



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Sunshine Coast Regional Council

Site Address: *withheld* – ‘the subject site’

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the Decision Notice issued by the Sunshine Coast Regional Council to refuse a Building Development Application relating to building work for a class 7 conversion of a driveway to storage area.

Date and Place of Hearing: 9:00 am Thursday 5 June 2008 at the subject site

Tribunal: Mr Chris Schomburgk – Chairperson

Present: Applicant’s representative
Applicant’s traffic engineer
Applicant’s site manager
Mr John Dunn – Sunshine Coast Regional Council Representative
Mr Garry Sando – Sunshine Coast Regional Council Representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (a) **confirms** the decision of the Sunshine Coast Regional Council to refuse a Building Development Application for the conversion of a driveway to a storage area and the **appeal is dismissed**.

Material Considered

The material considered in arriving at this decision comprises:

- The application, including ‘Form 10 – Notice of Appeal’, supporting plans and documentation;
- Plans and documents provided by Council to all parties at the hearing;
- Verbal submissions from all the parties at the hearing;
- The relevant provisions of the Town Planning Scheme for the former Maroochy Shire Council – in particular, the Code for Transport, Traffic & Parking, and Planning Scheme Policy No 6; and
- The *Integrated Planning Act 1997*.

Findings of Fact

The Tribunal makes the following findings of fact:

- The subject site is located on the corner of *withheld* at Mooloolaba. The site is the subject of a Building Units Plan (*withheld*) and the area of the site that is subject to this appeal is part of the common property, which is identified as *withheld*. The building comprises 30 dwelling units, of which approximately 27 are used for holiday letting, with the other three currently owner-occupied.
- The original building was approved and constructed in about 1978 and included a two-way driveway servicing the units off *withheld*. Vehicular access is limited to *withheld* only, and the driveway services 23 garages on the lower level and seven garages on the upper level. Directly opposite the driveway is the intersection of *withheld*.
- The building works that are the subject of the Decision Notice are the conversion of part of what was a two-way driveway into an enclosed storage area. The conversion has already been constructed. This part of the driveway, which is close to the *withheld* entry/exit, is now wide enough for a single vehicle only.
- The works that are the subject of this appeal were apparently undertaken in about mid-late 2006. Council received a complaint about the works in August 2007. Part of the driveway is currently being used for wheelie bin storage and a nib wall protrudes into the driveway space.
- The matter has had a substantial history, which is set out in the statement provided by Council at the hearing. In summary:
 - A Decision Notice approving the building works was issued by a private certifier in February 2007. The private certifier subsequently discontinued his engagement in October 2007.
 - An Operational Works application was lodged in June 2007 for the driveway conversion, but was subsequently withdrawn.
 - That Operational Works application was re-submitted in August 2007. A decision to refuse was drafted, but Council deemed that the works were not Operational Works, and advised the applicant accordingly.
 - A Building Works application for the same work was lodged in November 2007. That application was refused in December 2007.
 - Council officers met on site with the applicants to discuss the grounds for refusal on 10 January 2008.
 - An Enforcement Notice was issued by Council to demolish the structure on 18 January 2008. That Notice is being held in abeyance pending the outcome of this appeal.
 - The Building Works application was re-submitted to Council on 26 March 2008 and included a revised traffic report. That application was refused by Decision Notice dated 28 April 2008, and is the subject of this appeal.
- Council's refusal is based on alleged non-compliance with provisions of the Planning Scheme, and the relevant Code – the Transport, Traffic and Parking Code – as well as alleged non-compliance with Planning Scheme Policy No 6, and the Australian Standard AS/NZS 2890.1:2004.
- The Planning Scheme includes a general requirement to “provide adequate access to each parking space and to permit free circulation of vehicles entering, leaving and parking”.

- The Code includes a series of Elements, each with Performance Criteria. A number of these are relied upon by Council in its decision. In particular, Council relies upon:

Element 3, P1, P2 and P6 which states:

P1 – site access and design does not interfere with planned function of overall road network;

P2 – driveways are located so as to minimize adverse impacts on external traffic systems

P6 – site access driveways incorporate queue provisions sufficient to ensure safe and convenient access without impact on external systems.

Element 5, P2 which states:

P2 – provision is made for the safe and convenient movement of pedestrians on-site and between public pedestrian facilities and on-site activity nodes.

Element 7, P2 which states:

P2 – car parks and their site access systems must be designed to provide safe and convenient parking and circulation for all of the different users of the facility.

- The Planning Scheme Policy provisions that are in dispute are the provisions relating to driveway width, queuing length, and impacts on external traffic. Clause 3(b) of the Decision Notice also refers to pedestrian visibility, but it was agreed at the hearing that this was not an issue upon which Council now relied.
- The Australian Standard referred to in clause 4 of Council’s decision also relates to driveway widths. There was disagreement between Council’s engineer and the applicant’s traffic engineer about the interpretation of the relevant clauses of the Standard as it applied in this case.
- Prior to the hearing, and again at the hearing, the applicants have offered to install a gate and safety devices, and to remove the existing wheelie bins and nib wall, in an attempt to overcome Council’s concerns. While it was accepted by all parties that these measures would improve the current (unlawful) situation, it was not accepted by Council that they would go far enough to overcome the perceived deficiencies.
- It was accepted by all parties that the pre-existing situation (approved in 1978) was not perfect and that it would be unlikely to be approved by today’s standards. However, according to Council, the current works made that situation even worse.
- Given that the majority of the units in the complex are for holiday letting (a situation that seemed unlikely to change to any substantial degree), it is reasonable to assume that the majority of users of the driveway would not be familiar with the internal and external traffic and access systems. This has the potential to make the situation even worse.
- The works have the effect of reducing the driveway to a single lane. This means that, for example, vehicles exiting the site may need to reverse back into the site if a vehicle was entering the site from *withheld*. The applicant’s traffic engineer showed a situation where the exiting vehicle could manoeuvre into that part of the driveway where the wheelie bins were currently stored (assuming they were relocated and the nib wall removed), but that seemed like a very tight manoeuvre, and a person unfamiliar with the need to do so, may have difficulty.

- While the number and frequency of vans or other service vehicles to the site were low, there were nevertheless occasions when such vehicles attended the site, and this is likely to add to the potential problems of manoeuvrability on site. Equally, while traffic volumes generally are relatively low in this location, Mooloolaba is nevertheless a popular tourist destination and road users, including short term occupants of *withheld* units, will not necessarily be familiar with local traffic systems, nor the specific on-site requirements required by the current situation on the site.

Based on an assessment of these facts, it is the Tribunal's decision that **the appeal is dismissed**, and the **application for building works for conversion of a driveway to a storage area is refused**.

Reasons for the Decision

- While the pre-existing situation for on-site vehicular access and manoeuvrability was less than what would be required of today's standards, that is no justification for potentially making the situation even worse.
- Users of the site access and parking arrangements would primarily be tourists who would not be familiar with the specific requirements for ingress and egress caused by this proposal, thereby adding to the potential safety and convenience problems alluded to by Council.
- The proposal makes ingress and egress, while technically feasible, difficult for users in a situation where two or more vehicles are attempting to exit and enter the site at the same time. That situation detracts from the Planning Scheme Code requirement to create safe and convenient accessibility for users.
- While it is accepted that traffic volumes in the vicinity of the site are relatively low, it is the nature of traffic users (i.e. many will be unfamiliar with the locality, and the specific requirements needed for this site if approved) that increases the concerns about impacts on safety and convenience.
- The devices, signage and gated entry/exit offered by the applicant would go some way to improving the current (unlawful) situation, but not, in the Tribunal's opinion, sufficient to overcome the potential problems alluded to by Council's grounds of refusal.
- The proposal does not provide for safe and convenient parking and circulation for all of the different users of the facility, and does not minimise adverse impacts on external traffic systems.
- Given the non-compliance with the relevant Planning Scheme provisions, it is not necessary for the Tribunal to decide between the different interpretations of the relevant Australian Standard.

Chris Schomburgk
Building and Development Tribunal Chairperson
Date: 18 June 2008

Appeal Rights

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

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

Enquiries

All correspondence should be addressed to:

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