P&E LAW

Planning, Environment & Native Title Law

P&E LAW CHEAT SHEET RESOURCES

ASSESSING NEED FOR DEVELOPMENT

Whether there is a need for a proposed development is an issue that may arise from assessment benchmarks (e.g. a planning scheme provision allowing additional building height where there is a demonstrated need for the development), or as an 'other relevant matter' for the purposes of impact assessment under s 45 of the *Planning Act 2016* (the **Planning Act**).

CATEGORIES OF 'NEED'

While not to be treated as rigid categories or definitions,[1] the court has adopted the following categories of need, from expert evidence of economists and with reference to established principles from case law:[2]

1. Community Need refers to an assessment as to the extent to which the physical wellbeing of the community is improved.[3]
2. Economic Need refers to a more quantitative assessment of demand for the proposed development; and
3. Planning Need refers to an assessment of the extent to which the proposed development can be accommodated by existing planning provisions.[4]

Where 'need' is used without qualification in a planning instrument, it is taken to be a reference to planning need.[5]

Overlap between these categories of need is to be expected, particularly noting:

- without economic need, there will be no planning need;[6]
- the extent to which a development will be able to cater to a community need, will depend upon there being sufficient economic need to support the development (i.e. the development must be viable in the market, to provide community benefits).[7]

GENERAL PRINCIPLES FOR ASSESSMENT

The assessment of need is a flexible process, informed by the principles discussed in the cases (see below), but not constrained by those principles as though they were a checklist that must be ticked off by a decision-maker in every case.[8]

His Honour Judge Morzone KC summarised relevant principles (previously summarised by former Judge Wilson SC in *Isgro*[9]) with reference to cases where those principles have been subsequently refined:[10]

- need is a relative concept to be given greater or lesser weight depending on all of the circumstances to be taken into account;[11]
- need in planning does not mean pressing need, critical need, widespread desire or connote a pressing urgency, but relates to the well-being of the community;[12]
- for community need, a range of qualitative factors are involved such as convenience, accessibility, choice, range, depth, competition, price, service, shopper amenity, etc;[13] a use is needed if its provision, taking all things into account, will improve the physical well-being of the community,[14] or will on balance improve the services and facilities available in the locality;[15] or will improve the ease, comfort, convenience and efficient lifestyle of the community;[16]

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[1] *Noosa Spotlight Property 2 Pty Ltd v Noosa Shire Council* [2021] QPEC 77 at [71] – [72] (**Noosa Spotlight**).
[2] *Fabcot Pty Ltd v Cairns Regional Council & Ors* [2020] QPEC 17 at [29] – [34]; (**Fabcot**), undisturbed on appeal in *Trinity Park Investments Pty Ltd v Cairns Regional Council & Ors*; *Dexus Funds Management Limited v Fabcot Pty Ltd & Ors* [2021] QCA 95 (**Fabcot Appeal**), and adopted in *Noosa Spotlight*.
[3] Consistent with *Luke & Ors v Maroochy Shire Council & Anor* [2003] QPEC 5.
[4] Consistent with *Williams McEwans Pty Ltd v Brisbane City Council* [1981] QPLR 33 and Isgro v *Gold Coast City Council & Anor* [2003] QPELR 414 (**Isgro**).
[5] Ibid.
[6] *Fabcot Appeal* at [159]; *Elfband Pty Ltd & Vanhoff Pty Ltd v Maroochy Shire Council* [1995] QPLR 290 at 313; *Lipoma Pty Ltd v Redland City Council* [2020] QCA 180 at [59].
[7] *Bowyer Group Pty Ltd v Cook Shire Council & Ors* [2022] QPEC 33 (**Bowyer Group**).

- a need cannot be a contrived one, but based on the assumption that there is a latent unsatisfied demand which is either not being met at all or is not being adequately met;[17]
- the question of need is decided from the perspective of the community and not that of an applicant, commercial competitor or those who make adverse submissions;[18]
- the impact of a proposed development on existing like businesses is [not] (sic) a matter which is to be taken into account adversely to the proposed new facility unless, for example, the extent of competition will cause an overall adverse effect on the extent and adequacy of facilities available to the community;[19]
- the provision of competition and choice can be a matter which indicates a need;[20]
- a fundamental element of economic need is that the development, if approved, would be financially viable,[21] as distinct from privately profitable. Economic need involves a typically more quantitative assessment as to whether the extent of demand for the proposal is sufficient to support it at a sustainable level;[22]
- Planning Need refers to an assessment of the extent to which the proposed development can be accommodated by existing planning provisions. This necessarily involves an assessment of the existence of competitive approvals and the availability of suitably zoned and/or designated lands to accommodate the proposed development.[23]

SOME OTHER PRINCIPLES TO BEAR IN MIND

For economic need, the extent of unsatisfied demand for a particular development is not a matter that is capable of precise prediction by reference to fixed formulas. It is a matter about which reasonable minds might differ. Evidence of need should reveal all assumptions underpinning opinions, to demonstrate the validity of those assumptions and cogency of opinions.[24]

Generally, an applicant must demonstrate the existence of need at the time of the application[25] but it may also be relevant to consider future demand for a development where there is currently an unmet need, by reference to the relevant planning scheme and whether it provides for the unmet need to be satisfied or adequately satisfied. However, in this context, it is important to remember that it is not appropriate to go behind the deliberate planning strategies adopted by a Council in its planning scheme.[26]

REQUISITE NEED - A SLIDING SCALE

The requisite level of need will vary in each case depending upon the context.

Satisfying an assessment benchmark may only require that a need (unqualified) be demonstrated. A need does not have to be particularly strong to be a 'demonstrable need', but rather a real or substantive (not trivial, immaterial, minor, or insignificant) need which is capable of being shown or logically proved.[27]

Considering need as an 'other relevant matter' for impact assessment under the Planning Act involves a broad discretion. Distinct from previous legislative regimes, to approve a development that is noncompliant with the assessment benchmarks, it is not necessary to establish a need for the development that overrides/outweighs the noncompliance. Instead, the need evidence must assist to demonstrate that a decision to approve the development is in the public interest, all things considered.[28]

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[8] *Yorkeys Knob BP Pty Ltd v Cairns Regional Council* [2022] QCA 168 at [30] (***Yorkeys Knob***).
[9] *Isgro* at [20] – [30].
[10] *Bowyer Group* at [45].
[11] *Intrafield v Redland Shire Council* [2001] 116 LGERA 350 at [20] (***Intrafield***).
[12] *Watts & Hughes Properties Pty Ltd v Brisbane City Council* (1998) QPLR 273 at 275.
[13] *Fabcot Pty Ltd v Cairns Regional Council & Ors* [2021] QPELR 40 at [29].
[14] *Cut Price Stores Retailers v Caboolture Shire Council* [1984] QPLR 126 at [131].
[15] *Roosterland Pty Ltd v Brisbane City Council* (1986) 23 APAD 58 at [60].
[16] *Fitzgibbons Hotel Pty Ltd v Logan City Council* [1997] QPELR 208 at 213 (***Fitzgibbons Hotel***); *Bunnings Building Supplies Pty Ltd v Redland Shire Council* [2000] QPELR 193 at 198C.
[17] *Indooroopilly Golf Club v Brisbane City Council* [1982] QPELR 13 at 32-35.

Where there are fundamental and serious inconsistencies with a planning strategy evident throughout the provisions of the planning scheme, a higher level of need may be required to support a decision that approval is in the public interest.[29] Such a high level of need may be established, for instance, where there is evidence that the need would be satisfied only by the proposed development on that particular site (e.g. due to locational requirements for the development or attributes of the site) but ordinarily, one does not necessarily have to demonstrate the need for the development on the particular site.[30]

The bar should not be set too high for need, when the use applied for involves a necessity of life (e.g. supermarkets, quarries), however, it does not follow that the bar is set so low that need will be established simply by the nature of the use applied for.[31]

The court has been prepared to find that a need exists, despite the presence of similar businesses in the locality. Generally speaking, however, those decisions have been confined to circumstances where the proposals were likely to provide benefit by way of a greater level of convenience to patrons. At the other end of the spectrum are cases in which such facilities as a new service station, or cinema complex would add to a consumer's area of choice but not noticeably improve the wellbeing of the community, or improve the services and facilities available in a locality where existing businesses plainly met demand.[32]

[33] Cf. *Fitzgibbons Hotel* at [213]; *TMP Holdings Pty Ltd v Caloundra City Council* [2002] QPELR 1 at [9]; Isgro.
[34] *Kentucky Fried Chicken Pty Ltd v Gantidis* (1979) 140 CLR 675, at 687.
[35] *Intrafield*.
[36] *All-A-Wah Carapark v Noosa Shire Council* [1989] QPLR 155, 158.
[37] *Fabcot Pty Ltd v Cairns Regional Council & Ors* [2021] QPELR 40 at [29].
[38] Ibid.
[39] *Kelly Consolidated Pty Ltd v Ipswich City Council & Anor* [2024] QPEC 12.
[40] *Edith Pastoral Company Pty Ltd v Somerset Regional Council & Ors* [2021] QPEC 52 at [257] (***Edith Pastoral***).
[41] *Charters Towers Operations Pty Ltd v Charters Towers Regional Council* [2025] QPEC 12 at [252]; *Room2Move.com Pty Ltd v Western Downs Regional Council* [2019] QPEC 34.
[42] *United Petroleum Pty Ltd v Gold Coast City Council & Anor* [2018] QPELR 510.
[43] *Brisbane City Council v YQ Property Pty Ltd* [2020] QCA 253; [2021] QPELR 987; *Abeleda & Anor v Brisbane City Council & Anor* [2020] QCA 257; [2021] QPELR 1003 (***Abeleda***); *Wilhelm v Logan City Council & Ors* [2020] QCA 273; [2021] QPELR 1321; *Fabcot Appeal; Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16; [2019] QPELR 793, 803-13 [35]-[86].
[44] *Yorkeys Knob*.
[45] *Abeleda*.
[46] *Edith Pastoral* at [260].
[47] *Isgro* at [26]

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