

IN THE PLANNING AND ENVIRONMENT P & E Appeal No. 147 of
COURT 1993

HELD AT BRISBANE

QUEENSLAND

Before Quirk DCJ

[M.J. & M.E. Creed v. Caboolture Shire Council]

BETWEEN:

M.J. & M.E. CREED Appellants

- and -

CABOOLTURE SHIRE COUNCIL Respondent

REASONS FOR JUDGMENT

Judgment delivered: 17/09/1993

Catchwords:

Counsel: Mr W Cochrane for the Appellants

Mr S Ure for the Respondent

Solicitors: Messrs Lynette Gatward & Co for the
Appellants

Messrs King & Co for the Respondent

Hearing 13, 14 September 1993

Date(s):

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REASONS FOR JUDGMENT - QUIRK, D.C.J.

Delivered the day of September 1993

This appeal is against the respondent's refusal of an application for approval of the rezoning to Residential A of two contiguous allotments at Burpengary. The subject land occupies a total area of 4.36 hectares and has frontage of nearly 70 metres to Morayfield Road and 336.5 metres to Ogilvie Road. The land which is presently included in the Rural Residential A Zone is approximately 750 metres north along Morayfield Road from the bridge across Burpengary Creek.

The proposal application for rezoning approval was accompanied by a subdivisional layout plan which indicated 42 lots ranging in size from 600 square metres to 1,400 square metres. An objection to the application in the form of a petition containing 30 signatures was received. The signatories were residents of Ogilvie Road where, on the side opposite to the subject land, there is a row of allotments which is zoned Residential A and developed accordingly.

Immediately north of Burpengary Creek there is a relocatable home and caravan park occupying 7.391 hectares. The land separating this facility from the subject land has recently been the subject of a successful application for its rezoning to the "Special Facilities (Relocatable Home and Caravan Park)" Zone to permit the extension of the park to a total capacity of 62 caravan sites and 143 relocatable home sites. Other land in the area is included in the Rural Residential A Zone.

The respondent's express reasons for refusal of the application were that it was incompatible with adjoining Rural Residential Zones and in conflict with its draft Strategic Land Use Plan. This Plan, which has been publicly exhibited, has the area of north of Burpengary Creek and to the west of Morayfield Road (which includes the relocatable home and caravan park) and the area in Ogilvie Road zoned Residential A designated "Rural Residential". The draft plan is squarely in conflict with

the current Strategic Plan which has designated an area (considerably larger than but including the subject land) to the north of the creek and to the west of Morayfield Road as part of the "urban area".

Robyn Hanelt, a town planner of considerable experience both as a local authority planner and as a consultant, and was called by the appellants. She regarded the subject land as being very suitable for urban development and pointed to its ready access along Morayfield Road to the Burpengary Business Centre. It is not subject to any flooding from Burpengary Creek and is capable of being adequately drained. No difficulties in the provision of urban services (including sewerage) are envisaged. In her assessment of the proposal, Ms Hanelt was prepared to attach considerable importance to its conformity with the current Strategic Plan. She saw the subject land as an "isolated undeveloped pocket of land" and did not see its development as posing any threat (in a planning sense) to existing development in the neighbourhood.

The Council's town planner, Peter Tabulo, in his opposition to the proposal sought to attach significant weight to the provisions of the draft Strategic Land Use Plan. He also attributed some importance to the objections of the residents of Ogilvie Road which appear to be based upon a perceived threat to the "rural residential lifestyle" to which they evidently believe they are entitled. Such a notion can be quickly dealt with by observing that such a perception and belief is completely at odds with the zoning of the land upon which these persons reside and the designation, in the current Strategic Plan, of the area in which their land is found.

It is well known that, where a Planning Authority has in preparation a draft planning instrument which is intended to, and in due course may well, become part of its Town Planning Scheme, the Court should be very careful in making any decision which will "cut across" these planning strategies. This is particularly so when the draft planning instrument has reached the stage of having been exhibited publicly.

At the same time it would seem to me that additional and important considerations are introduced when, in respect of a particular piece of land and a particular proposal, the draft instrument is squarely in conflict with the Town Planning Scheme and more particularly its Strategic Plan or Development Control Plan. Whatever weight might be attached to a draft Strategic Plan, it must be accepted that it is not yet part of the law and it is difficult to accept that it should be seen to override the provisions of a current Strategic Plan which is. This was an approach which appears to have been taken by the Court in Trinity Drafting Services & Anor. v. Council of the Shire of Mulgrave (1992) Q.P.L.R. 287. The desirability of confidence on the community's part in the provisions of a Town Planning Scheme is a matter which has been repeatedly stressed by this Court (Stenders Morris & Partners v. Cairns City Council 1989 Q.P.L.R. 15). I accept the proposition that if the Act, in s.4.4(5A) attaches a good deal of importance to the absence of conflict with a "relevant Strategic Plan", the fact that a proposal is in conformity with a Strategic Plan must be seen as a factor substantially in its favour.

In a case of this kind, a decision as to what weight, if any, should be attributed to a draft Strategic Plan involves, at least, a very close examination of the planning principles upon which the changes to relevant planning arrangements purport to be based. It is said in this case that the relevant provisions of the draft Strategic Land Use Plan are based on the desirability of preserving the individual character of the separate townships which are found in the Shire and the importance of providing a "visual break between townships".

Such a notion is however by no means novel and appears as one of the expressed objectives of the Strategic Plan which is presently in force and which, nevertheless, was prepared to designate the subject land as part of an area suitable for urban development evidently sharing the view of Ms Hanelt that its proximity and good access to the commercial area of Burpengary was a matter of some importance.

The change in approach is said to have been based on a desire to see Burpengary Creek as the limit of the spread of urban development from Burpengary in the direction of Morayfield. One might have been more ready to accept the validity of this approach in the absence of the existing Residential A development along Ogilvie Road and the relocatable home and caravan park immediately to the north of the creek. The extension of this facility along Morayfield Road at a time when the draft Strategic Land Use Plan was very much in evidence is a matter which is not easy to understand. The fairly lame attempt to explain away the Residential A zoning and existing development thereon as "historical" and the relocatable home and caravan park as distinguishable in the light of its "special facilities" zoning amounted, in my opinion, to an unsupportable refusal to accept the realities of development in the area. What is there is more important than the words chosen to describe it.

I accept the opinion of Ms Hanelt that the proposal would involve an "in-fill" to development which is clearly residential in nature (and of a moderately dense order). A restriction of development of the subject land to that of rural residential development would contribute little to the achievement of any "visual break" between Burpengary and Morayfield.

I accept the evidence of Ms Hanelt. I find that the onus of showing that the proposed development is one which, having regard to the relevant provisions of the Act and the respondent's Town Planning Scheme should be approved. The appeal is accordingly allowed.