EXEMPLAR

COACHES and LIMOUSINES

3 Captain Cook Highway,
Craiglie,
Queensland, 4877

22nd July 2014

DOUGLAS SHIRE COUNCIL
Received
File Name
Document No.
22 JUL 2014
Attention
Initiator

Ms Linda Cardew
Chief Executive Officer
Douglas Shire Council
PO Box 723
Mossman
Queensland 4973

Dear Ms Cardew,

NOTICE OF APPEAL

MATERIAL CHANGE OF USE – 5957R DAVIDSON STREET, CRAIGLIE

Please find enclosed the subject Appeal, yesterday lodged in the Planning and Environment Court Cairns, for your attention.

Yours sincerely,

Gordon Wellham AM
Principal
Exemplar Coaches and Limousines

In the Planning and Environment Court

Held at: Cairns, Queensland

No. 123 of 2014

Between: **Gordon Allan Wellham** Appellant

And: **Douglas Shire Council (DSC)** Respondent

NOTICE OF APPEAL

Filed on: *21st July 2014*

Filed by: *Gordon Allan Wellham*

Service address: *3 Captain Cook Highway, Craiglie, QLD, 4877*

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Gordon Allan Wellham of 3 Captain Cook Highway, Craiglie in the State of Queensland appeals to the Planning and Environment Court at Cairns against the decision of the respondent in respect of the Assessment Manager's Condition 3f relating to Material Change of Use (Code Assessment) – Service Industry – 5957R Davidson Street Craiglie, namely to:

"i. Include "No Standing" signage adjacent to the road frontage for the full width of the property frontage to Davidson Street (Captain Cook Highway)

OR

ii. Where the applicant demonstrates agreement from the State of Queensland for the provision of a bus stop and shelter adjacent to the land on the State controlled road:

- *Provide a bus stop and shelter adjacent to the land; and*
- *Provide "No-Standing" signage adjacent to the remaining road frontage to Davidson Street (Captain Cook Highway); and*
- *Design of the bus stop and shelter is to match the bus stop and shelter currently existing nearby on the eastern side of Davidson Street (Captain Cook Highway) to the satisfaction of the Chief Executive Officer."*

NOTICE OF APPEAL

Filed by the Appellant

Gordon Allan Wellham
3 Captain Cook Highway
Craiglie, QLD, 4877

and seeks the following relief:

To:

1. *Delete Condition 3f in its entirety,*

2. *OR amend Condition 3f to read:*

"Include "30 Minute Parking" signage adjacent to the road frontage for the full width of the property frontage to Davidson Street (Captain Cook Highway)"

3. *AND Such further or other orders as the Court considers appropriate.*

The grounds of appeal are:

1. That the imposition of such a condition diminishes the utility of the tenancies of the subject property and generates safety implications.

Particulars

There is adequate provision for parking off-site at the rear of the property, and primary access to the building is at the rear.

However, intermittent, short term access from the front of the property is still required for brief stops by northbound coaches and limousines to collect paperwork, baby seats and other sundry items, and for customers of the sub-tenant to 'pop-in' to collect orders.

The Appellant considers the No-Standing sign condition to be unreasonable and if applied will result in customers parking in front of the neighbouring bottle shop and/or the service station, where there are no such restrictions.

The Appellant further contends that access to the rear is limited by DTMR to one driveway and that, having been reduced by a pedestrian path, the 6m width is sufficient only for one-way traffic. Without the availability of street access, the increase in traffic proceeding to and from the rear of the property, in conjunction with vehicles invariably having to reverse to concede opposite vehicle access/egress will create safety implications at the footpath threshold.

Further it would not be inconvenient and unprofessional for coaches loaded with passengers to have to park at the rear of the premises for a brief stop when this could be achieved by a quick stop in front of the property.

2. That the Respondent has no cogent argument for the condition to be imposed. The Respondent has documented two reasons for the condition. The Appellant refutes each:

2a. The first purported justification is: That the Concurrence Agency (the Department of Transport and Main Roads (DTMR)) has imposed an overarching condition which the Respondent has interpreted to mean No-Standing signs being

placed at the front of the proposed development. The Appellant contends that DTMR has no such intent.

Particulars

DTMR's condition (No 7), in its entirety, states:

> *"Ensure there is sufficient on-site car parking without a reliance on parking in the state-controlled road reserve."*
>
> The Respondent's justifying statement is that:
>
> *"The requirement to provide "No Standing" signage ensures compliance with this requirement..." (Reference: DSC Council Meeting of 03 June 2014, Page 20, Note for Agenda Item 5.2 Officer's Comment)*

Steven Zelenika, (Senior Town Planner, Department of Transport and Main Roads) in a meeting with the Appellant on 4th June 2014 made the following contribution.

He unequivocally affirmed that **DTMR has no objections to vehicles parking in the road reserve** and added that, if they did, then they would have stated so as a condition, as they do in all instances where that requirement is relevant.

He added that the intent of the condition, as routinely stated, was that "should conditions in the reserve change (for instance, through road-widening) all vehicles that would otherwise be parked in the reserve at the front of the building would need to be accommodated on-site. There has to be sufficient capacity from the outset to house the additional vehicles should the need arise." He and his department are satisfied that the Appellant's provision for on-site parking will not only be adequately met, but it will be well exceeded.

The Appellant therefore contends that:

- For the Respondent **to assert that placing No-Standing signs at the front of the site will ensure that there are adequate parking places on-site is non-sequitur, and therefore invalid**;
- For the Respondent **to assert that DSC is echoing the Concurrence Agency's condition is not substantiated**. DTMR unequivocally asserts that it has no such intention.

2.b. The second purported justification is: That the No-Standing signs are required in order that the application conforms with the Douglas Planning Scheme in respect of the Vehicle Access and Parking Code. The Appellant contends that all the conditions are met without the erection of No-Standing signs.

Particulars

The exhaustive list of Purposes in respect of the ***Vehicle Access and Parking Code*** *(along with the Appellant's* compliance against each objective) follows.

"The Code's purpose is to ensure that:

- sufficient vehicle parking is provided On-Site to cater for all types of vehicular traffic accessing and parking on the Site, including staff, guests, patrons, residents and short term delivery vehicles; **Compliant Solution**

- sufficient bicycle parking and end of trip facilities are provided on-Site to cater for customer and staff; **Compliant Solution**

- on-Site parking is provided so as to be accessible and convenient, particularly for any short term use; **Compliant Solution**

- the provision of on-Site parking, loading/unloading facilities and the provision of access to the Site, do not impact on the efficient function of the street network or on the area in which the development is located; and **Compliant Solution**

- new vehicle Access points are safely located and are not in conflict with the preferred ultimate streetscape character and local character and do not unduly disrupt any current or future on-street parking arrangements. **Not Applicable"**

3. That the Respondent has stipulated that the Appellant may erect a bus stop and bus shelter as an alternative to the No-Standing signs is neither a practicable nor a reasonable proposition.

Particulars

Mr Raymond Douglas, Manager (Passenger) Transport Operations, Department of Main Roads was at the meeting that the Appellant had with Mr Steven Zelenika, (Senior Town Planner, Department of Transport and Main Roads) in a meeting on 4th June 2014.

They advised the Appellant that:

- their respective departments each had oversight of aspects of bus stop/shelter installation,
- that for DSC to offer the erection of a bus stop and shelter as a condition was 'interesting, to say the least',
- a very strong case would have to be mounted by the Appellant to justify the proposed erection of a bus stop and shelter, and that
- current circumstances are such that **approval will not be given.**

Mr Douglas added that "a standard bus shelter costs in the order of $25,000 to $30,000, with some costing up to $40,000".

4. **That the Respondent has stipulated that the Appellant may erect a bus stop and bus shelter as an alternative to the No-Standing signs runs counter to conditions imposed by the Respondent itself and also by the Concurrence Agency.**

Particulars

There are two relevant, related conditions:

a. Assessment Manager Condition No 12: "All loading and unloading must occur on the land."

b. Concurrence Agency Condition No 8: "All loading and unloading associated with the development must not be carried out within the state-controlled road reserve."

The presence of a bus stop and shelter would have the intended consequence of passengers and luggage being **loaded** and **unloaded**; an outcome which is totally at variance with the intent of the stated Conditions.

Further, the presence of such a stop/shelter will encourage additional, third-party loading/unloading instances, further negating the intent of the Conditions.

5. **That the following relief proposed by the Appellant is, indeed, practicable and acceptable to the Concurrence Agency:**

> ***"Include "30 Minute Parking" signage adjacent to the road frontage for the full width of the property frontage to Davidson Street (Captain Cook Highway)"***

Both Mr Raymond Douglas, Manager (Passenger) Transport Operations, Department of Main Roads, and Mr Steven Zelenika, (Senior Town Planner, Department of Transport and Main Roads) in the meeting on 4th June 2014, stated that **"the most favourable outcome would be neither "No Standing" signs nor a bus stop and shelter, but instead signs imposing a limited parking period, say thirty minutes".**

6. That the Respondent's actions in respect of the Negotiated Decision Process were not conducted in the intended spirit of the process, and consequently the outcome has been sub-optimal for each party.

Particulars

On submitting the request for a Negotiated Settlement on **16th April 2014** the Appellant closed the correspondence with the words:

> *"I would welcome the opportunity for a sit-down chat to work out if and how we may find a mutually acceptable compromise."*

The first response from the Appellant was an email, at Close of Business on **2nd June 2014**, nearly seven weeks later. The email advised that the matter was scheduled to be before the council as the first agenda item the following morning.

The only other contact was in a telephone conversation between the Appellant and a council officer at 08.30 am on **3rd June 2014** (an hour and a half before the council meeting). During this conversation the option of the Bus Shelter was first raised. The officer subsequently drafted an amendment to Agenda item 5.2, incorporating the bus shelter, and this was tabled at the 10 am meeting.

It was not until the **4th June 2014**, in the Negotiated Decision Notice, that the Appellant saw the wording of Condition 3f for the first time.

In a further attempt to broker a settlement the Appellant on 7th July 2014 invited Council to participate in an Alternative Dispute Resolution (ADR) process under the auspices of the Planning and Environment Court. On 17th July 2014 (letter from Manager Development and Planning to Gordon Wellham) the Respondent advised "While as a general proposition Council prefers to seek alternatives to litigation Council is not agreeable to an ADR process in this instance."

The Appellant concedes that the Respondent may have acted within the letter of the law in respect of the mechanics of the Negotiated Settlement process but strongly contends that it was not acting in the best interests of one of its stakeholders by not taking up the offer of actual negotiation, and subsequently the offer of ADR.

7. That comments by a council officer at the council meeting of 03 June 2014 may have impaired councillors' judgement in reaching a fully reasoned conclusion in respect of the Negotiated Settlement.

Particulars

Only two questions were asked at the council meeting in respect of the Negotiated Settlement, each by Councillor Melchert.

1. Councillor Melchert asked: *"**Why is there a requirement for the No-Standing signs?**"*

   *The council officer responded: **"It is a Concurrence Agency condition".***

2. *Councillor Melchert asked: **"Is the developer happy with the proposed approach?"***

   *The council officer responded that **"the developer is".***

The Appellant contends that,

a. *as set out in Grounds for Appeal No 2 (above), **the Concurrence Agency has no condition relating to No-Standing signs.***

b. ***the Appellant (the 'developer') is clearly far from happy*** *with Council's proposed approach.*

That the conditions relating to No-Standing signs/Bus Shelter imposed in respect of the development have no precedence in the vicinity and are therefore an unreasonable expectation of the Appellant.

Particulars

There are no No-Standing signs in the vicinity nor, indeed for many, many kilometres either side the subject development.

The two latest developments in the vicinity are the Shell Service Station (two 'doors' to the north) and the Court House Bottle Shop (immediately 'next door' to the north). The Respondent has not imposed "No-Standing Sign" conditions on either of these developments.

Further, rather than imposing conditions relating to the restriction of parking in the state-controlled road reserve the Appellant has approved/encouraged such parking in front of the Appellants property immediately across the road from the subject development. The Appellant "has in the past paid for the drain outside Lot 3 to be covered in order to provide on-street parking. This work and parking arrangement was lawfully approved by the Douglas Shire Council and created provision for over flow parking." (Reference: DSC Council Meeting of 03 June 14, page 20, Agenda Item 5.2 Notes)

8. That this Notice of Appeal has been submitted in accordance with Sustainable Planing Act 461.

Particulars

The Negotiated Decision Notice (5957R Davidson Street, Craiglie) was issued on 4th June 2014.

On the advice of a councillor (provided on the 5th June 2013), the Appellant delayed starting this appeal until after a Repeal Motion, to be tabled by that councillor, relating to the Decision Notice, was heard by Council at its next Ordinary Meeting.

That meeting was held on the 24th June 2014. The Repeal Notice was considered to be out of order. The minutes of the meeting state: "a Negotiated Decision Notice has been issued in this matter, Council is unable to issue a further such notice. Therefore, the Repeal Motion failed."

This Notice of Appeal is submitted 19 business days after the Repeal Notice was brought before Council; the date the Negotiated Decision Notice became extant.

.....

Appellant

To:
Chief Exec.
The Executive Officer
Douglas Shire Council
PO Box 723
Mossman
Queensland 4973

If you wish to be heard in this appeal, you must:

(a) **within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this Notice of Appeal was filed or where the court file is kept; and**

(b) **serve a copy of the Entry of Appearance on each other party as applicable.**

The Entry of Appearance should be in the form set out in Form PEC – 5 for the Planning & Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

(a) **within ten business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept, and**

(b) **serve a copy of the Notice of Election on each other party as applicable.**

The Notice of Election should be in the form set out in form PEC-6 for the Planning and Environment Court.