

PLANNING AND ENVIRONMENT COURT

[2005] QPEC 091

JUDGE ROBIN QC

P & E Application No 1088 of 2005

MAXEN DEVELOPMENTS PTY LTD

Applicant

and

HERVEY BAY CITY COUNCIL

Respondent

BRISBANE

..DATE 09/09/2005

ORDER

CATCHWORDS: Integrated Planning Act 1997 s 4.1.52 - held a "minor change" where 50 attached dwellings were reduced to 25 detached dwellings, with height reduced from 3 to 2 storeys

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HIS HONOUR: This is a developer's appeal which has been resolved between it and the Council.

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Judge Wilson's order of the 8th of June 2005 dealt with the jurisdictional issues. The question remaining for the Court is whether a change to the application ought to be allowed - whether the change in the development proposal comes within section 4.1.52, and in particular the schedule 10 definition of minor change.

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Mr Daniels' affidavit read by leave includes the two submissions which were put into the Council by Ms Hand and by Mr Richards. Relevantly they were concerned with the bulk and density of the original proposal which was for 50 attached dwellings to be located on a pear- or tear-shaped area of land protruding into a lake at Toogoom. They did not elect to participate in the appeal. The court, in my opinion, ought to take their concerns into account. Whether or not they would be happy with the development proposal as it now is, the fact is that the proposed changes reduce the force of any complaints they might have had.

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The 50 dwelling units are to be replaced by 25 detached dwellings, arranged in similar configurations. The proposed building height limits are reduced from three storeys to two. In addition the proposed site coverage is now less than 40 per cent.

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Mr Wright's affidavit indicates that it is intended to ultimately develop this stage of a larger development utilising standard format lots in a community title scheme rather than building format lots and common property in the scheme. He expresses in paragraph 15 of his affidavit which I set out below, views with which the Court agrees:

"15. I consider that the new plan is only a minor change to the original application on the following basis:

15.1 It changed the proposal from a 50 Unit development to a 25 dwelling development decreasing density on the site (both community title);

15.2 The building height has been reduced;

15.3 The same community facilities that were proposed in the original application are retained in the revised proposed;

15.4 The proposed site coverage is lessened;

15.5 Other than outlined there is no significant changes to the original application;

15.6 The new plan is consistent with the Residential Medium Density designation in the Transitional Planning Scheme."

Mr Connor for the Council has supplied a proposed draft order including a revised development package. It contains significant changes, of course, given the changes in the proposal which are clearly significant from some points of view, but they serve to reduce the impact of the proposal considerably and it's difficult to see them, in the circumstances, as anything other than a minor change to the proposal: it would not, if the application were remade cause anyone to make a properly made objection. Order in terms of the initialled draft which is the document Mr Connor supplied.
