

Tuesday, 24th October 2023

Our Ref: 21401
Your Ref: DA230024

NORTH BURNETT REGIONAL COUNCIL
PO BOX 390
GAYNDAH QLD 4625

ATTENTION: Acting Planning & Environment Manager
VIA EMAIL: admin@northburnett.qld.gov.au

Dear Angela,

APPLICANT'S RESPONSE TO SUBMISSIONS

**FREDERICK STREET AND JOHN STREET, BIGGENDEN, QLD, 4621
LOT 11 ON B4469 AND LOT 21 ON B4469**

We refer to the submissions received during the recent public notification period which were received by email on 12th October 2023. We have now reviewed all the submissions and provide below a response to the main issues raised in the letters.

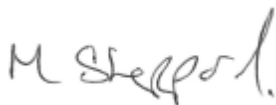
Summary of issues	Applicant's Response
Stormwater & Flooding	
A submitter raised concerns that there will be an increase in flows from the development site due to loss of pervious areas.	As detailed in the Engineering report the proposed development includes a stormwater detention basin to manage stormwater flows from the site. Analysis has been undertaken that confirms that the proposed detention basin will ameliorate stormwater flows from the development such that peak flows are not increased.
A submitter raised concern about the maintenance of existing concrete lined table drains within John and Caroline Streets.	The existing concrete lined table drains are located within the road reserves of John and Caroline Streets. As such the ownership and responsibility for maintenance of the infrastructure lies with Council the proposed development application does not alter the requirement for Council to maintain the existing infrastructure.

<p>Concern was raised that the development would worsen existing flooding issues around the site.</p>	<p>As outlined above, the proposed development includes a stormwater detention basin to ensure that flows from the site are not worsened because of the development. As such, the proposed development does not exacerbate any existing flooding issues that may be present surrounding the site.</p>
<p>Concern was raised that there was a risk of stormwater contamination affecting local wildlife.</p>	<p>As detailed in the Engineering report the proposed development includes water quality treatment devices including a bio-retention basin and specific hydrocarbon management measures such as a SPEL Purceptor that will manage the potential risks stormwater contamination from the development.</p>
<p>Traffic & Access</p>	
<p>Concern was raised regarding the safety of heavy vehicles leaving the site onto the Isis Highway.</p>	<p>The site is designed to cater for the largest vehicle permitted to use the Isis Highway, being a B-Double. As outlined in Section 6.2 of Contour's Traffic Impact Assessment (TIA), the number of heavy vehicles using the site is expected to be low with larger heavy vehicles, such as semi-trailers and B-doubles, only expected to use the use the site occasionally. Nevertheless, the TIA confirms that there is ample visibility at the exit to the Isis Highway and this, together with the low-speed environment and low traffic volumes, will allow the proposed access to operate safely.</p> <p>The layout of the access will be refined during detailed design and this process will ensure that the access complies with the conditions in the Concurrence Agency Response. Please note that Contour has advised that it will be possible to ensure that the eastbound swept path movement of larger vehicles is maintained within the eastbound lane by providing additional driveway widening where it interfaces with the road edge. Further details of the design will be provided at operational works stage.</p>
<p>A submitter raised concerns about the traffic volumes presented in the application.</p>	<p>Vehicle movements have been forecast in the TIA based on survey data from existing service station sites across Queensland.</p>

	<p>This data source is considered adequate for the purposes of the TIA and to demonstrate that the number of vehicle trips generated by the development will be low and is unlikely to have a perceptible impact on the performance of the road network.</p> <p>Due to low traffic volumes (both pre-development and post development), existing roads and intersections are not expected to experience any capacity issues, and collection of detailed traffic survey information is not warranted. This approach was accepted by the Department of Transport & Main Roads.</p>
Economic Need	
<p>Some submitters raised concerns about the Economic Needs Report and the need for, and viability of, the proposed development.</p>	<p>A response to these issues is provided in the letter prepared by Foresight Partners in Attachment 1.</p>

We trust that the response outlined above satisfactorily address the submitters concerns but if you have any further questions with regard to these matters, please do not hesitate to me directly.

Yours faithfully
PROJECT URBAN



Mick Sheppard
Director
Email: mick.sheppard@projecturban.com.au

23009
19 October 2023

SJS Fuels Pty Ltd
C/- Jaiden Banks and Jimmy Singh

Dear Jaiden,

Re: Economic Response to Submissions, Proposed Service Station, John Street and Frederick Street, Biggenden (DA230024)

As requested, we set out the following response to submissions received with respect to the subject Development Application (DA230024) as relevant to economic need. This response should be read in conjunction with our economic need and impact assessment report (dated April 2023) submitted with the subject DA.

What is Economic and Community Need?

In considering the submissions lodged with respect to this DA, it is important to identify the definition and interpretation of economic and community need.

The concept of need is well understood and regularly discussed and assessed in the Queensland Planning and Environment Court which is the ultimate arbiter of Planning Scheme interpretation and discretionary assessments.

Previously, in respect of the concept of need, the Court has held that:

- need does not mean pressing need, critical need, nor a widespread desire. Rather, a thing is needed if its provision, taking all things into account, will improve the physical well-being of the community¹, or would on balance improve the services and facilities available²;
- whether a need exists is to be decided from the perspective of the community. In planning terms it is interpreted as indicating a facility which will improve the ease, comfort, convenience, and efficient lifestyle of the community³;
- fundamental to the principle of need is that it is a matter to be judged from the perspective of community interest rather than that of any individual such as the applicant, a commercial competitor or particular objectors⁴;
- the impact of a proposed development on existing like businesses is not a matter which is to be taken into account adversely to the proposed new facility unless the extent of competition will cause an overall adverse effect on the extent and adequacy of facilities available to the community⁵;

¹ Cut Price Stores Retailers v Caboolture Shire Council [1984] QPLR 126 at 131.

² Roosterland Pty Ltd v Brisbane City Council (1986) 23 APA 58 at 60.

³ Fitzgibbons Hotel Pty Ltd v Logan City Council [1997] QPELR 208 at 213.

⁴ TMP Holdings Pty Ltd v Caloundra City Council [2002] QPELR 1 at [9]; Isgro v. Gold Coast City Council & Anor [2003] QPELR 414.

⁵ Kentucky Fried Chicken Pty Ltd v Gantidis (1979) 140 CLR 675, at 687

- any possible adverse effects on an existing business will only be relevant to the extent that there is a risk of a reduction in the level of services enjoyed by the community by depressing one provider and not replacing it with another⁶; and
- the provision of competition and choice can be a matter which provides for a need⁷.

Our economic need and impact assessment was prepared in consideration of the above and it is clear that, having regard to these interpretations, there is a need for the proposed development.

Matters Raised in Submissions

Our responses to the key issues raised in the submissions (where relevant to need) are outlined below with regard to the definition/interpretations of need outlined above. Matters related to traffic, amenity, noise, etc are referred to the relevant consultants in these fields.

Table 1: Economic Response to Matters Raised in Submissions, DA230024

No.	Matter Raised:	Our Response:
1	<p>The proposed development would <i>'disadvantage established stakeholders'</i>.</p> <p>The proposal will erode the viability of Biggenden Food and Fuel.</p>	<p>The submitted economic need and impact assessment appropriately addresses demand, need, and impacts of the proposed development.</p> <p>Commercial competitive impacts are not a planning concern where there is sufficient demand to support the existing and proposed facilities. Furthermore, the provision of competition and choice is a matter which supports need, as held by the P&E Court.</p> <p>Also held by the P&E Court, need is a matter to be judged from the perspective of community interest, rather than that of any individual such as the applicant, a commercial competitor, or particular objectors.</p> <p>The submissions do not offer any evidence or analysis to justify their claims that there is sufficient demand to support only one service station.</p>
2	<p>There is no need for another fuel and food outlet in a township as small as Biggenden.</p>	<p>Need is appropriately addressed in the submitted economic need and impact assessment. It should be noted that the demonstrated need is current, and does not rely upon future demand growth.</p> <p>An example of a small rural township with two viable fuel outlets is Goomeri, located around 112km by road south of Biggenden. The Goomeri catchment (~10-15km radius) of 1,050 residents (2021 data) plus passing traffic supports two service stations, namely Shell and BP. By comparison, the Biggenden catchment had a 2021 population of around 1,440 residents (p6 of our report) and is therefore sufficient to support the proposal. There are several other examples of townships we could provide.</p>
3	<p>Historic closure of other food/fuel facilities indicates that the market is</p>	<p>There are many aspects that determine the ongoing viability of a fuel facility which include (but are not limited to) market</p>

⁶ Zieta No. 59 Pty Ltd v Gold Coast City Council (1987)

⁷ Bunnings Building Supplies Pty Ltd v Redland Shire Council (2000) QPELR 193, at 198.

No.	Matter Raised:	Our Response:
	too small to support another fuel facility.	<p>size, site location and exposure, marketing/signage, personal financial circumstances/debt, etc.</p> <p>It is noted that personal financial circumstances are not a relevant consideration in planning assessment.</p> <p>With regard to the above, the closure of a historic facility cannot be directly linked to insufficient need for a second fuel retailing facility in Biggenden, particularly where a site presumably required significant capital expenditure to repair fire damage (as stated in the submissions).</p>
4	There is no need for an additional food outlet in Biggenden.	<p>The proposed Development Application is for a Service Station use which is distinct from a Food and Drink Outlet use. The proposed Service Station tenancy will operate in accordance with the prescribed use definition.</p>
5	There is a second fuel retailer in Biggenden (Dowlings) which is not considered in the economic assessment.	<p>Based on a review of online sources (Google Maps & Street View, aerial imagery) Dowlings Transport at 34 Victoria Street, Biggenden was publicly advertising fuel sales in April 2021 and at Sept 2022 with a small roadside sign.</p> <p>'Dowlings' appears to be a home-based transport business and is not equipped to handle typical customer volumes of a commercial fuel operation nor does it have main road exposure to conveniently serve passing traffic. There is no significant road signage nor is there a fuel bowser clearly visible from the road frontage.</p> <p>Furthermore, this facility is not included in the state government register of fuel price reporting indicating that this is not a commercial fuel retailing facility.</p> <p>It is expected that commercial fuel sales at this facility would be minimal and would not materially impact the assessment we have undertaken.</p> <p>In any case, a separate submission indicates that 'Dowlings' have ceased the sale of fuel to the public.</p>
6	There are fuel options in Childers, Bundaberg, Maryborough, and Ban Ban Springs.	<p>These locations are well-beyond the relevant trade area/catchment considered in the economic need and impact assessment are of little relevance to this analysis.</p> <p>While it is acknowledged that fuel facilities exist in these locations, need for the proposal is demonstrated in consideration of a more localised trade area/catchment.</p> <p>Furthermore, we would not consider these as 'convenient' locations for trade area residents to refuel given the nearest service stations beyond the catchment are 38km (Ban Ban Springs) to 46km (Childers) by road from the subject site.</p>
7	Competition will not decrease fuel prices.	<p>It is widely accepted (by the P&E Court and economic experts) that new market entrants stimulate price competition, particularly where the entrant is an independent operator. In our experience, we have observed fuel price decreases in regional townships in Queensland due to the</p>

No.	Matter Raised:	Our Response:
		<p>establishment of a second fuel operator (where there was a monopoly held by one fuel outlet).</p> <p>Protection from commercial competition is not a relevant planning matter, and in fact, represents a community disbenefit.</p>

Conclusion

Based on the above, it is concluded that there is no information/analysis provided in the submissions which undermine the conclusions of the economic need and impact assessment submitted with the Development Application.

It is maintained that there is a demonstrated and present need for the proposed development.

We trust this letter contains sufficient information and explanation. If anything further is required, please contact the undersigned.

Yours sincerely,



Jordan Musk
Director