



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-022
Appellant:	Brian and Olwyn Rose
Respondent/ Assessment manager:	Gladstone Regional Council
Site address:	55 Roe Street, Miriam Vale Qld 4677 and described as Lot 4 on M 4756 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016 (PA)* against the assessment manager's decision to refuse a material change of use (**MCU**) application (**the application**) for a Home based business (school bus storage and office).

Date and time of hearing:	5 December 2024
Place of hearing:	Gladstone Regional Council offices and subject site
Tribunal:	Kim Calio—Chair Deanna Heinke—Member Sarah Day—Member Thomas Bayley—Member
Present:	Brian Rose, Roboat Bus Co Pty Ltd—Appellant Olwyn Rose, Roboat Bus Co Pty Ltd—Appellant Gladstone City Council—Respondent Helen Robertson, Manager Development Services—Council representative Tegan McDonald, Principal Planning Lead—Council representative Nick Cooper, Senior Planner—Council representative (via video) Jess Barrett, Roboat Bus Co Pty Ltd—Appellant support Stephen Enders, Zone Town Planning—Appellant consultant Shaunte Farrington, Zone Town Planning—Appellant consultant

Decision:

The Development Tribunal (**tribunal**), in accordance with section 254(2)(a) of the *Planning Act 2016* (P99A), confirms the decision of the assessment manager to refuse the development application for a development permit for material change of use for a Home based business on land located 55 Roe Street, Miriam Vale, described as Lot 4 on M 4756.

Background

School bus run business

1. A school bus run business began operating from 55 Roe Street, Miriam Vale some time in 2010, servicing Foreshores to Miriam Vale.
2. The business expanded in 2012 to include the Turkey Beach school bus run.
3. The business further expanded in July 2014 to include the Makawata school bus run.
4. The business was expanded again in March 2017 to include the Bariveloe school bus run.
5. The business was expanded to its current operations in July 2022 with the addition of the Tannum Sands school bus run.
6. The business currently services approximately 140 students at schools in Miriam Vale, Bororen, Tannum Sands and Agnes Water, with four buses.
7. The four buses have a passenger capacity of 52, 45, 38 and 13 which equates to a total of 148 passengers.
8. For the morning run the four buses leave the subject site at the staggered times of 6.20am, 6.50am, 7.10am and 7.25am with two returning at 8.45am and the other two returning at 8.30am and 9.25am.
9. For the afternoon run one bus leaves the subject site at 2.10pm and the other three buses leave at 2.40pm with two buses returning at 4.10pm and the other two buses returning at 4.45pm and 5.15pm.
10. A total of 16 bus trips per weekday, during the school year, are generated by the business from the subject site. This excludes vehicle trips made by staff attending the subject site.
11. In addition to the weekday school bus runs, school excursions and charter tours occur on an ad hoc basis.
12. The Appellants also employ four non-resident casual drivers to drive buses associated with the business. The Appellants reside at the subject site. The four employees do not reside at the subject site and travel to and from the subject site on each school day that the buses are operational. At any one time, the business operates with five employees from the subject site as one of the casual drivers relieves one of the residents.
13. Employee car parking has changed over time and employees do not park on the subject site or on Roe Street or the unconstructed road reserve at the rear of the subject site. Employees drive to and from work each day and employees park their vehicles in nearby street to the subject site.

Subject site

14. The subject site is 1,988m² in size and rectangular in shape and relatively flat.
15. The subject site has a 31m frontage to Roe Street, which is a State Controlled Road, and a 34m frontage to the unconstructed road reserve at the rear. The subject site is approximately 64m long from the Roe Street frontage to the frontage of the unconstructed road reserve.
16. The unconstructed road reserve runs parallel to Roe Street and connects Jinks Street to Messmate Drive.

17. The subject site is connected to water, electricity and telecommunications. The subject site is served by an existing onsite waste water treatment system. There are 4 large above ground water tanks situated within the side and rear sections of the site.
18. The subject site is contained within the Township zone under the Gladstone Regional Council Planning Scheme.
19. The subject site is located on the western outskirts of the Miriam Vale township.
20. To the east of the subject site there are commercial and community services such as the Big Crab, Ambulance Station and the Miriam Vale State School.
21. To the north-east of the subject site, there is the town centre which is comprised of services such as a pharmacy, convenience store and the Miriam Vale Hotel.

Subject site structures

22. The subject site is improved with a number of structures including:

STRUCTURE	APPROX GROSS FLOOR AREA (GFA)
Dwelling	163 m ²
Shed 1	91 m ²
Shed 2	126 m ²
Skillion Roof Structure (attached to Shed 2)	61 m ²

23. The dwelling includes a small office associated with the School Bus Run business.
24. Shed 1 garages the owner's private vehicles and caravan and has 3 roller doors along its frontage. Shed 1 is located to the western side of the site and between the dwelling and Shed 2. Vehicular access to Shed 1 is via Roe Street
25. Shed 2 garages three of the buses and is located at the rear of the subject site with vehicle access obtained from the unconstructed road reserve.
26. Shed 2 was the subject of an Amenity and Aesthetic Assessment as it was to be located on a site with an area between 450m² and 2000m² and have a gross floor area exceeding 72m².
27. The Amenity and Aesthetic application dated 9 March 2018 noted that the proposed shed was for the purpose of garaging the land owners' vehicles which were parked in the open in the location of the proposed shed.
28. The Amenity and Aesthetic Approval was issued by the Gladstone Regional Council on 26 March 2018 and provided for a 10.5m wide and 12m long shed setback of 3m from the eastern side boundary and setback from the rear boundary at a distance ranging from 1m to 3m.
29. Shed 2 was completed in 2018/2019.
30. The skillion roof structure attached to Shed 2 is used for the parking of one small bus and was the subject of a Residential Boundary Relaxation which was approved by the Gladstone Regional Council on 22 January 2020.
31. Residential Boundary Relaxation provided for a 16m long skillion roof structure 5m wide at the northern end and 3m wide at the southern end.

32. The setbacks approved for the skillion roof structure on the eastern side boundary were 450mm at the northern end and on the boundary at the southern end
33. The setbacks approved for the skillion roof structure on the southern rear boundary adjoining the unconstructed road reserve was 400mm at the western end and 1m at the eastern end.
34. The skillion roof structure was completed in 2020/2021.

Complaints

35. Commencing 24 November 2020 a total of eight complaints from residents in the vicinity of the subject site have been documented in the Council's Customer Service Request system. The complaints included the following matters:
 - (a) The unconstructed road not being maintained after it washed away
 - (b) Rocks and sand washing into the drain causing a safety issue for children on bikes
 - (c) The dirt road, which has pot holes, being used by buses 4 to 8 times a day causing dust
 - (d) 4-6 buses and 4 cars coming from 55 Roe Street utilising the unconstructed road causing dust problems and increased damage to the road
 - (e) Employee cars parked in the unconstructed road
 - (f) Buses being washed in the unconstructed road
 - (g) A business being run which is not suitable for the road and in a residential area
 - (h) Noise from bus reversing beepers
 - (i) 5 buses using the unconstructed road and request for confirmation if there is Council permission for them to use this unconstructed road.
36. It would appear that the complaints commenced some years after the school bus run business was expanded in 2017 to include the Bariveloe school bus run and around the time the skillion roof structure was completed.

Compliance action

37. Council issued a demand letter on 4 April 2023 raising concerns with the alleged operation of a transport depot on the subject site.
38. A meeting was held between Council and the Appellant on 13 April 2023 to discuss the means to achieve compliance. An email was issued to the Appellants summarising the meeting including advice that:
 - (a) The activity is a Transport Depot which would require an Impact Assessable application which would not be supported on the subject site due to amenity impacts on adjoining residential uses
 - (b) An alternative Rural zoned property identified during the meeting while still triggering an Impact Assessable application would have far lower amenity impacts
 - (c) A meeting with the Department of Transport and Main Roads should be held prior to proceeding with any application.
 - (d) The process and costs for submitting a Material Change of Use application for a Transport Depot

39. The Appellants advised Council on 14 April 2023 that they had been in contact with the Department of Transport and Main Roads and several Town Planning Consultants for quotes and advice regarding the development application process.
40. A Prelodgement Meeting (PL/24/2023) was held on 15 June 2023 between the land owners/business operators, their consultants and Council.
41. During this meeting the applicants asserted that the activity fits the definition of a Home based business and required confirmation from the Council on the definition.
42. Council advised the activity was defined as a Transport Depot and was not considered subordinate to the residential use citing the independence of the shed to the dwelling and the scale of the use (the number of buses, number of employees and size of the shed).
43. Council gave the applicant a period of 3 months to lodge the required development application (3 October 2023).
44. A Show cause notice was issued by Council on 2 September 2024 notwithstanding the Appellants had submitted an Appeal to the Development Tribunals on or about 2 May 2024 and Council received notification of the Appeal from the Development Tribunals on 14 May 2024.
45. The Show cause notice stated that:
- To rectify this development offence the owner is requested to*
- *Cease the operations immediately:*
 - *Do not commence operations until such time as a valid approval for a Material Change of Use development for Transport Depot has been issued.*
46. The Show cause notice invited the owners to show cause, by no later than 30 September 2024, as to why Council should not issue an Enforcement notice to them.

Application process and assessment

47. A Code assessable Material Change of Use application (DA/55/2023) for a Home based business was submitted to Council on 19 September 2023.
48. The report accompanying the application asserted that the activity being conducted on the subject site was a Home based business and identified that a code assessable Material Change of Use application was required due to the use not meeting a number of Acceptable outcomes of the Home based business code including:
- AO1.1 – Development has a maximum GFA of 100m²
- AO1.2 – Development generates a demand for no more than 10 vehicular trips to and from the site per day
- AO1.4 – The Home based business is conducted by:
1. 1 or more of the permanent residents on the principal dwelling house, and
 2. No more than 2 non-resident employees at any one time
- AO3 – The Home based business (where not a bed and breakfast) is conducted between the hours of
- a. 7am to 7pm on weekdays, and
 - b. 7am to 1pm on Saturdays

AO4.1 – Not more than 2 vehicles associated with the Home based business is parked on the site at any one time

AO4.2 – Activities on the premises do not involve the repairing, servicing, cleaning or loading of motor vehicles

49. Despite not achieving the above Acceptable outcomes, the applicant's planning report presented arguments as to how the use meets the following corresponding Performance outcomes:

PO1 Development is of a scale and intensity similar to surrounding dwellings

PO3 Development does not adversely impact on the amenity of area

PO4 Vehicle parking (not associated with the dwelling):

- a. is associated with the onsite home based business, and
- b. does not adversely affect the amenity of the neighbouring properties

50. Council issued an action notice on 3 October 2023 stating that the application material did not demonstrate how the use as proposed, met the definition of a Home based business. The proposed bus storage and business operation was not considered to be subordinate to the residential use. The use was considered a Transport Depot and therefore, the application was not properly made as the DA form 1 and associated fee is incorrect.
51. On 25 October 2023, the applicant lodged an Application for Declaration with the Development Tribunals requesting that the tribunal determine the application is properly made in accordance with Section 51 of the *Planning Act 2016* on the grounds outlined in their submission.
52. On 27 October 2023, Council was notified of the Application for Declaration with Development Tribunals, about whether a development application is properly made in accordance with Section 240 of the *Planning Act 2016*. The applicant provided further material and justification as part of the application for declaration with Development Tribunals.
53. Following review of this further material and justification, Council issued a Confirmation Notice on 31 October 2023 stating that the Development Application was considered properly made on 27 October 2023.
54. An amended Confirmation Notice was issued on 1 November 2023 amending the assessment benchmarks.
55. The Application for Declaration to the Development Tribunals was subsequently discontinued.
56. An information request notice was issued by Council on 15 November 2023 requesting further detail on the following matters:
- (a) Amended plans demonstrating:
 - i. swept paths for the buses entering and existing the storage shed and within the road reserve,
 - ii. location of vehicle wash down area, and
 - iii. location of staff vehicle parking.
 - (b) Detail on proposed improvements to the unconstructed road reserve to the rear of the site for access of the buses.

57. In accordance with Schedule 10 of the Planning Regulation 2017 (the Regulation) under the Planning Act 2016 (the Act), the proposal triggered referral to the State Assessment and Referral Agency (SARA) related to State transport corridors and future State transport corridors.
58. The SARA confirmed the development application was properly referred on 13 November 2023.
59. On 12 December 2023, SARA issued a referral agency response with one condition prohibiting access between the subject site and the state-controlled road (Roe Street) for the purpose of the Home based business.
60. The applicant requested an extension to the information response period on 9 February 2024.
61. Council agreed to extend the information response period until 15 April 2024 in a letter dated 14 February 2024.
62. The applicant provided a full response to Council's information request on 22 February 2024 including:
- (a) The swept path for the largest vehicle entering the shed. It is noted the swept path for the smaller bus entering and exiting the skillion roof structure was not shown and further that the largest vehicle swept path went slightly beyond the proposed sealed area for buses manoeuvring from Jinks Street onto the unconstructed road reserve.
 - (b) The location for employee car parking in Roe Street. It is noted however that the location of the wash down area was not identified.
 - (c) Details of the proposed improvements to the unconstructed road reserve. It is noted that the proposed construction is not to Council's standard. The applicant stated in this regard

It is requested Council review the proposed non-standard design favourably to address amenity concerns, rather than imposing a compliant road extension. It would be prudent to remind Council that any works within this space that exceed the requirement of the proposed development may result in trunk infrastructure works and significant ongoing maintenance from Council.

63. Council's assessment report notes that the proposed Home based business does not satisfy the following Acceptable Outcomes:

AO1.1 – Development has a maximum GFA of 100m².

AO1.2 – Development generates a demand for no more than 10 vehicular trips to and from the site per day.

AO1.4 – The home based business is conducted by 1 or more of the permanent residents of the principal dwelling house, and no more than 2 non-resident employees at any time.

AO2 – Goods, equipment and activities associated with the development are not visible from the street or adjoining premises.

AO3 – The home based business (where not a Bed and breakfast) is conducted between the hours of: 7am to 7pm on week days, and 7am to 1pm on Saturdays.

AO4.1 – Not more than 2 vehicles associated with the home based business is parked on the site at any one time.

AO4.2 – Activities on the premises do not involve the repairing, servicing, cleaning, or loading of motor vehicles.

Performance Outcomes of the Home based business code

64. Council's assessment report therefore assessed the proposal for compliance Performance Outcomes of the Home based business code, as follows:

(a) PO1, which states 'Development is of a scale and intensity similar to surrounding dwellings':

i. Council's assessment report notes that the applicant has stated the development does not comply with AO1.1 due to the area of the shed used for the parking of the buses being approximately 167m² and the area of the house used as an office for the business. Council's assessment report states:

The definition of gross floor area (GFA) in the Planning Scheme states that area used for the parking, loading and manoeuvring of vehicles is not included in the calculation of GFA. As a result this assessment acknowledges that non-compliance with AO1.1 can only consider the floor area of the business operations within the existing dwelling.

ii. Council's assessment report identifies four non-resident employee trips to and from the subject site together with four bus runs morning and afternoon which equates to 24 vehicle (bus and car trips per day) per day associated with the School Bus Run business.

iii. Council's assessment report states:

The immediate surrounding properties, numbers 49, 51, 53, 54, 56, 57, 58, 59, 61 and 63 Roe Street; 1 Henderson Street; and 4 & 6 Jinks Street, all contain existing and lawful dwelling houses. According to Council records, there are no commercial uses occurring within these properties or have been approved under a relevant development approval.

iv. Council's assessment report also states:

The applicant has stated the subject site reflects the established character in the Miriam Vale township as the development retains the Dwelling house and ancillary shed. The applicant provided site photos within the Town Planning Report to illustrate the existing character of the area. The applicant has advised that when the non resident employees attend the site, no additional parking is located within the subject site. Additionally, once the buses exit the rear shed, the site returns to the primary residential use and when the buses return to the rear shed to be stored, no amenity impacts are introduced to Roe Street.

It is acknowledged that the shed in which the buses are being stored required an Amenity and Aesthetics Policy approval due to the size of the shed exceeding a 72m² floor area. Whilst the physical size of the shed has been approved by Council under the A&A Policy for a Class 10a structure ancillary to the dwelling onsite, the scale and intensity of the land use being for the operating bus storage and office must demonstrate it is of similar scale and intensity t(sic) surrounding dwelling(sic) to comply with PO1.

- v. With regard to determining compliance with PO1 the assessment report makes the following comments:

AO1.2 provides a benchmark for what is considered of a similar scale and intensity for the number of vehicular trips per day associated with a dwelling (10 trips per day). The proposed number of vehicular trips per day is more than double the acceptable outcome. With up to 24 vehicular trips per day to and from site, five days a week, and utilising an unformed gravel road reserve at the rear of the site for vehicles the size of rigid trucks/buses is not considered of a scale or intensity of use appropriate for the surrounding residential properties which all contain Dwelling houses.

AO1.4 provides a benchmark for what is considered of a similar scale and intensity for persons attending the site at any one time (two non-residential employees) in the context of persons on site for a dwelling house use. Four non-resident employees and two resident employees exceeds the scale and intensity of what is considered appropriate the surrounding residential properties.

- vi. In summary Council's assessment report states:

The home based business for school bus storage and office is of a scale and intensity that conflicts with PO1. Therefore, the proposed development must be assessed against the purpose and overall outcomes of the code.

- (b) PO2, which states 'Development is consistent with the streetscape character of the zone'

- i. The applicant stated that the Home based business complies with AO2 as:

All equipment associated with the Home-Based Business is stored within the structures on the site.

- ii. However, AO2 refers to goods, equipment as well as activities associated with the development not being visible from the street or adjoining premises.
- iii. The 4 buses are stored in structures that are in close proximity to and are open to the unconstructed road reserve.

- iv. Council's assessment report states:

This results in the four buses being visible from the rear road reserve to the adjacent residential properties. The manoeuvring of the buses is occurring outside of the property boundary and within the road reserve meaning the activities associated with the home based business are occurring off site and impacting both the functionality and character of the township zone within this particular streetscape. The existing streetscape character is low density residential and is infrequently used for domestic purposes by the residents of the houses from 49 to 63 Roe Street and 4 Jinks Street.

- v. Council's assessment report also notes that from aerial imagery it is evident that the unconstructed road reserve is infrequently used by most residents and heavily used by the school buses as the access and manoeuvring areas are clearly visible.

vi. In summary, Council's assessment report states:

The current bus storage, manoeuvring and cleaning/washing associated with the home based business for a school bus business is not consistent with the streetscape character of the Township zone within for the unnamed road reserve.

(c) PO3, which states 'Development does not adversely impact on the amenity of the area':

i. AO3 provides a benchmark for hours of operation for Home based businesses considered to not adversely impact on the amenity of an area by setting a commencement time of 7am. Two of the four school bus runs leave the subject site prior to 7am at 6.20am and 6.50am in order to meet the time schedule for school commencement. The drivers of these two bus runs would therefore be on site prior to this time.

ii. Council's assessment report states:

The applicant has submitted the following statement: 'The subject site is located on a major State-controlled road that experiences traffic noise 24/7 throughout the year. This introduces a level of amenity to the immediate area that is not experienced in all areas of the Miriam Vale township or typical residential areas. Furthermore, the subject site is within close proximity to the roadhouse, fire station and Council depot which are large contributors to noise that exceeds the above hours of operation.' The immediate adjoining and adjacent properties to the development site are all residential properties. Whilst Roe Street is a state-controlled road, the buses are accessing the site from the rear unformed road reserve and being stored at the rear of the site. As a result, residential properties located on Jinks Street can be expected to experience amenity impacts such as noise and dust as a result of the home based business, as well as the immediate adjoining residence on Roe Street. The non-residential uses referenced by the applicant are located at the following distances from the development site:

- *Miriam Vale fire station – 167m to the west on Roe Street (Township zone)*

- *Miriam Vale Stare Roadhouse – 310m to the west on Roe Street (Township zone)*

- *Council Depot on Henderson Way – 88m 'as the crow flies' to the north (Community facility zone)*

For the purpose of determining the home based business' impact on the amenity of the residential area, Council does not accept that non-residential uses located up to and over 167m from the development site, or not within the same street, as a sound argument that the development does not adversely impact area's amenity.

(d) PO4, which states:

Vehicle parking (not associated with the dwelling):

a. *is associated with the onsite home based business, and*

- b. *does not adversely affect the amenity of the neighbouring properties*
- i. The Home based business does not comply with AO4.1 as the school bus run business parks four buses on the subject site, two more than provided for under AO4.1. Council's assessment report and the applicant's material lodged with application noted that the school bus run business did not comply with AO4.2 as the buses were being cleaned onsite.
- ii. Council's assessment report states:
- In response to Council's information request issued 15 November 2023, the applicant provided the following:*
- *Vehicle access, parking and swept paths in the road reserve detailed in Figure 6.*
 - *Preliminary pavement design, 3m wide sealed alternative design road to address amenity impacts detailed in Figure 7.*
- The applicant has not adequately addressed where buses are being cleaned on site. Council disputes that the cleaning, particularly the external washing of buses, of four buses, is consistent with general domestic household usage for the purpose of water and chemical run off.*
- iii. The applicant had also stated in the response to Council's information request that:
- It is requested Council review the proposed non-standard design favourably to address amenity concerns, rather than imposing a compliant road extension. It would be prudent to remind Council that any works within this space that exceed the requirement of the proposed development may result in trunk infrastructure works and significant ongoing maintenance from Council.*
- iv. In the Council's assessment report it was further stated that:
- Starting up, idling and movement of school buses before 7am from a predominately residential neighbourhood is considered to impact on the amenity of those residential properties. Furthermore, the buses are accessing the site from an unformed road reserve and utilising the road reserve for the required vehicle movements to enter Jinks Street in a forward motion. The storage, cleaning and operating of four school buses from a residential property is not considered an appropriate outcome for the expected amenity of the neighbouring residential properties.*

Purpose and Overall Outcomes of the Home based business code

65. As the development did not demonstrate compliance with PO1, PO2, PO3 and PO4 of the Home based business code, an assessment against the achievement of the Purpose and overall outcomes of the code was also undertaken in Council's assessment report.
66. Council's assessment reports states that the purpose of the Home based business use code is to:

...ensure that home based business uses are subordinate to a dwelling and residential activity and do not adversely impact on the amenity of surrounding residential activities.'

The purpose of the code is to be achieved through the following overall outcomes:

- a. The scale and intensity of development is low impact.*
- b. Development does not compromise the viability of designated centres and employment areas.*
- c. Development does not adversely impact on the amenity of adjoining premises.*
- d. Development maintains the character of residential neighbourhoods.*

The applicant, as part of the tribunal lodgement material, provided further information to attempt to demonstrate the proposed use is subordinate to dwelling and residential activity. The applicant advised that proposed development 'has grown in size with the addition of two additional buses in recent years, which has resulted in the use to be non-compliant with the Acceptable Development Subject to Requirements provision of the Home-Based Business code. However, this does not mean the associated school bus run business is no longer subordinate to the principle use of the premises as a House and therefore cannot be assessed as a Home-Based Business. It just means that development application is required to be submitted for an assessable MCU allowing Council to assess the potential impacts and regulate the use through conditions if seen, as necessary.

67. Council's Assessment Report also states:

It is evident that the scale of the operation of the business has increased to the point where it can no longer be identified as a Home based business. The increase in scale has led to adverse amenity impacts on adjoining properties and resulted in compliance action being carried out by Council based on neighbouring resident complaints.

68. Council's Assessment Report goes on to state:

...The applicant's position of regulating the use through conditioning is not considered as not (sic) a suitable justification to decide the land use as a Home based business.

Section 65 (1) of the Planning Act 2016 states that: A development condition imposed on a development approval must— (a) be relevant to, but not be an unreasonable imposition on, the development or the use of premises as a consequence of the development; or (b) be reasonably required in relation to the development or the use of premises as a consequence of the development.

The nature of the operations on the subject site will require robust conditions to manage the amenity impacts of the operations such as sealing of the road network, or the provision of formed car parking (constructed, sealed, line marked, provided with wheel stops and maintained in accordance (sic)). It would be unreasonable to impose such conditions for a Home based business that is by definition intended to be low scale and subordinate to the onsite residential use. As the business is clearly operating with four school buses, four external staff, and earlier than 7am five days a week, it is not reasonable to restrict the business via conditions that would majorly impact the operation of the business and its ability to service the community as intended. It is unreasonable to condition the development to reduce the scale of the

use, by reducing staff and bus numbers, to be compliant with the Home based business code which would in fact undermine the fundamental use as proposed.

Additionally, there is no opportunity to lawfully condition vehicle access and manoeuvring as required by current standards, noise generation levels, dust and fencing under the assessment benchmarks of the Home based business code.

Based on the assessment in Table 3 and the consideration of the development against the purpose of the code, it is clear that the operation of the school bus storage and office extends beyond the confines of what a Home based business is identified as stipulated by the Planning Scheme. The Home based business, operating for school bus storage and office, is considered:

- To not be subordinate to the Dwelling house onsite.*
- To not be of a scale and intensity that is low impact within the residential neighbourhood.*
- To be inconsistent with the low scale residential streetscape character of the zone.*
- To adversely impact on the amenity of adjoining premises where assessment benchmarks cannot mitigate the impacts of the development through reasonable and relevant conditions.*
- To not maintain the character of the residential neighbourhood by employing four non-resident staff and storing four school buses in addition of the expected person and vehicle numbers associated with a dwelling house use. The proposed school bus storage and office has failed to comply with the assessment benchmarks and therefore the purpose of the Home based business code.*

69. The Development Application was considered under Delegated Authority and was refused by Council's Delegate on 27 March 2024.

70. The following are the reasons for the Delegate's refusal of the Development Application:

- (1) The operations of the Home based business in regard to increased traffic and non resident attendance to the site is not subordinate to the existing Dwelling house use.*
- (2) The Home based business for school bus storage and office is of a scale and intensity which adversely impacts the surrounding residential neighbourhood.*
- (3) The Home based business compromises the viability of the Miriam Vale employment areas which are appropriately zoned Low impact industry, where the business would be more appropriately located.*
- (4) The Home based business for school bus storage and office at 55 Roe Street, Miriam Vale adversely impacts the amenity of the adjoining and immediately adjacent residential properties through noise and dust pollution.*
- (5) The scale and intensity of the Home based business and the consequential impacts on the surrounding residential properties cannot be reasonably conditioned to demonstrate compliance with the assessment benchmarks of the Home based business code.*
- (6) Insufficient material has been submitted to demonstrate the cleaning of the buses does not cause stormwater runoff issues onto adjoining properties or the unnamed road reserve.*

- (7) *The Home based business for school bus storage and office does not maintain the character of the residential neighbourhood as it results in a land use which far exceeds the accepted development benchmarks set by the Home based business code.*
- (8) *The Home based business for school bus storage and office does not achieve the purpose of the Home based business code of Our Place Our Plan Gladstone Regional Council Planning Scheme, version 2.*

Development Tribunals appeal

71. The owners of the subject site, Brian Rose and Olwyn Rose, through their consultants Zone Planning Qld, lodged this Appeal on or about 2 May 2024 in response to the refusal of the Application by the assessment manager.

Appellants' response to the Council's reasons for refusal of the application and Tribunal comments

72. Included in the material lodged with this Appeal, the Appellant provided a response to each of the Reasons for Refusal stated by Council in the Decision Notice dated 3 April 2024. The following is a summary with excerpts of the Appellants' responses to each reasons together with the tribunal's comments:

- (a) Reason 1: The operations of the Home based business in regard to increased traffic and non-resident attendance to the site is not subordinate to the existing Dwelling house use.

- i. The Appellants responded:

... The Dwelling House hosts the office which is associated with the school bus service with the remainder of the house continuing to operate as the primary dwelling for owners.

It was submitted that the school bus service achieves the subordinate test in relation to the Dwelling House use at the subject site although the Home-Based Business has grown to a size that has resulted in the use being non-compliant with the Acceptable Development Subject to Requirements provision of the Home-Based Business Code. (...) this does not mean the associated school bus service is no longer subordinate to the principle (sic) use of the premises as a Dwelling House. It (...) means that a Development Application was required to be submitted for an assessable MCU.

This was accepted by the Assessment Manager whereby a Confirmation Notice was issued (...)

(...) The increased traffic and non-resident attendance have been further assessed in relation to the township area to demonstrate compliance with the correlating Performance Outcome criteria listed within the Home-Based Business Code. Impacts with regards to potential impacts on amenity can be reasonably conditioned.

- ii. The tribunal concurs with this reason as the number of vehicles parked on site (four buses) and vehicle trips generated by morning and afternoon bus runs for each together with three – four employees attending the site each week day is not considered to accord with activity general expected to be generated by a dwelling house.

- iii. During the Hearing the Appellant advised that outside of school bus runs, the buses are also used for school excursions and some charter tours. The scale of the current charter tours is secondary to the school bus run business.
 - iv. The tribunal notes that this reason does not refer to amenity and therefore the Appellants' comments with regard to '*potential amenity being able to be reasonably conditioned*' are not considered relevant.
- (b) Reason 2: The Home based business for school bus storage and office is of a scale and intensity which adversely impacts the surrounding residential neighbourhood.
- i. The Appellants responded:

The school bus storage and Home Office currently operate within the established Dwelling House and ancillary structures onsite and has for many years. These structures are not considered to reduce or impede the township character of the area. The structures are also not considered of scale that is inconsistent with the established or contemplated character of the township which envisages Dwelling Houses with ancillary sheds, among other commercial activities.

The use of the existing structures, being vehicle storage in the rear structure and a Home Office within the Dwelling House, is therefore maintained that the scale is in keeping with the township area.
 - ii. The tribunal concurs with this reason as the scale of the activity is considered to adversely impact the surrounding residential neighbourhood given:
 - A) four buses are parked adjacent to the rear boundary of the subject site in structures clearly visible from the unconstructed road reserve,
 - B) three – four non-resident employees are engaged in the business,
 - C) in the order of 24 vehicle trips (buses and employee vehicles) are generated by the business per day which commence at 6.20am,
 - D) the buses which generate 16 vehicle trip per day take access from an unconstructed road reserve
 - iii. This is evidenced by the history of complaints relating to the business operations which date back to 2020 and relate to issues such as noise, dust and commercial activity in a residential area.
 - iv. The tribunal notes that this reason does not refer to the character of the area or township and therefore the Appellants' comments with regard to the business not reducing or impeding or being inconsistent with the character of the area or township are not considered relevant
- (c) Reason 3: The Home based business compromises the viability of the Miriam Vale employment areas which are appropriately zoned Low impact industry, where the business would be more appropriately located.
- i. The Appellants responded:

The subject site is located within the Township Zone within the current Planning Scheme. This Zone, unlike traditional residential zones, contemplates various forms of development due to the rural township location and direct access to the highway. This is further expressed within the Township Zone Code purpose statement:

The purpose of the township zone code is to provide for small village and town settlements in rural and coastal places as identified in the strategic framework. Development provides for a mix of uses including residential, retail, business, education, community purpose, recreation and open space that support the needs of the local community and surrounding hinterland areas. Non-residential uses can also include highway services and rural services. Tourist related uses such as tourist parks and small scale short-term accommodation may also be appropriate where they are consistent with township character.

- ii. The Appellants provided a map of the Miriam Vale zone configuration from the Gladstone Regional Council Planning Scheme and noted the mix of zones includes Community Facilities, Sport & Recreation, Open Space, Special Purpose, Rural & Rural Residential and Township. The Appellants' response states:

...majority of Miriam Vale is located within the Township Zone. Of interest, the existing Home-Based Business for the local bus service aligns with the intent of Zone Code by providing a mix of uses, which include education and community purpose for the local community. This school bus service is the only contract in Miriam Vale that services the local state school and surrounding catchment to ensure the families and children of the area can access the service during the school term.

Although the Zone Code does not form part of the formal assessment as per the Table of Assessment listed benchmarks, the intent of the Zone and what it envisages commercial, retail and community uses should be considered in determining the 'viability' of the township area and whether the proposed home operation compromises the designated employment area. Unlike traditional centres, Miriam Vale does represent a designated centre, rather considers varying land use development within the township extent to provide local and highway services where necessary. The actual commercial centre of Miriam Vale is zoned Township reinforce (sic) this point along with a number of other commercial uses scattered through the Township Zone.

It is therefore considered that the proposed Home-Based Business achieves the intent of Overall Outcome (b) of the Home-Based Business Code, contrary to Council's assessment.

- iii. The tribunal does not concur with this reason for refusal. The purpose of the Home based business code is to:

... ensure that home based business uses are subordinate to a dwelling and residential activity and do not adversely impact on the amenity of surrounding residential activities.

- iv. The purpose of the code is to be achieved through four overall outcomes. One of the four overall outcomes is that:

b. development does not compromise the viability of designated centres and employment areas.

- v. The tribunal does not consider that the proposed development will compromise the viability of designated centres and employment areas given the business is

a school bus service operating four buses per week day with three – four non resident employees at any one time. The business is not considered by the tribunal to be of a scale that would compromise the viability of the Miriam Vale employment areas in the Low impact industry zone.

- (d) Reason 4: The Home based business for school bus storage and office at 55 Roe Street, Miriam Vale adversely impacts the amenity of the adjoining and immediately adjacent residential properties through noise and dust pollution.

- i. The Appellants responded:

The operation is located within the Dwelling House and ancillary shed established onsite. The nature of the service requires the stored bus vehicles to exit and re-enter the site for the morning and afternoon school run during the school term. When not in use, the vehicles remain stored within the rear structure located behind the Dwelling House.

Further, the existing amenity of the highway township should be considered in conjunction with the operation. The subject site is located within a single row of township allotments that are bounded by two road reserves, one being a State-controlled road (Bruce Highway) with the local road network name being Roe Street.

Being located on the Bruce Highway results in an established high background noise throughout all times of the day. Coupled with varying land uses operating within a 500m radius of the subject site, the existing amenity of the township allotments are unique compared to a traditional residential allotment located within an urban area.

The directly adjoining properties at 57 and 53 Roe Street have also provided letters of support of the operating use within the Dwelling House and ancillary shed. This further highlights that the perceived amenity impacts are mitigated to protect the existing amenity of the adjoining residential properties.

- ii. The tribunal concurs with this reason for refusal. The impact on the amenity of nearby residents through noise and dust generated by the school bus movements has been established through a history of complaints dating back to 2020 and supported by a compliance diary kept by the complainants at Council's request to document specific impacts of the business operations.
- iii. With regard to noise impacts, the tribunal notes that employees arrive at the subject site prior to the 6.20am bus run with two buses leaving the subject site prior to 7am. Four buses leave the site traversing the unconstructed road reserve and travelling past dwellings between 6.20 am and 7.25am. After the morning run the four buses return between 8.30am and 9.25am. For the afternoon run the four buses exit the subject site between 2.10pm and 2.40pm returning to the subject site after the afternoon run has finished between 4.10pm and 5.15pm. A total of 16 bus movements are occurring over approximately a 3 hour 35 minute period each day.
- iv. The four buses are reversed into the storage structures resulting in reversing beepers occurring for the morning and afternoon bus runs. The Appellant informed the tribunal at the Hearing that the buses are now reversed into the storage structures upon returning to the subject site after the afternoon bus run

to avoid beepers sounding in the early morning at the commencement of the morning bus run.

- v. Further with regard to the Appellants' assertions of an '*established high background noise throughout all times of the day*' for this area due to the Bruce Highway and varying land uses operating within a 500m radius of the subject site, the tribunal visited the site and did not note the presence of high background noise impacts from the Bruce Highway (Roe Street) or commercial uses in the local area. The road is called the Bruce Highway, but it becomes a local street with a speed limit of 60 kph in the township. Such a speed is generally suitable for residential area and in the tribunal's opinion, should not be claimed as "high" noise source. Further the tribunal notes that noise readings or a noise assessment report to support this assertion were not provided in the application material.
 - vi. With regard to dust, 16 bus movements occur over a combined period of approximately 3 hours 35 minutes each week day along the unconstructed road reserve. At the time of the tribunal's site visit, obvious erosion and vehicle tracks were present in the unconstructed road reserve leading from the subject site to the intersection with Jinks Road. In front of Shed 2 and the skillion roof structure exposed sandy ground was observed along with sandy-coloured tyre marks on the driveway surface. These marks are likely caused by tyres coming into contact with sandy ground during vehicle manoeuvring in front of the Shed 2 and the skillion roof structure. The tribunal considers it likely that dust impacts are occurring from the movement of the four buses on the unformed road. The Appellant appears to recognise there are "*perceived amenity impacts*" in offering to undertake construction in the unconstructed road reserve to address this issue, albeit not to the standard road design requirement set by Council for a public road.
- (e) Reason 5: The scale and intensity of the Home based business and the consequential impacts on the surrounding residential properties cannot be reasonably conditioned to demonstrate compliance with the assessment benchmarks of the Home based business code.

- i. The Appellants responded:

In accordance with the Planning Act 2016 – Section 60 (2)

(2) To the extent the application involves development that requires code assessment, and subject to section 62, the assessment manager, after carrying out the assessment—

- a) must decide to approve the application to the extent the development complies with all of the assessment benchmarks for the development; and*
- b) may decide to approve the application even if the development does not comply with some of the assessment benchmarks; and*
- c) may impose development conditions on an approval; and*
- d) may, to the extent the development does not comply with some or all the assessment benchmarks, decide to refuse the application only if compliance can not be achieved by imposing development conditions.*

As per the Table of Assessment for a Home-Based Business within the Township Zone, the development can be categorized as Accepted Development Subject to Requirements. Upon review of the Home-Based Business Code, the development exceeded the limitations within the relevant Acceptable Outcomes, and as such, was categorized as Code Assessable.

With reference to the submitted Town Planning Report, the Home-Based Business operation is considered to comply with the relevant Performance Outcomes within the Development Code. Based on this, it is considered that the Assessment Manager could reasonably approve the Code Assessable Development Application, subject to conditions to ensure amenity impacts are managed.

- ii. The tribunal concurs with this reason for refusal. The tribunal notes section 60(2)(d) of the PA provides for developments to be refused only if compliance cannot be achieved by imposing development conditions. However, section 65(1) of the PA states that:

A development condition imposed on a development approval must—

- (a) be relevant to, but not be an unreasonable imposition on, the development or the use of premises as a consequence of the development; or*
- (b) be reasonably required in relation to the development or the use of premises as a consequence of the development.*

- iii. The tribunal is of the view that a range of extensive and potentially unreasonable conditions for development of a Home based business nature would be necessary to achieve compliance with the Home based business code.
- iv. Significant aspects to address are dust, visual, character and noise impacts as well as scale and intensity.
- v. While the Appellants put forward a proposal to undertake construction works in the public unconstructed road reserve including sealing, it has not been demonstrated that these works are of an appropriate standard acceptable to Council for construction in a public road and are to a standard that will not place on ongoing maintenance burden on the community. The extent and nature of the construction is not in accordance with minimum standards Council would accept for donated assets as part of the development process. Notwithstanding the proposed construction in the unconstructed road reserve may address amenity issues relating to dust there is the question as to whether the imposition of a condition requiring the construction of that section of unconstructed road reserve to the Council's acceptable standard would meet the reasonable test under the PA for development conditions. The extent of construction works required to address dust impacts and not create stormwater runoff issues would in the opinion of the tribunal be unreasonable for a Home based business. It is also noted that this construction would not address noise and visual amenity impacts of the school bus run business.
- vi. To address visual amenity impacts and reduce neighbourhood character inconsistencies, actions such as screen fencing along impacted residential properties together with advanced landscaping, fully enclosing the open

skillion roof structure and installing doors on the shed may be necessary. It is noted that fencing and landscaping conditions would relate to land and premises external to the subject site. Imposing and securing the maintenance of such fencing and landscaping would be problematic particularly in the absence of input from impacted parties external to the subject site. Again, imposing these requirements would, in the tribunal's opinion, be unreasonable for a Home based business which by definition is subordinate to a residential use. In any event, the Appellants have not satisfied the tribunal that such conditions would fully address the character impact of a commercial activity in a residential area. That is, in the order of 16 bus movements would still be occurring with up to four employees on site for the morning and afternoon school bus runs.

- vii. A further significant factor to address is the noise impact particularly that occurring prior to 7am. It would be unreasonable for a business which relies on commencing its activities prior to 7am in order to provide its commitments to its customers, to be restricted from commencing prior to 7am. The Appellants have not satisfied the tribunal that this matter can be resolved to achieve compliance with the Home based business through reasonable and relevant conditions.
 - viii. The tribunal concurs that the range and extent of conditions likely to be required to achieve compliance with the Home based business code would be unreasonable and in fact likely change the essential and important inherent operational characteristics of the school bus run business.
- (f) Reason 6: Insufficient material has been submitted to demonstrate the cleaning of the buses does not cause stormwater runoff issues onto adjoining properties or the unnamed road reserve.
- i. The Appellants responded:

The proposed cleaning of the vehicles can occur both on and off site. When general vehicle cleaning is conducted onsite, it is not anticipated to exceed the expected amounts of other sites with several vehicles and machines in the immediate area. Coupled with larger allotment sizes and limited access to water, it is considered that any potential runoff would achieve the requirements of lawful point of discharge at a non-worsening rate due to the nature of the cleaning and site context.

This approach is consistent with the current Performance Outcome 4 of the Home-Based Business Code as previously indicated within the supporting Town Planning Report.

If the tribunal considered this was a concern, then any approval could be reasonably conditioned so that buses were not cleaned onsite.
 - ii. The tribunal accepts that this reason for refusal was relevant at the time of the application assessment and decision. However, at the Hearing on 5 December 2024 the Appellant confirmed that the buses were no longer being washed on site or in the unconstructed road reserve and further, by email dated 31 January 2025, that the buses are now being washed off site in a washdown bay. The tribunal acknowledges that ceasing the bus washing practice on the unconstructed road reserve was to decrease the impacts of the Home based business. Although clarification as to what alternative arrangements for the

washing of the buses were requested by the tribunal in the Directions email issued by the Registrar on 31 January 2025. The Appellant only advised the buses were now being washed off site in a wash down bay and did not specify the details of where the wash down now occurs. This reason would appear to no longer be relevant given the changes in the business operations and, as identified by the Appellant, could be conditioned and therefore no longer a valid reason.

- (g) Reason 7: The Home based business for school bus storage and office does not maintain the character of the residential neighbourhood as it results in a land use which far exceeds the accepted development benchmarks set by the Home based business code.

- i. The Appellants responded:

When reviewing the subject site from Bruce Highway (Roe Street), the development reflects the adjoining allotments in scale and character. When viewing the development from Jinks Court, the existing rear shed and awning depict other ancillary shed structures within the area.

The operation within the existing structures maintains the character of the township with the established Dwelling House and ancillary sheds.

Again, the development is considered to comply with the relevant assessment benchmarks within the Home-Based Business Code in relation to scale and amenity.

- ii. The tribunal concurs with this reason for refusal to the extent that the school bus service does not maintain the character of the residential neighbourhood. The site has two road frontages - primary and secondary and the activity is not visible from the primary street frontage. The distance between the primary and secondary road frontages is approximately 64m. However, the activity is considered to be a dominant, inconsistent activity in the secondary unconstructed road frontage. The open shed and skillion roof structure are not in consideration here as they were approved through other processes. What is under consideration is the operation of the school bus run business involving four buses parked in such a manner as to dominate the unconstructed road reserve streetscape. The distance between the buses and the boundary of the site with the unconstructed road reserve varies from 1m – 3m for the three parked in the open shed and 0.4m – 1m for the bus parked in the skillion roof structure. The parking of the 4 buses accounts for approximately 44% of the subject site's 34m frontage to the unconstructed road. The bus parking has a visual impact on the streetscape of the unconstructed road reserve. The operation of the school bus run business with the number and nature of traffic movements to and from the site together with three – four staff coming to the subject site every week day of the school year is a commercial activity of a scale not evident in the residential neighbourhood.
- iii. The tribunal noted that the other dwellings which also have frontage to both Roe Street and the unconstructed road, do not appear to use the unconstructed road on any regular basis. The grassed condition of the unconstructed road from the western boundary of the subject site to Messmate Drive appears to reflect that with the exception of the subject site, the unconstructed road is rarely utilised for vehicular access.

- (h) Reason 8: The Home based business for school bus storage and office does not achieve the purpose of the Home based business code of Our Place Our Plan Gladstone Regional Council Planning Scheme, version 2.

- i. The Appellants responded:

The proposed development, being a school bus storage and home office within the existing Dwelling House and ancillary shed, has demonstrated compliance with the correlating Performance Outcomes in accordance with the Home-Based Business Code.

With reference to the purpose statement of the Home-Based Business Code:

The purpose of the home based business use code is to ensure that home based business uses are subordinate to a dwelling and residential activity and do not adversely impact on the amenity of surrounding residential activities.

By complying with the correlating Performance Outcomes within the Code, the development is considered to achieve the purpose of the relevant Code. Notwithstanding this, as maintained in the Town Planning Report and within this submission, the proposal is considered of a scale that is subordinate to the Dwelling House, located within existing structures to retain local amenity and does not create adverse impacts on the surrounding township area.

It is therefore considered that the development complies with the Purpose Statement and relevant assessment criteria within the Home-Based Business Code.

- ii. The tribunal concurs with this reason for refusal as the school bus run business of the scale and intensity operated does not achieve the purpose of the Home based business code. Specifically, the school bus run business is not considered subordinate to the dwelling and residential activity occurring on the subject site. Further the school bus run business does have an adverse impact on the amenity of surrounding residential activities from a visual, noise, dust perspective and introduces a clearly discernible non-residential activity into this residential area.
- iii. The purpose of the Home based business code is not achieved as the school bus run business is not considered to achieve the following overall outcomes and can not be reasonably conditioned to do so:
- a. The scale and intensity of the development is low impact
 - c. Development does not adversely impact on the amenity of adjoining premises
 - d. Development maintains the character of residential neighbourhoods

73. Council raised an issue with the lodgement date of certain appeal documents and the Registrar sought excusal of noncompliance in the lodgement of the appeal from the Development Tribunal delegate.

74. The Development Tribunal delegate considered the noncompliance in the lodgement of this appeal and on 20 September 2024 decided to excuse the noncompliance so that the appeal could proceed.
75. Council issued a letter to the Appellants on 20 September 2024 advising that further compliance action with regard to CSR 717966 will be held pending the outcome of the Development Tribunal Hearing.

Hearing

76. This appeal was dealt with by the tribunal at the hearing held on 5 December 2024, which was conducted at the Gladstone Regional Council office in Miriam Vale following an inspection of the subject site at which all parties were present.
77. During the site visit the tribunal inspected the dwelling and the allocated area within the dwelling for the office use component of the home based business.
78. During the site visit the tribunal also inspected Shed 2, the skillion roof structure and the surface condition and the configuration of the unconstructed road reserve, Jinks Street, Messmate Drive and Roe Street.
79. The inspection did not reveal any evidence of serving or repairing of the buses being stored on the subject site.
80. The inspection did not reveal and evidence of staff parking on site. The Appellant advised that this occurs on Roe Street opposite the site and that there are numerous options for parking to occur in the vicinity of the subject site.
81. The unconstructed road reserve linking Jinks Street to Messmate Drive did not appear to be used on any regular basis except for the buses.
82. The owners outlined the history of the business growth, bus numbers and capacity, bus runs and provided an update that the buses are no longer washed on site or in the unconstructed road reserve.
83. The tribunal visited the surrounding Township zone to assess the amenity and character of the surrounding area and other suitably zoned sites to accommodate the use of the subject site.

Post hearing

84. Following the hearing the tribunal issued directions to the Appellants on 13 January 2025 and the Appellant responded on 31 January 2025.
85. Following the Hearing the tribunal issued Directions to the Council on 13 January 2025, 5 February 2025 and 5 March 2025 and the Council responded to the Registrar on 28 January 2025, 7 February 2025 and 7 March 2025 respectively.

Jurisdiction

86. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the tribunal.
87. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the tribunal subject to (in the case of the tribunal) the pre-conditions stated in section 1(2) of schedule 1.
88. The tribunal has jurisdiction to determine this appeal under section 229 and schedule 1, section 1(2)(a) and schedule 1, section1, table 1, item 1 (a) of the PA.

Decision framework

89. The onus rests on the appellants to establish that the appeal should be upheld (section 253(2) of the PA).
90. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA).
91. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings),
92. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

93. The material considered in arriving at this decision was:
 - (a) Customer Service Requests (CSR) 637135, 639006, 698099, 698100, 704653, 704780, 707973, 717966 and 734345 in relation to issues raised regarding the use on unconstructed road reserve, business activity and amenity complaints.
 - (b) Prelodgement Meeting Minutes (PL/24/2023) for Prelodgement Meeting held 15 June 2023. Applicant sought approval to utilise the existing shed and carport for the parking of four school buses.
 - (c) DA Form 1 Development Application involving code assessment submitted to Gladstone Regional Council by Zone Planning Group for Material Change of Use for a Home Based Business located at 55 Roe Street Miriam Vale on 19 September 2023.
 - (d) Zone Planning Group Report submitted with the development application for Material Change of Use for a Home Based Business.
 - (e) Gladstone Regional Council Action Notice - Not Properly Made Application dated 3 October 2023.
 - (f) Request for Declaration dated 25 October 2023 submitted to the Development Tribunals by Zone Planning Group regarding the Action Notice and requesting determination that the application is properly made in accordance with section 51 of the Planning Act 2016.
 - (g) Email dated 31 October 2023 from Gladstone Regional Council to Development Tribunals advising the Confirmation Notice was issued on 31 October 2023 and that the additional advice contained in the Declarations Request was sufficient to deem the application properly made.
 - (h) Gladstone Regional Council Confirmation Notice dated 31 October 2023
 - (i) Gladstone Regional Council Amended Confirmation Notice dated 1 November 2023.
 - (j) Gladstone Regional Council Information Request dated 15 November 2023.
 - (k) Information Request Response prepared by Zone Planning Group dated 22 February 2024.
 - (l) Council's Assessment Report, dated 27 March 2023, of the development application for Material Change of Use for a Home Based Business (School Bus Storage and Office).

- (m) Council Decision Notice refusing the development application for Material Change of Use for a Home Based Business (DA/55/2023) dated 20 October 2023.
- (n) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the tribunals registrar on or about 2 May 2024. The documentation included a range of material including the original development application, two letters of support from the adjoining neighbours dated 25 July 2023 and 31 July 2023 and the Request to the Development Tribunal for a Declaration.
- (o) Gladstone Regional Show Cause Notice dated 2 September 2024 regarding the operation of an unlawful Transport Depot.
- (p) Letter from the Appellants to Mayor and Councillors dated 17 September 2024 requesting Council cease compliance action until the matter is resolved by the Development Tribunal and including 8 letters of support (6 from surrounding residents and 2 from a school and Community Club). The 6 letters from surrounding residents included the 2 letters of support submitted with the Form 10 material.
- (q) Gladstone Regional Council letter dated 20 September 2024 to the Appellants advising further compliance action would be held pending the outcome of the Development Tribunal Hearing.
- (r) Email from Council to the Registrar 1 October 2024 providing a copy of the Delegated Assessment report, Prelodgement Meeting Minutes and Confirmation Notice dated 1 November 2023.
- (s) Email from Zone Planning Group 2 October 2024 providing a copy of the Declarations Request to the Development Tribunal, Gladstone Regional Council Information Request and Confirmation Notice.
- (t) Email from Council to the Registrar 28 January 2025 providing a response to the tribunal's first Directions issued 13 January 2025.
- (u) Email from Appellant to the Registrar 31 January 2025 providing a response to the tribunal's first Directions issued 13 January 2025
- (v) Email from Council to the Registrar 7 February 2025 providing a response to the tribunal's second Directions issued 5 February 2025
- (w) Email from Council to the Registrar 10 March 2025 providing a response to the tribunal's third directions issued 7 March 2025.
- (x) Planning Act 2016
- (y) Planning Regulations 2017
- (z) Gladstone Regional Council Planning Scheme – Our Place Our Plan Version 2 commencement 3 July 2017.

Findings of fact

94. The tribunal makes the following findings of fact:

- (a) The proposed road design for construction in part of the unconstructed road reserve providing vehicular access for the buses does not comply with Council road design and construction standards.
- (b) The following are planning scheme definitions relevant to the activity being conducted on the Subject Site as raised by the applicant and Council

USE	DEFINITION	EXAMPLES INCLUDE	DOES NOT INCLUDE THE FOLLOWING EXAMPLES
Home based business	A dwelling used for a business activity where subordinate to the residential use.	Bed and breakfast, home office, home based child care	Hobby, office, shop, warehouse, transport depot
Transport Depot	Premises used for the storage, for commercial or public purposes, of more than one motor vehicle. The use includes premises for the storage of taxis, buses, trucks, heavy machinery and uses of a like nature. The term may include the ancillary servicing, repair and cleaning of vehicles stored on the premises.	Contractor's depot, bus depot, truck yard, heavy machinery yard	Home based business, warehouse, low impact industry, service industry

- (c) The application submitted to Council was for a material change of use for a Home based business which is a code assessable use and therefore is a bounded code assessment. The Appellants have chosen this path by pursuing the Home based business definition rather than the Transport Depot definition. A Transport Depot is an impact assessable use in the Township zone.
- (d) The Planning Act 2016 provides for a development application to be refused only if compliance with the relevant codes cannot be achieved by imposing conditions. Chapter 3 Part 2 Division 2 Assessment Manager's Decisions section 60 2)(d) of the Planning Act 2016 Deciding development applications, states:
- ...may, to the extent the development does not comply with some or all the assessment benchmarks, decide to refuse the application only if compliance can not be achieved by imposing development conditions.*
- (e) The nature of development conditions is governed by the Planning Act 2016. Chapter 3 Part 2 Division 3 Development Conditions section 65 Permitted development conditions states:
- (1) *A development condition imposed on a development approval must—*
- (a) *be relevant to, but not be an unreasonable imposition on, the development or the use of premises as a consequence of the development; or*
- (b) *be reasonably required in relation to the development or the use of premises as a consequence of the development.*

Reasons for the decision

95. The tribunal finds that the development does not comply with the Home based business code as it does not demonstrate compliance with Performance Outcomes PO1, PO2, PO3 and PO4 or Overall Outcomes a, c and d and the Purpose of the code. These components of the code have been discussed throughout this decision notice and are briefly summarised below:

Performance Outcomes

- (a) PO1, which provides 'Development is of a scale and intensity similar to surrounding dwellings'.

- i. This outcome is not met as no other surrounding dwellings run four buses with up to four non-resident employees at any one time, generating in the order of 24 bus and staff trips per day, and commencing at 6.20am. The scale of the shed structure itself (which was previously approved) is not in question here as it is the land use activity and the use to which the structures are to put that have been considered.
 - ii. On balance, the tribunal considers the use does not meet this Performance Outcome
- (b) PO2, which provides 'Development is consistent with the streetscape character of the zone'.
- i. Performance Outcome PO2 refers to zone rather than locality, area, neighbourhood or street which provides for a broader assessment of the character setting of the overall area of the Township zone.
 - ii. The streetscape character of the Township zone is varied as it comprises a mix of uses, including residential, retail, business, education, community purposes, recreation and open space and other non-residential uses. There is a transition in the Township zone between these mix of uses, which create the streetscape character of the Township zone.
 - iii. The subject site is located in an area of the Township zone which is predominately residential in streetscape character, with a mix of houses reflecting a low-density character.
 - iv. The subject site has two road frontages - primary and secondary. The development proposed in the development application is an existing activity and business. While the existing activity is not visible from the primary street frontage it is a visually dominant, inconsistent activity in the secondary streetscape frontage. The four buses associated with the proposed development are prominent in the secondary road streetscape, as they are stored in the open structures with minimal setbacks from the rear road reserve boundary. Due to the existing structures on the subject site the four buses must use the unconstructed road reserve to undertake manoeuvring onto the subject site. Four buses used in the course of a business with multiple morning and afternoon traffic movements are inconsistent with the streetscape. The activity as operated is not considered to be consistent with the streetscape character of the Township zone in the location of the subject site.
 - v. On balance, the tribunal considers the use does not meet this Performance Outcome
- (c) PO3, which provides 'Development does not adversely impact on the amenity of area'.
- i. The tribunal is of the view that the development does impact on the amenity of the area particularly in the vicinity of the unconstructed road reserve and arguably the intersection with Jinks Street. The extent to which it has an adverse impact seems to vary from the local residents' perspective with letters of support provided as well as complaints lodged. The tribunal noted that one particular dwelling was located closer to the unconstructed road and therefore potentially more susceptible to the adverse visual, noise and dust impacts. The tribunal noted that conditions to address these impacts were not able to be reasonably imposed for a Home Based Business.

- ii. The activity has an adverse visual impact in the residential context and adverse impacts from a noise and dust perspective generated by the bus movements. The tribunal notes that the complaint history referred to both noise and dust impacts. While the planning scheme clearly contemplates non-residential uses in the Township zone. PO3 concerns itself with the amenity of the area, which is a narrower scope than the zone itself. Therefore, while non-residential uses are contemplated overriding factors of amenity guide the suitability of specific non-residential uses
 - iii. On balance, the tribunal considers the use does not meet this Performance Outcome.
- (d) PO4, which provides:
- Vehicle parking (not associated with the dwelling):*
- (a) *is associated with the onsite home based business, and*
 - (b) *does not adversely affect the amenity of neighbouring properties.*
- i. The four buses are parked on the subject site, however the tribunal is of the view that parking commercial vehicles of this scale in this location on the subject site does have an adverse impact on the amenity of neighbouring properties from a visual perspective as well as from a noise and dust perspective. The time at which the buses commence the morning run, the number of buses, the bus manoeuvring along the unconstructed road reserve and storage of the buses in open structures are all characteristics of the business which contribute to an adverse effect on the amenity of the neighbouring properties.
 - ii. On balance, the tribunal considers the use does not meet this Performance Outcome

Purpose and Overall Outcomes

- (e) The Home based business code provides:
 - 1. *The purpose of the home based business use code is to ensure that home based business uses are subordinate to a dwelling and residential activity and do not adversely impact on the amenity of surrounding residential activities.*
 - 2. *The purpose of the code will be achieved through the following overall outcomes:*
 - a. *The scale and intensity of development is low impact.*
 - b. *Development does not compromise the viability of designated centres and employment areas.*
 - c. *Development does not adversely impact on the amenity of adjoining premises.*
 - d. *Development maintains the character of residential neighbourhoods.*
- (f) The tribunal is of the view that the business use does not comply with 2 a, c or d. The use, operating four buses with up to four non-resident employees is of a scale and intensity beyond low impact (visually, traffic movements, noise, dust).

- (g) The buses are parked in a large open shed at the rear property boundary and are visually prominent in this location. The use commences operating at 6.20am and has in the order of 16 traffic movements per day just for the buses. The buses access the shed/skillion roof structure via the unconstructed road reserve at the rear of the property and reversing manoeuvres are required to park the buses. The site and access characteristics together with the operating procedures for the use result in adverse impacts on the amenity of adjoining premises. Further the scale and intensity of the use do not maintain the character of the residential neighbourhood.
- (h) The tribunal considers that the Purpose of the code is not met as the scale and intensity of the use is not subordinate to the dwelling and residential activities (due to the number of buses, number of non-resident employees and bus traffic movements). Further the scale, intensity and operating procedures of the use, the onsite parking arrangement and access to the bus parking combine to adversely impact on the amenity of surrounding residential activities.
96. In coming to this decision, the tribunal also considered the possibility of imposing reasonable and relevant conditions on the development in order to achieve compliance with the Home based business code as required under section 60(2)(d) of the PA.
97. The tribunal is of the opinion that the Home based business as currently operating and applied for does not comply with Performance Outcomes PO1, PO2, PO3, PO4 or Overall Outcomes a, c, and d or the Purpose of the Home based business code.
98. The tribunal finds that the school bus run business as currently operating and applied for conflicts with Home based business code and can not be reasonably conditioned to comply.
99. The Appellants have not discharged their onus.
100. The tribunal upholds the decision of the assessment manager to refuse the Application.

Kim Calio
Development Tribunal Chair
Date: 28 May 2025

Appeal rights

Schedule 1, Table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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