

PLANNING & ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Tower 720 Pty Limited v. Hervey Bay City Council & Anor*
[2002] QPEC 078

PARTIES: **TOWER 720 PTY LIMITED (Appellant)**

v.

HERVEY BAY CITY COUNCIL (Respondent)

And

KEENGULF PTY LTD (Co-respondent)

FILE NO/S: P&E Appeal No. 2779 of 2002

DIVISION: Planning & Environment

PROCEEDING: Appeal

ORIGINATING
COURT: District Court Brisbane

DELIVERED ON: 19 December 2002

DELIVERED AT: Brisbane

HEARING DATE: 15 October 2002

JUDGE: Quirk DCJ

ORDER: **Appeal dismissed**

CATCHWORDS:

COUNSEL: Mr S Ure for the appellant
Mr M Connor (Solicitor) for the respondent
Mr M Hinson SC & Mr E Morzone for the co-respondent

SOLICITORS: Shand Taylor for the appellant
Connor O'Meara for the respondent
Barry & Nilsson for the co-respondent

- [1] This appeal raises a relatively short point concerning the sufficiency of car parking. The appeal was by an adverse submitter against the approval of a proposal for the construction of further floor space to accommodate an additional tenancy at the Bay Central Shopping Centre at Hervey Bay.

- [2] The existing centre is a relatively large one, having a gross floor area in excess of 2,500 square metres and is anchored by a supermarket and a discount department store. It also accommodates speciality shops. Presently on-site parking is provided in 986 spaces.
- [3] The Transitional Planning Scheme provisions in respect of car parking are found in Part 4 in s.4.2.1. The relevant table indicates that for “Major Shopping Development” the requirement is 6 spaces for each 100 square metres or part thereof of gross floor area.
- [4] However, in s.4.2.1.10 a power to grant relaxation in certain circumstances is found.

This section provides:

“Notwithstanding any of the provisions contained in this Section the Council may, in accordance with an adopted Local Planning Policy:

(a) Dispense with or modify all or any of the parking requirements

contained herein if it considers that dispensation or modification is justified having regard to:

- (i) the likelihood of generation of a greater or less than normal peak parking demand, including requirements for staff;
- (ii) the location of the site in relation to existing or proposed car parking areas;
- (iii) the level of pedestrian accessibility;
- (iv) the nature of the proposed use including hours of operation and anticipated intensity;
- (v) the existing use on the site;
- (vi) the topography, shape, levels or depths of the site;
- (vii) vehicle access whether it is inconvenient or hazardous; and

- (viii) the proposed layout and size of car parking bays.
- (b) At its absolute discretion, in cases where it is considered desirable or expedient to do so.”

[5] In respect to the exercise of the relevant discretion the Council has adopted a policy (Policy No. 19) known as the “Car Parking Policy”. Clause 2 of the policy provides:

“When exercising its discretion in terms of Section 4.2.10 of the Planning Scheme, Council may permit the shared use of on-premises parking spaces for multiple uses of premises. Council requires that a report be submitted by a suitably qualified and experienced traffic consultant to establish the appropriate number of required parking spaces. This report will include as a minimum:

- (a) the rationale for the shared use of spaces based on the nature and extent of the uses on the premises;
- (b) an assessment of the existing and likely parking conditions in the locality having regard for the provisions of the Planning Scheme;
- (c) an analysis traffic conditions in the locality both before and after the completion of the proposed development and an assessment of the effect that the material changes of use will have on the traffic and car parking in the locality;
- (d) recommendations on the optimal design of the parking facility and access and egress points;
- (e) empirical evidence for the proposed number of spaces to be provided.”

[6] Against that background I had the benefit of evidence from three experienced traffic engineers, Mr. Price (called by the appellant), Mr. Beard (by the respondent) and Mr. Holland (by the co-respondent).

- [7] The existing development provides 12,617 square metres of gross floor area. Mr. Price in his assessment was inclined to work on a somewhat greater figure which took into account an area outside the shops which is covered by colonading. However, it is noted that the Planning Scheme provides a definition of gross floor area which is the following terms:

“The gross floor area means the sum of floor area (inclusive of all walls, columns and balconies whether roofed or not) of all stories of every building located on a site, excluding the areas (if any) used for building services, a ground floor public lobby, a public mall in a shopping centre and areas associated with the parking, loading and manoeuvring of motor vehicles”.

The exclusion of public mall areas would hardly be consistent with the inclusion of covered areas external to the tenancies. If one is seeking to apply the prescribed requirements of the Planning Scheme it is appropriate that the Scheme definition of gross floor area be respected.

- [8] The prescribed rate of 6 spaces per 100 square metres of gross floor area would call for 757 spaces. The current parking provision is 229 spaces in excess of the scheme’s requirement. The construction of the proposed extension will lead to a loss of 141 spaces, but the additional floor area will increase the Scheme’s requirement to 956 spaces, bringing about a shortfall of 111 spaces.

- [9] Both Mr. Beard and Mr. Holland supported a relaxation to that extent. Mr. Beard formed the opinion that:

“The design peak parking demand at the Bay Central Shopping Centre, with the additional tenancy proposed, will be in the range 790 to 830 parking spaces. Since the subject centre, expanded as proposed, will provide 845 spaces, there is no reasonable basis for refusal of this application, and the required parking relaxation is appropriate in the prevailing circumstances”.

- [10] Mr. Holland agreed with this view and supported his opinion with data obtained from surveys carried out on the site. Both of these experienced consultants stressed that general experience has shown that relaxations of planning scheme parking requirements has become the norm rather than the exception because parking demand surveys have consistently demonstrated lower peak parking demand rates than those required to comply with typical planning schemes. The reasons for this were explained in detail in their evidence. It was also emphasised that it is not appropriate to design for annual peak car parking demand since that would be a waste of community resources in providing spaces which would only be utilised for one or two hours per year. Typical parking provision rates at major shopping centres in recent years have been in the range 5.0 to 5.5 spaces per 100 square metres of GFA. As a result of this proposal 5.3 spaces per 100 square metres will be provided.
- [11] In his more conservative approach Mr. Prince, relying upon a somewhat hypothetical assessment, was of the opinion that there would be a significant shortfall in car parking spaces and that the availability of parking at the centre might be under stress at times of peak demand.
- [12] Based on a fairly strict interpretation of it, the appellant argued that the policy did not envisage circumstances such as those of this case as providing a basis for relaxation. The argument required the phrase “the shared use of on-premises parking spaces for multiple uses of premises” to be understood to be referring to a multiplicity of “defined uses” (under the Scheme) rather than differing uses which might be part of (in a planning sense) of a shopping centre.

- [13] In these matters a measure of common sense is called for and I believe the appellant's approach is to rely too much on semantics rather than a proper appreciation of reality. In any event an approval in this case does not stand or fall depending upon the policy's interpretation. The relevant power is found in the *Integrated Planning Act* and the important question is whether the parking provision in the proposal is a reasonable and sensible response to it.
- [14] On the evidence of Mr. Beard and Mr. Holland I am prepared to find that it is and that the onus of showing that the application is one which should be approved has been discharged. Accordingly, the appeal must be dismissed.