

# PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Gold Coast Motorsport Training Centre Pty Ltd v Gold Coast City Council* [2020] QPEC 51

PARTIES: **GOLD COAST MOTORSPORT TRAINING CENTRE  
PTY LTD**  
**(applicant)**

v

**GOLD COAST CITY COUNCIL**  
**(respondent)**

FILE NO/S: 3387/2016

DIVISION: Planning and Environment Court

PROCEEDING: Minor Change Application

ORIGINATING COURT: Planning and Environment Court, Brisbane

DELIVERED ON: 24 August 2020, *ex tempore*

DELIVERED AT: Brisbane

HEARING DATE: 24 August 2020

JUDGE: R S Jones DCJ

ORDER: **1. The application is allowed.**  
**2. I will hear further from the parties as to any consequential orders if necessary.**

COUNSEL: A Skoien (applicant)

K Wiley (respondent)

SOLICITORS: Gant Legal (applicant)

Corrs Chambers Westgarth (respondent)

1. **HIS HONOUR:** I am concerned here with an application brought by Gold Coast Motorsport Training Centre Proprietary Limited, who I will refer to hereafter as Motorsport, for a determination that a number of changes to a development application currently before the Gold Coast City Council, who I

will refer to as the Council from hereon, constitute minor changes within the meaning of section 350 of the Sustainable Planning Act 2009.

2. By way of some background, Motorsport appealed the decision of the Council to refuse its development application as originally formulated. That appeal was commenced on 25 August 2016 prior to the repeal of the Sustainable Planning Act, by the Planning Act and Planning and Environment Court Act, both of 2016. Pursuant to relevant provisions of those Acts, as a consequence, this application is to be dealt with in accordance with the provisions of the Sustainable Planning Act.
3. Motorsport lodged its development application in or around 18 December 2014 seeking a development permit for a material change of use for outdoor motorsport and recreation (motorsport and training facility) uses in respect of its land located on Jacobs Well Road, Pimpama.
4. The subject land is an irregularly shaped parcel on the southern side of Pimpama Jacobs Well Road and is bounded to the north by that road and to the west, south and east by rural land and scattered residences. In total, the land comprises of approximately 46 hectares and is located in the rural zoning. The subject land has been used for what has been described as motorsport and motor training uses for some five to six years now. These uses include not only training, in respect of the use of motorbikes and four-wheeled drive vehicles, but also the competitive racing of those forms of motor vehicles.
5. Motorsport, by lodging its development application, is attempting to regularise that current use of the land. Also, as I understand it, the development application, as originally proposed, also sought approval for the expansion of the use of the existing site. Under the development application, as it currently stands, the use of the land would involve: (a), regular use of go-kart tracks by members of the public for motorsport and/or training; (b), provide for special events, for example, racing, etcetera, on a more irregular basis; (c), provide for its principle access being via Pimpama Jacobs Well Road to the north with the

secondary access, when special events are to occur, via an internal road connected to Pimpama Jacobs Well Road to the west. Car parking facilities would also be provided and buildings and other structures for the storage of karts and other facilities associated with the use of the land. I will say more about that some of these matters below.

6. Unsurprisingly, the development application involved impact assessment and underwent public notification which triggered a number of submissions and objections. As I have already said, the development application was refused by the Council and that occurred on 26 July 2016. That is the decision currently under appeal by Motorsport. In the proceedings before me, Mr Evans spoke on behalf himself and the other two co-respondents, by election, Mr Lowe and Mr Blenkiron. Mr Skoien, of counsel, appeared for Motorsport and Mr Wylie, of counsel, for the Council. It is tolerably clear that, since that development application was refused, Motorsport and the Council have been endeavouring to resolve a number of the substantive reasons for refusal. Indeed, during the course of this proceeding, Mr Wylie advised me that, with the introduction of the proposed changes, his client would support the application being approved.
  
7. The proposed changes are summarised in the affidavit of Mr Nash, the senior town planner and director of Urban Planning Service Proprietary Limited. Mr Nash is a very experienced town planner having some 25 years experience in that area. His summary of the changes could be described as following: (1), a reduction and restriction of hours of operation; (2), a reduction and restriction of vehicle types, uses and special events; (3), the introduction of two new proposed acoustic mounds, which would be landscaped, and the introduction of a grassed seating mound; (4), the introduction of an earth buffer mound and the introduction of, onto some of those mounds, shipping containers which were intended to further alleviate noise impacts from the use of the land. I should note here that Mr Evans took particular issue with the noise ameliorative works being the earthen mound together with the shipping container being located within the conservation area. Mr Nash also identifies that the changes include a

number of new buildings being introduced. This description or summary of the intended changes was not challenged by the co-respondents.

8. Pursuant to section 495(1)(2)(b) of the Sustainable Planning Act, this court must not consider a change to an application on which the decision being appealed was made unless the change is only a minor change. Pursuant to section 350 of the Sustainable Planning Act:

*“A minor change in relation to an application, is –*

most relevantly here:

*...a change that, (i), does not result in a substantially different development; and, (ii), does not require the application to be referred to any additional referral agencies; and, (iii), does not change the type of development approval sought; and, (iv), does not require impact assessment for any part of the changed application, if the original application did not involve impact assessment.”*

9. The changes involved here do not require the referral to any additional agencies, nor does it materially change the type of development approval sought and, as I have already said, the proposal has always been impact assessable. As I understood the opposition to this application by the co-respondents, they were of the opinion that the proposed changes did result in a substantially different development and/or changed the type of development approval sought. I would note here that Mr Evans, speaking on behalf of the other co-respondents, identified that their primary concerns were those centring around the introduction of the noise ameliorative works particularly into the conservation or buffer area located to the east but, perhaps more relevantly, as I saw it, the introduction of the new buildings and parking spaces.
10. Statutory guideline number 6 of 2009 attempted to provide some assistance in determining whether or not a change may result in a substantially different

development. Matters identified were not meant to be exhaustive but included: (1), that the use involved in new use with different or additional impacts; (2), resulted in the application applying to a new parcel of land; (3), cause a dramatic change in the built form in terms of scale, bulk and appearance; (4), changed the ability of the proposed use to operate as intended, here, by way of example, introducing a change that would fundamentally alter the type of use originally contended for; (5), would remove a component that was integral to the operation of the development, an example of this might be the removal of a proposed cinema complex from a proposed commercial development; (6), cause significant impacts on traffic flow and on the transport network generally; (7), introduce new impacts or increase the severity of known impacts; (8), remove incentives or offsets that might tend to balance negative impacts; (9), otherwise introduce unacceptable impacts on infrastructure.

11. It is well-established that all of the changes need to be considered collectively in deciding whether or not they, when looked at together, could still constitute a minor change. It would follow, generally speaking, that any change that involved new, additional or increased impacts to any material extent would be unlikely to be classified as minor. On the evidence before me, I am satisfied that the proposed changes do not involve a new parcel of land, nor do they change the ability of the proposal to operate as intended, nor do they remove a component that is integral to the operation of the proposed use, nor do they involve the removal of an incentive or offset component that might have balanced negative impacts and, finally, they would not result in any negative impacts on existing or proposed infrastructure.
12. A number of the proposed changes are clearly ameliorative in nature. The operation hours are intended to be reduced from what is currently proposed, namely, 7 am to dusk seven days a week to 7.30 am to 6 pm on Monday through to Saturday and 8.30 am to 5 pm on Sundays and public holidays. Mr Nash's affidavit, at paragraph 35 to 45, also identifies that, unlike what was originally proposed, namely, there being no limitation on the types of vehicles, the number of vehicles, and the number of special events that might have been

held, under the proposed change there would be a reduction in special events and also a more regularised approach or control over the types of events that might occur on the land.

13. As I see it, the real areas of concern, expressed by the co-respondents by election, centred around whether, in truth, the proposed changes would result in a substantially different development by the introduction of the additional buildings and, in particular, what was said to be the increase in the number of car parks. It was said that, as I again understood it, these additional buildings, together with a number of car parks, would be likely to cause or have a negative impact on traffic flow on Pimpama Jacobs Well Road, which Mr Evans described as being already heavily trafficked.
14. A number of steps have been taken to address the noise impacts arising from the use of the land. Relevant to this proceeding they involve the carrying out of earthworks to construct mounds on top of where some of those mounds would be located shipping containers. While the co-respondents, by election, accepted that those noise ameliorative works would be likely to reduce noise, they were not satisfied that the noise would be reduced to an acceptable level. That issue, of course, may well be a matter for another day. As I understand it, however, save for the introduction of the noise ameliorative works in the area identified on the eastern part of the subject land as conservation area, no issue was taken with the visual aspects, or any other issues, in respect of the balance of the proposed works. The earthworks together with the containers thereon are significant. However, they need to be seen in the context of them being internal to the site, landscaped and being largely screened from local residents and/or the uses of Pimpama Jacobs Well Road.
15. In any event, save for those works intended to be carried out within conservation area – which I will come back to – I am satisfied that what is now proposed could sensibly or properly be described as being minor in the overall scheme of things, that is, by reference to the nature, use and intensity of intended use. Turning then to the proposed works to be carried out in the

conservation area, as originally proposed, they appear at page 9 of exhibit 5. As can be seen by reference to page 13 of the same exhibit, the conservation area, itself, is not reduced in area but what has been introduced into that area is an earthen mound on top of which shipping containers would be situated.

16. Mr Curtis, an experienced architect, was retained by Motorsport to prepare a visual impact assessment of the proposed ameliorative works including those in the conservation area. He identified that a particular concern of the Council was the potential for adverse visual amenity impacts associated with locating shipping containers on top of the earthwork mounds. In his affidavit, at paragraphs 43 to 45, Mr Curtis opined:

*“Council officers have identified the shipping containers as being their principle concern with respect to visual impact of the revised proposal. These elements will be located and configured in an orderly geometric arrangement and will be relatively small elements in relation to the mounds and scale of the site. They will not appear as random elements governed across the site but will appear as purposeful and part of the revised development’s temporary appearance while vegetation grows. The three year duration required for the vegetation to achieve a height that will provide effective screening to the revised proposal is relatively short and is not inconsistent with the acceptable duration times with the establishment of landscaping on new construction projects where the landscaping is integral to a development approved appearance.”*

17. His evidence was not challenged and I accept it. In essence, I am satisfied that, after three to five years, the use of the subject land will be screened, that is, visually, from Pimpama Jacobs Well Road, by the buffer vegetation and again, as I have already said, I am satisfied that, based on the evidence, the proposed noise ameliorative works, insofar as they might impact on visibility from the road to the north and to the west, will be improved. I am also satisfied that those works could properly be described as being minor.

18. Returning then to those works located within the conservation area, while I can understand Mr Evans' concern about any works being carried out within that area, I do not consider his concerns to be completely warranted. Quite clearly, these works will be screened by the remaining conservation area particularly to the east and, consistent with what is intended in respect of the other works, the use of camouflage-type paint on the containers, together with the surrounding landscaping, will largely disguise these works within the next three to five years. On balance, having regard to the totality of the evidence before me, I am satisfied that the noise ameliorative works intended to be carried out, including those within the conservation area, could be properly described as involving a minor change.
19. Turning then to the next substantive issue involving the introduction of a number of new structures. A comparison with the structures that exist now, with what is intended, can be gleaned from exhibit 5 at pages 6, 7, 8 and 9, and at pages 13 to 14 and 15. Essentially, what now exists is a storage area of some 316 square metres, which also includes some 202 square metres of what is described as kiosk and administration areas, together with a large area under an awning or cover. I do not consider it necessary to go through each of the new buildings, nor the relocation or replacement of other buildings in any detail, as they were shown quite clearly in the plans to which I have just referred.
20. The real issue is whether these intended works would be likely to lead to an intensification in the use of the land. When viewed objectively, it could not be reasonably said that the introduction of these new buildings would have any material impact on the scale and bulk of the intended use. In respect of the intensification of the use, Mr Evans raised two particular points: first, the introduction of more toilet facilities and, second, the introduction of new or additional car parking spaces. According to him, the introduction of these works would be likely to cause or be indicative of an increase in the number of visitors to the site and, among other things, introduce unacceptable traffic impacts along Pimpama Jacobs Well Road.

21. Turning then to the likelihood of increased attendance, two important features need to be kept in mind: first, most of the intending buildings would be unlikely to attract more attendees, by way of example, a number of these buildings are intended for operational uses, such as storing of spare parts, noise testing facilities and storage and maintenance uses. Second – and perhaps of greater importance – is that the current application, as it now stands, has no limitations placed on the number of attendees that might be able to attend the site on any given occasion. That remains the situation with the proposed changes however, there will now be a reduction in operating hours and the number of events that can be held. In short, it seems tolerably clear to me that most, if not all, of these buildings, and the car parking spaces, are intended to modernise and tidy up the site and to provide more modern facilities.
22. There is no evidence before me that any of the proposed building works would result in higher visitor numbers and, as a consequence, more traffic along Pimpama Jacobs Well Road, and, on the evidence before me, it could not be reasonably inferred that that would be the case. To sum up on this topic: I am satisfied that these buildings will not materially add to the bulk and scale of the intended use, nor will they have any meaningful negative impacts on visual amenity and nor would they have any meaningful impact on traffic.
23. In respect of the number of car parks, it was contended that they would be increased from 40 to 57. The affidavit of Mr Nash, however, makes it acceptably clear that that is not the case. The development application, as it now stands, provides for 57 onsite car spaces, which include two disabled car parking spaces. What is now contended for is 54 on onsite car parking spaces including one disabled car parking space. That is, there is a reduction, albeit a slight one, in the number of car parks.
24. In this context, I accept Mr Wylie’s observation that all proposed changes could be fairly described as being ameliorative in nature. On balance, for the reasons given, I am satisfied that the proposed changes are minor for the purposes of the Sustainable Planning Act and I would order that the application

ought be allowed and that, for the purposes of section 495(2)(b) of the Sustainable Planning Act 2009, the appeal proceed on the basis of the changed development application as particularised in the appellant's material before me. I will also order that I will hear further from the parties as to any consequential orders, if necessary. As I have said, I reserve the right to tidy up these reasons before final publication.

25. By way of postscript I would note that after giving my reasons, on 4 September 2020, I made orders with the consent of all the parties to the following effect:

1. By 18 September 2020, the Respondent, Frist Co-Respondent by Election, Second Co-Respondent by Election and Third Co-Respondent by Election must notify the parties as to whether they will contend that the Changed Development Application (identified in the Order made by His Honour Judge Jones on 24 August 2020) the subject of the appeal ought be:
  - a) Approved; or
  - b) Refused, and if so, provide particulars of the reasons for refusal upon which it will rely.
2. By 18 September 2020 the Frist Co-Respondent by Election, Second Co-Respondent by Election and Third Co-Respondent by Election must notify the parties of the name and field of expertise of each expert they intend to call to give evidence in the proceeding.
3. The appeal be reviewed on 25 September 2020.