

HELD AT BRISBANE

QUEENSLAND

BETWEEN:

OWEN EUGENE YOURELL

Appellant

AND:

COUNCIL OF THE SHIRE OF CABOOLTURE

Respondent

REASONS FOR JUDGMENT - O'SULLIVAN, D.C.J.

Delivered the 15th day of September, 1992

This is an Appeal by Owen Eugene Yourell against the refusal of the Council of the Shire of Caboolture to rezone part (3365m²) of an allotment (8608m²) described as Lot 11 on Registered Plan 202791 from the Rural Residential "B" Zone for inclusion in a Special Facilities (Tavern and Drive-In Bottle Shop) Zone. Lot 11 is located on the corner of Old Gympie Road and Mackie Road at Narangba. The balance of Lot 11 is currently zoned "Local Shopping" in part and "Special Facilities (Service Station)" in part. A metes and bounds description of the land proposed to be rezoned is contained in Schedule 1 of Exhibit 14.

The issues in dispute in the appeal are as follows:-

- (1) The proposal is contrary to the intent of the Rural Residential Strategic Plan Map designation in which the subject land is included as detailed in Part A of the Strategic Plan.
- (2) The proposal is contrary to the Commercial and Business Area Objectives detailed in Part A of the Strategic Plan.

- (3) The proposal will fragment commercial uses in the Narangba area and is, therefore, undesirable from a Town Planning viewpoint.
- (4) The proposal will have a detrimental effect upon the amenity of the locality.
- (5) Grounds for objection nominated by Objectors to the proposal have merit from a Town Planning viewpoint.
- (6) The proposal would prejudice the proper and orderly development of the locality.

There were 251 Objections to the proposal, of which 197 were contained in standard letters. Nine of these Objectors gave evidence. A Map showing the location of these Objectors, Exhibit 25, shows that many live near the subject site, and that two of them are adjacent to the subject site.

There was a Petition in support for the proposal with 790 signatures, 376 from Narangba residents.

A tavern is not specifically defined in the respondent's Town Plan. It is thus within the definition of "hotel". A hotel is a prohibited use within the Rural Residential "B" Zone.

In the vicinity of the subject land there are extensive areas of housing, land zoned Rural Residential "B" and land zoned Local Shopping. A hotel is a prohibited development in each of these zones.

The subject land is within the "Rural/Residential Areas" Preferred Dominant Land Use in the respondent's Strategic Plan.

The Statement of Intent of this Designation in the Strategic Plan is as follows:-

"These areas are shown coloured brown on the map and designate those areas which are considered suitable for subdivision into allotments ranging in size from 0.8 hectares to 4 hectares. Land use in these areas

will be essentially of a residential nature, however, other uses ancillary to residential development such as churches, local shops and recreation facilities may locate in these areas."

In his report concerning the proposed development Mr. Schomburgk looked at the respondent's Strategic Plan and noted that the specific Objectives for "Rural/Residential Areas" in clause 4 of Part A could not be read as precluding the proposed development. He concluded that:

"The broad explanation..(the Intent of the Rural/Residential Areas)..provides that uses 'ancillary to residential development' may be located in these areas. This has been the case with the service station and the local shopping complex on the balance of the subject site and it is my contention that the subject proposal, because of its nature and its scale, should be similarly regarded."

He further noted that the proposal was for a relatively small tavern as distinct from a large hotel.

Mr. Schomburgk referred to the "Commercial and Business Areas" Preferred Dominant Land Use namely:

"These areas are indicated by blue hexagons on the map and show the more substantial shopping and business centres existing and proposed within the Shire. Expansion of business and shopping activities should locate as an integral part of the existing centres with new centres establishing only where required by identifiable major concentrations of population."

He particularly noted the reference to "more substantial" centres. He opined that as the tavern is a small-scale local tavern and not "a major commercial facility" there is no reason why it needs to be located in a "more substantial" centre. Therefore the provisions of clause 2(4) did not apply. Mr. Schomburgk said he could not specifically derive any guidance with respect to the location of hotels and taverns from the Strategic Plan. He referred to the Strategic Plan Map and opined that higher order Commercial and Business Areas are essentially marked by pale blue hexagons. His understanding of the Plan is that these hexagons cover

local facilities such as shops and service stations. His conclusions were based on the fact that the proposed rezoning was for a relatively small site for a tavern and the development was a relatively small tavern. Objective 6(1) in the Strategic Plan for "Commercial and Business Areas", which is "To encourage consolidation and expansion of existing major commercial and business areas within the Shire", was therefore not relevant in this context.

Mr. Schomburgk also relied on Objective 6(4) for "Commercial and Business Areas". This Objective states:

"To permit, where justified, the establishment of sub-regional and district facilities in locations of high access convenience where such facilities are considered complementary to the existing principal business centres."

He submitted that regard should be had, inter alia, to Clause (a) of the Implementation Criteria, namely:

"Whether the new facility should more appropriately be incorporated in an existing centre."

Mr. Schomburgk opined that he could not see any reason why the proposed tavern would not form an integral part of the existing complex at a scale which was not likely to detract from the efficient functioning of Narangba as a commercial and business centre.

Mr. Tabulo, a Town Planner in the employ of the respondent, produced a report and gave evidence on behalf of the respondent. He considered that the proposed tavern is a significant commercial development and, therefore, pursuant to the Strategic Plan Objectives it should be located in a recognized Commercial and Business Area, that is, the Narangba township. He considered that a tavern is a high order use that attracts users from a much wider area than a group of shops or a service station which serve the local area.

He opined that the proposal was contrary to the Commercial and Business Area Objectives in the Strategic Plan because it is a significant business and commercial

development in the Narangba area and consequently it should be located in the Narangba centre in accordance with the Objectives for "Commercial and Business Areas" in the Strategic Plan.

Mr. Tabulo opined that as the location under this proposal is some 2.5 kilometres from the Narangba township, a Commercial and Business Area marked on the Strategic Plan Map, it will fragment commercial uses in the Narangba area.

I note that the proposed tavern development is of the order of 865 square metres. This area is by no means insignificant when compared with the extent of existing commercial development in the Narangba township.

Mr. Tabulo stated that the Town Planning Scheme did not make any distinction between the size of establishments that fall within the "hotel" definition for sound Town Planning reasons. He considered that hotels exhibit the same characteristics irrespective of their size. He referred to the physical characteristics of a hotel, the bulk of the building, and the car parking areas, and submitted that they were not buildings that were considered to be of residential nature or size. He also considered that characteristics associated with hotels were not compatible with residential areas and gave examples of this incompatibility by pointing to the rowdy and noisy behaviour of people who attend these premises.

After carefully considering the evidence of each of the Town Planners as to their application of the Strategic Plan to the proposed development, I prefer the evidence of Mr. Tabulo. I consider that the proposal, together with the existing nearby shops, will lead to a substantial shopping and business centre (particularly when compared with the existing Narangba township) and pursuant to the Strategic Plan should be located in the Commercial and Business Areas in the Shire. I consider that the area in the vicinity of the proposal is not an identifiable major concentration of population as required for the "Commercial and Business Areas" Preferred Dominant Land Use.

I consider that the proposed development would not be ancillary to residential development, and thus justified within the "Rural/Residential Areas" Designation. I consider it is relevantly different from churches and recreation facilities. A "hotel" is not a local shop by virtue of the definition of "shop" in the Scheme. The proposal is a higher order use which attracts users from a much wider area than the group of shops which serve the local area. I consider that the proposed development would fragment commercial uses in the Narangba area and is therefore undesirable from a town planning viewpoint.

For the reasons I have discussed I consider that the proposal conflicts with the respondent's Strategic Plan for the area. The weight to be given to a Strategic Plan has been frequently canvassed in the Local Government Court, and in this Court: refer, for example, Brownless v. Council of the Shire of Caloundra (1990) Q.P.L.R. 261, McPherson v. Caloundra City Council (1990) Q.P.L.R. 272, Duncombe v. Council of the Shire of Caboolture (1990) Q.P.L.R. 257, Conroy & Ors. v. Caloundra City Council (1990) Q.P.L.R. 166, McLennan v. Maroochy Shire Council (1990) Q.P.L.R. 113, Mustercliffe Pty. Ltd. v. Brisbane City Council & Ors. (1991) Q.P.L.R. 111, Plafaire Projects Australia Pty. Ltd. v. Council of the Shire of Maroochy (1991) Q.P.L.R. 87, Beck v. Council of the Shire of Atherton (1991) Q.P.L.R. 56, Castro v. Douglas Shire Council (Unreported - Row, D.C.J. - 1st April, 1992), Bowden & Ors. v. Brisbane City Council & Ors. (1991) Q.P.L.R. 271.

Amenity

The appellant, Mr. Yourell, gave evidence of his experience in other businesses which included the Matilda roadhouse near the subject land. He stressed that his concept for the proposed development is for a small-scale, family tavern and that he will do what is requested of him so as not to create problems for people in the area. I accept his sincerity. His philosophy was supported by Mr. Davies, who is the proposed Manager of the tavern.

The appellant provided the Court with a report on the noise aspects of the proposed development prepared by Mr. Moore, a Noise Consultant. This report was admitted by consent. I accept that the implementation of the measures suggested by Mr. Moore would keep the noise intrusion in the immediate locality to an acceptable level.

Mr. Schomburgk considered that any impact on amenity owing to noise could be resolved by the imposition of conditions. He also pointed out that the existing noise sources in the locality are such as to reduce the impact of noise on the existing amenity. He referred to the service station, the industrial estate across from Old Gympie Road and the high volumes of traffic using Old Gympie Road.

With respect to visual impact he considered that as the proposed tavern was no higher than the existing shops complex it was no more visually detrimental than the existing shopping centre. He noted that the proposal includes a six metre wide buffer strip along the western and southern boundaries and considered that a proper and reasonable condition ought to be the provision of a landscaped mound within these strips. He considered that it would be unlikely that the proposed tavern would have a detrimental impact on the visual amenity of the locality. He considered that the allotments adjoining Old Gympie Road have a lower level of amenity than those allotments to the west, because of the influence of Old Gympie Road and the proximity to the heavy industrial area across Old Gympie Road. He opined that the amenity was also reduced to some extent by the presence of the shopping centre and the service station.

Mr. Tabulo, on the other hand, considered that the proposal would have a detrimental effect upon the amenity including:

1. Noise generated from the drive through bottleshop, the carpark area and by patrons attending the tavern;

2. The visual impact will be inconsistent and out of character with a Rural Residential area as a consequence of bulk and extent of buildings and carparking areas;
3. The site appears to have been filled which means it is higher than adjoining Rural Residential properties and will be readily visible from those properties.

The Objectors who gave evidence spoke of their concerns about the impact on their lifestyle if the proposed development went ahead. They were particularly concerned about noise, vandalism and drunks.

I agree with Mr. Schomburgk that the presence of Old Gympie Road and the industrial estate to the east, together (to a lesser extent) with the adjoining shop and service station, detract from the amenity of the allotments in the vicinity that affront Old Gympie Road. I note that the proposed development is smaller than the industrial buildings across the road. The amenity of the allotments in the vicinity of the proposed tavern is lower than those further west. I agree that the current design of the tavern complements the existing shopping centre and service station buildings and that the overall appearance would be that of an integrated complex. I agree with Mr. Schomburgk that the imposition of suitable conditions would "do much to mitigate against any detrimental impact and noise being generated by use of the tavern".

I consider that the proposal will have some impact on the amenity of the locality, but the imposition of reasonable and relevant conditions will reduce this impact so that it is not unacceptable.

Summary

The proposed development is in conflict with the Strategic Plan for the area. It will lead to a substantial shopping and business centre which should be located in one of the "Commercial and Business Areas" of the Shire. It will fragment commercial uses in the

Narangba area. It will prejudice a proper and orderly development of the area.

The appellant has failed to discharge his onus of showing that the proposed development ought to be approved.

I dismiss the appeal.