

PLANNING AND ENVIRONMENT COURT

CIVIL JURISDICTION

JUDGE ROBIN QC

No 741 of 2008

CORFIELD BROTHERS DEVELOPMENT PTY LTD Appellant
(ACN 114 468 987)

and

FITZROY SHIRE COUNCIL Respondent

BRISBANE

..DATE 22/10/2008

ORDER

CATCHWORDS: Integrated Planning Act 1997 s4.1.52(2)(b), minor change where proposal for 56 townhouses in 28 buildings becomes one for 46 in 23.

HIS HONOUR: The appellant developer and the respondent Council, now the Rockhampton Regional Council, in lieu of the former Fitzroy Shire Council, have come to terms in this applicant appeal.

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The development proposal was for 56 townhouses in 28 separate buildings in the town of Gracemere. The site is in Lillypilly Avenue although the actual development is to be set some considerable distance back separated by what is described on some plans as an "Overland flow path."

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There were adverse submissions from residents of Donovan Crescent whose properties backed on to the proposed development. Those have been summarised in discussions between the Court and Bar table as expressing concerns that the development was out of character with that in Donovan Crescent, essentially too intense, and, to adopt my expression, barracks-like. Nonetheless, the development application found favour with the Council planning officers before being rejected by the then Council.

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The changes subsequently made reduce the intensity of the development and to that extent its visual impact. The number of units is reduced to 46 in 23 buildings. There is variation in the orientation of them to an extent which has been described as, in part, attributable to dealing with the impact of the hot western sun more effectively for the future residents. The buildings are no longer in the originally proposed serried ranks, but, speaking generally, in smaller

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aggregations of only a couple, or indeed on their own, in the external two rows of the three which constitute the development. Openings are thus created which give a more open appearance to the whole. The Court's given leave to read and file an affidavit of the architect Jared Michael Poole, which shows the changes that have been made.

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None of the adverse submitters elected to join in the appeal. They would, presumably, welcome the changes, assuming that the proposal is to go ahead at all. The risk to adverse submitters of staying out of an appeal such as the present is that the local government may change their attitude to the proposal as has happened here. There's nothing the Court can do about that.

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The draft order handed up is deficient in not reciting the Court's satisfaction with issues to do with section 4.1.52(2)(b) of the Integrated Planning Act of 1997. That omission should be fixed up. So, I've added to the customary declarations of satisfaction in relation to public notification and advice of the institution of the appeal, a third preamble paragraph in these terms, "And the Court being satisfied that the changes to the development application described in the affidavit of Jared Michael Poole sworn 21 October 2008 read and filed by leave today are minor changes within section 4.1.52(2)(b) of the Integrated Planning Act 1997." It is inconceivable that the changed application would have provoked any adverse submission which the publicly notified one did not. In context, the change must be

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accounted "minor". With that alteration made to the draft
there is an order in terms of the initialled draft which
incorporates new plans and relevant development conditions.

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