no further effect, as provided for in section 427(6) of SPA.

My decision on the development application is taken to be the original assessment manager's decision although, pursuant to section 427(5) of SPA, my decision as the assessment manager cannot be appealed in the P&E Court.

Findings on material questions of fact and evidence or other material on which findings of material questions of fact were based

Prior to making my decision I was provided with a preliminary assessment report prepared by officers of the Department of Infrastructure, Local Government and Planning (DILGP), dated August 2016, which included the following information:

Site and development application details:

Name of Applicant	Maranoa Regional Council
Date application properly made to the council	11 February 2016
Date of decision notice issued by the council	19 June 2016
Development approval sought	Development permit for operational work for the construction of a Category 3 Levee
Applicable planning scheme	Roma Planning Scheme 2006
Land zoning	Rural Zone and Residential Zone
Level of assessment	Impact assessable
Real property description	Lot 22 on R863, Lot 2 of SP110498, Lot 1 and 2 on RP4380, Lot 1 on R8684 and Lot 1 on WV1882

Site address	216-218, 230, 234, 236, 238-256 and 258-262 Edwardes Street, Roma
Referral agencies	Chief Executive, Department of Infrastructure, Local Government and Planning (DILGP) (as State Assessment and Referral Agency)
Submissions received by the council	The application was publically notified from 20 May 2016 to 10 June 2016. Five properly made submissions, objecting to the development, were received during this period
Appeal	On 22 July 2016, Ms Mary (Molly) Stevens and Mr Paul Stevens filed a submitter appeal in the P&E Court against the council's decision to approve the development application (P&E Court Reference: 2850/16)

Request to call in the development application:

A request to call in the development application was received by an email from Ms Julie Reitano, Chief Executive Officer of the council, dated 22 August 2016.

The request states that '*The construction of the Western Levee is for the benefit of the broader Roma community (as part of the State) and involves a number of State interests*'. It further raises a number of issues including matters which are potentially relevant to whether this development involves matters of state interest in particular interests addressed in the SPP and the DD Regional Plan.

Prior to making my decision to propose to call in the development application, I was provided with a preliminary assessment report dated August 2016, prepared by officers of DILGP. This included a summary of the key issues raised in the request. I was also provided with a copy of the request.

The council's decision

Prior to making my decision to propose to call in the development application, I was provided with a preliminary assessment report dated August 2016, prepared by officers of the DILGP, which includes the following information:

- The development application was made by the council, for a development permit for operational work for the construction of a Category 3 Levee at 216-218, 230, 234, 236, 238-256 and 258-262 Edwardes Street, Roma.
- The development application triggered impact assessment requiring assessment against the applicable codes, laws, policies prescribed in Schedule 5 Part 1 Table 4, item 14 of the Sustainable Planning Regulation 2009 (the SPR), including the IDAS code contained in Schedule 15B of the Water Regulation 2002.
- The decision notice issued by the council on 24 June 2016, included conditions of approval. The decision notice states that 'The assessment manager does not consider that the assessment manager's decision conflicts with a relevant instrument.'

Submissions

Prior to making my decision to call in the application I was re-briefed with the preliminary assessment report dated August 2016, prepared by officers of the DILGP. This included the council's summary of the issues raised in submissions.

Appeal

Appeal number BD 2850 of 2016, a submitter appeal was filed in the P&E Court on 22 July 2016.

The appeal raises a number of issues including conflicts of interest, defective assessment against the IDAS code and defectiveness in the conditions of approval, including the concurrence agency conditions.

Prior to making my decision to call in the application I was re-briefed with the preliminary assessment report dated August 2016, prepared by officers of the department. This included a summary of the key grounds in the Notice of Appeal. I was also provided with a copy of the Notice of Appeal for this appeal.

State matters

Referral

On 12 February 2016, the development application was referred to DILGP, in its capacity as the State Assessment and Referral Agency, as a concurrence agency, to assess the construction of the new levee.

On 12 May 2016, DILGP provided its concurrence agency response which included conditions to be attached to any development approval.

Documents considered

In forming my decision to call in the development application, I had regard to the following material:

Documents
DILGP Briefing Note (MBN16/1374) signed 23 October 2016 and attachments
<ul style="list-style-type: none">• Copies of all 5 representations received in response to the proposed call in notice
<ul style="list-style-type: none">• Representations Report, prepared by the Department of Infrastructure, Local Government and Planning, October 2016
<ul style="list-style-type: none">• Statement of Discretionary Considerations prepared by the Department of Infrastructure, Local Government and Planning, October 2016
<ul style="list-style-type: none">• Draft call in notice, prepared by the Department of Infrastructure, Local Government and Planning, October 2016
<ul style="list-style-type: none">• Draft Ministerial correspondence to affected parties and other parties (including the assessment manager, applicant, submitters and concurrence agency), dated 24 October 2016 advising that I have called in the development application, prepared by the Department of Infrastructure, Local Government and Planning
<ul style="list-style-type: none">• Development application material lodged by Maranoa Regional Council together with a list of relevant development application material prepared by the Department of Infrastructure, Local Government and Planning, October 2016
DILGP Briefing Note (MBN16/1232) signed 31 August 2016 and attachments
<ul style="list-style-type: none">• Request by Maranoa Regional Council to call in the development application, dated 22 August 2016
<ul style="list-style-type: none">• Ms Mary (Molly) Stevens and Mr Paul Stevens vs Maranoa Regional Council as Assessment Manager (and Applicant) and Chief Executive, Department of Infrastructure, Local Government and Planning, Queensland Government as Referral Agency and Concurrence Agency: Notice of Appeal

<ul style="list-style-type: none"> • Preliminary assessment report prepared by Department of Infrastructure, Local Government and Planning, August 2016
<ul style="list-style-type: none"> • Proposed call in notice, prepared by Department of Infrastructure, Local Government and Planning, dated 31 August 2016
<ul style="list-style-type: none"> • Ministerial correspondence to affected parties (including the assessment manager, applicant, submitters of which I was aware at the time the proposed call in notice was given, and concurrence agency) dated 31 August 2016 advising that I was considering calling in the development application, prepared by the Department of Infrastructure, Local Government and Planning
<ul style="list-style-type: none"> • Development application and supporting documents
<ul style="list-style-type: none"> • Maranoa Regional Council's decision notice and conditions
Legislation
<i>Sustainable Planning Act 2009</i>
Sustainable Planning Regulation 2009
Water Regulation 2002
Other Planning Instruments
State Planning Policy April 2016
Darling Downs Regional Plan
Roma Planning Scheme 2006

Dated: 23 October 2016

JACKIE TRAD MP
DEPUTY PREMIER
Minister for Infrastructure, Local Government and Planning
and Minister for Trade and Investment