

TRANSCRIPT OF PROCEEDINGS

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PLANNING AND ENVIRONMENT P & E Appeal No 154 of  
COURT 1993

JUDGE ROW

KENNETH MATHESON SURVEYS PTY LTD Appellant

and

MORETON SHIRE COUNCIL Respondent

BRISBANE

..DATE 16/09/93

ORDER

HIS HONOUR: The appeal is allowed. I publish my  
reasons.

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IN THE PLANNING AND ENVIRONMENT P & E Appeal No. 154 of  
COURT 1993

HELD AT BRISBANE

QUEENSLAND

Before Row DCJ

[Kenneth Matheson Surveys P/L v Moreton Shire Council]

BETWEEN:

KENNETH MATHESON SURVEYS PTY. LTD. Appellant

- and -

MORETON SHIRE COUNCIL Respondent

REASONS FOR JUDGMENT

Judgment delivered: 16/09/1993

Catchwords:

Counsel: J J Haydon for the Appellant  
R R Bowie, Solicitor for the Respondent  
Solicitors: Hemming and Hart for the Appellant  
Minter Ellison Morris Fletcher for the Respondent  
Hearing 9 September 1993

Date(s):

IN THE PLANNING AND ENVIRONMENT P & E Appeal No. 154 of  
COURT 1993

HELD AT BRISBANE

QUEENSLAND

BETWEEN:

KENNETH MATHESON SURVEYS PTY. LTD. Appellant

AND:

MORETON SHIRE COUNCIL Respondent

9th September 1993

REASONS FOR JUDGMENT - ROW D.C.J.

Delivered the 16th day of September 1993

Kenneth Matheson Surveys Pty. Ltd. (the appellant) appeals herein consequent upon a decision of the respondent whereby it approved, subject to conditions, an application made in August 1992 by the appellant to subdivide land described as Lot 121 on Plan M3172, having an area of 25.85 hectares, situated at Redbank Plains into three lots, which decision was notified to the appellant on 31st May 1993.

Proposed lots 601, 602 and 603 have areas of 4.21 hectares; 2.00 hectares and 19.64 hectares respectively. The subject land has a frontage to a number of streets

including Candowie Street and Cedar Road. The appeal relates to Conditions numbered 1 and 5. On the hearing of the appeal, the Court was informed that the parties had agreed to a proposed amendment of Condition 1. Condition 5, which relates to external roadworks, was the substantive issue in dispute in the hearing of the appeal.

The subject land is zoned Future Urban under the relevant Planning Scheme. The appellant, as agents for the registered proprietors, have lodged applications proposing to further subdivide Lots 601, 602 and 603. Appeals in relation to that proposed subdivision have been instituted on the basis of the deemed refusal of the respondent to decide each application within the time specified by law. The proposed further subdivision seeks an urban type subdivision of each of the 3 Lots.

Condition 5 of the approval provides:-

"Prior to the signing and sealing of any Plan of Survey Jirra and Aparra Streets shall be constructed with asphalted concrete surfacing to a width of 7.5 metres between the existing bitumen in Aldinga Street and the subject land, together with associated works and drainage, in accordance with the Council's by-laws and to the requirements and satisfaction of the Shire".

On the appeal coming on for hearing, Counsel for the respondent informed the Court the respondent was seeking, on the hearing of the appeal, for the width of the bitumen construction to be a 4 metres 2 coats spray bitumen seal on a 6 metre gravel formation and not as notified in the decision of the respondent. Jirra and Aparra Streets are presently constructed from Aldinga Street to the northern boundary of Candowie Street. Each street serves a residential subdivision. The condition imposed by the respondent envisages the continuation of the construction of Jirra and Aparra Streets across the reservation of Candowie Street to the northern boundary of the subject land. Candowie Street along the frontage to the subject land is unconstructed. It has a road reservation of 20 metres.

Access under the Local Government (Planning and Environment) Act (the Act) is defined as follows"-

"Access" means the practical means of entry for persons and vehicles onto an allotment from a constructed road which abuts the allotment or, where permitted by a Local Authority pursuant to s.5.12, access by means of an easement but does not include an access restriction strip".

The subject land has not access from a constructed road in that Candowie Street is not constructed. The proposed extension of Jirra and Aparara Streets across the road reservation of Candowie Street would provide Lot 601 and Lot 602 with access to the constructed Jirra and Aparara Streets respectively. Cedar Road, to which Lot 603 has a frontage, is a constructed road.

When considering an application to subdivide land, a Local Authority and, on appeal, the Court is to assess the application having regard to the various matters prescribed in s.5.1(3) of the Act. Under sub-para.(j), the proposed means of access to each of the proposed allotments is, in the circumstances herein, relevant to the application. Under sub-s.(s), the provisions of the Planning Scheme which regulates the subdivision of the land are a relevant consideration.

Section 6(a) of Division 18 of Part IX (Subdivision of Land) of the Planning Scheme provides that without in any way limiting the Council's power to require a greater standard of construction in a subdivision involving the opening of a new road, or where an existing dedicated road fronting the proposed subdivision is not constructed to the standards set out in Table 3, the applicant for approval of the subdivision shall construct the road to the requirements set out in Table 3,.... Table 3 sets out various performance standards. In the Rural, Non-Urban and Future Urban Zone, road types B and C are indicated. Road type B provides for a carriageway width of 4 metres whereas road type C provides for a carriageway width of 6 metres. The width of each road shoulder is shown as 1.5 metres for either road type B or road type C.

In all subdivisions involving new roads, the respondent is obliged to take into consideration the existing and probable future development of their locality, present and future traffic requirements together with the amenities of the district, and shall determine the nature of the locality, the construction requirements and the width of each road in accordance therewith. The proposed subdivision into 3 lots does not involve the opening of a new road.

The approved subdivision of the subject land into three lots gives each proposed lot a potential for further subdivision. Such potential was recognised in the Minutes of the Planning and Development Committee of the respondent where it is stated:

"The proposal will be an interim use of the land prior to future residential development".

In the Future Urban zone, land may be used for certain permitted development including dwelling houses on an allotment not less than 450 square metres. The approved subdivision of the subject land into three lots will permit as of right the erection of one dwelling house on each of the lots. Whilst there have been applications made for the further subdivision of each of the lots, no decision has been made by the respondent in relation to that application as a consequence whereof appeals have been instituted in the Court against the deemed refusal in relation to each of the three lots. In considering the nature of development in such circumstances, the Court is not able to speculate as to the probable future development of each of the three lots other than to accept that there exists a potential for further development of each lot.

Evidence on the hearing of the appeal was given by Mr. Newcomb, a consulting engineer, and Mr. Jordan, the deputy shire engineer. I accept the evidence of Mr. Jordan in relation to the nature of the soil characteristics in the vicinity of the proposed extension of Jirra and Aparara Streets in that it is of a nature described as Redbank black soil. Such type of material is very expansive and, when wet, of very low strength and

very slippery. I am further satisfied it is difficult to drive over such soil in wet weather. In such circumstances, the absence of any construction by way of the extension of Jirra and Aparara Streets across the road reservation of Candowie Street would not provide access to Lots 601 and 602 within the provisions of the Act. Aparara Street and Jirra Street are constructed to approximately 8 metres width bitumen seal to the northern side of Candowie Street. The proposed extension of each of such streets by way of a bitumen seal across the reservation of Candowie Street I am satisfied would provide access to Lot 601 and Lot 602 within the provisions of the Act. As the proposed extensions would service only one lot which, in the present circumstances, can only be developed for one dwelling house, I am satisfied that the provision of a bitumen strip 4 metres in width on a 6 metre gravel formation would provide access within the provisions of the Act to each of Lots 601 and 602. Such a condition I am satisfied is reasonably required by the subdivision. While such a standard of construction is less than that prescribed by Table 3 of Division 18, I am satisfied having regard to the circumstances that a 4 metre width sealed carriageway with a 6 metre gravel formation would reasonably and adequately provide for access to the Lots 601 and 602 which can be developed for a single dwelling house.

The application for subdivision is approved subject to the conditions as notified by the respondent to the appellant under cover of letter dated 31st May 1993 subject to the following amendments:-

(i) Clause 1 is amended to read as follows:-

"The facts and circumstances set out in the application and all Council by-laws being adhered and generally in accordance with Plan No. 10198-04A dated 12th January 1993".

(ii) Clause 5 is deleted and the following is inserted in lieu:-

5. Prior to the signing and sealing of any Plan of Survey Jirra and Aparara Streets shall be

constructed with asphaltic concrete surfacing to a width of 4 metres two coats spray bitumen seal on a 6 metre gravel formation between the existing bitumen in Aldinga Street and the subject land, together with associated works and drainage, in accordance with the Council's by-laws and to the requirements and satisfaction of the Shire Engineer."

To the extent as set out above, the appeal is allowed.