

# PLANNING & ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Hofer v Maroochy Shire Council & Anor* [2008] QPEC 90

PARTIES: **GEORGE HOFER**

(Appellant)

v

**MAROOCHY SHIRE COUNCIL**

(Respondent)

and

**CHIEF EXECUTIVE OF MAIN ROADS**

(Co-respondent by election)

FILE NO/S: 8 of 2008

DIVISION: Planning and Environment

PROCEEDING: Appeal

ORIGINATING  
COURT: Maroochydore

DELIVERED ON: 7 November 2008

DELIVERED AT: Brisbane

HEARING DATE: 16 & 17 June 2008 with written submissions being received  
on 25 June 2008

JUDGE: Rackemann DCJ

ORDER: **The appeal is dismissed.**

CATCHWORDS: Applicant appeal – multiple dwelling units on a long cul-de-sac – existing development characterised by detached dwellings on large lots – planning intent for a wider range of residential dwelling types and densities with medium density housing located close to public transport facilities – impact on character and sense of place – increase in traffic volumes – lack of alternative emergency access – whether close to the public transport facilities – whether sufficient grounds to justify approval

COUNSEL: Mr S Ure of counsel appeared for the appellant

Mr T Trotter of counsel appeared for the respondent

SOLICITORS: IPA Law Planning Lawyers for the appellant

Sunshine Coast Legal Services for the respondent

- [1] This is an applicant appeal against the council's refusal of a development application for a development permit for a material change of use for multiple dwelling units on land at 48-50 Toral Drive, Buderim. The proposal is for 24 units (16 x 3 bedroom units and 8 x 2 bedroom units) in a two-storey built form.
- [2] The subject site, which is currently improved with a single detached house, has an area of 5,243m<sup>2</sup> and is situated on the southern side of Toral Drive towards its western extremity. Toral Drive is a long cul-de-sac, extending in a westerly direction for about 600m from its intersection with Stringybark Road. The site is approximately 1.2km from the Sunshine Coast University and 900m walking/cycling distance from the designated Sippy Downs Town Centre.
- [3] The existing development in Toral Drive is mainly characterised by detached housing on large lots. There is a church and child care centre on the south eastern corner of the Toral Drive / Stringybark Road intersection and there are two multiple dwelling unit approvals (which have yet to be acted upon) in the eastern part of Toral Drive. In particular, there is an approval for 69 units at the north-western corner of the Toral Drive / Stringybark Road intersection and a 120-unit development (the MLK proposal) on a battleaxe style site, which gains access via an allotment on the southern side of Toral Drive, about 320m to the east of the subject site.<sup>1</sup> There is also an approval for a 266 unit development on the eastern side of Stringybark Road.
- [4] Public notification of the application attracted a few submissions in support. There was one adverse submission, which was withdrawn. The council refused the application on six grounds and subsequently gave twelve pages of further and better particulars of those grounds. Not all of those grounds or particulars were the focus of attention at the hearing. Ultimately, counsel for the respondent submitted that the development application should be refused because:
- (a) Approval of the application would be in conflict with the Maroochy Plan 2000, in particular, provisions relating to Planning Area 3 – Sippy Downs and Precinct 5, Stringy Bark West;
  - (b) The proposed location is too remote from public transport;
  - (c) The proposal will bring about unwarranted and unacceptable changes to the character of the relevant part of Toral Drive;

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<sup>1</sup> The distance of 320m is taken from Mr Ryter's report.

- (d) Traffic engineering evidence suggests that until changes are made to the street system, for example, by the provision of a loop road between Toral Drive and Toral Court, the proposed location is unsatisfactory and unsafe from the aspect of emergency access to the site.”
- [5] The applicable planning scheme is the Maroochy Plan 2000. Under that scheme the site is within:
- (a) The Urban preferred dominant land use designation on the Strategic Plan Map;
  - (b) The Sippy Downs Planning Area, and;
  - (c) The Stringybark Road West Precinct.
- [6] The Shire-wide Desired Environmental Outcomes (DEOs) and the strategic implementation measures to support them are set out in Volume 2 of the Planning Scheme. Provisions include those relating to social equity and liveability (DEO 2); transport and accessibility (DEO 4); community and cultural development (DEO 5); and urban design, heritage and character (DEO 6). They seek, amongst other things, to:
- Achieve communities which exhibit a distinct character and sense of place;
  - Integrate land use and transport planning;
  - Consolidate residential forms around centres so as to optimise support for public transport and employment, community and commercial services;
  - Provide for a diversity, choice and mix of housing styles, with housing designed to be responsive to local character, climatic conditions and community needs;
  - Support land use and development strategies which serve to reduce private vehicle dependency and which integrate with transport planning strategies;
  - Create identifiable urban communities which, amongst other things, display distinctive character;

- Promote a high quality built environment, characterised by premises which, amongst other things, are consistent with local design and character.

- [7] The subject site falls within the Urban preferred dominant land use designation on the Strategic Plan Map. That allocation identifies areas suitable for residential premises of varying densities. It is one of the three preferred dominant land uses which relate to the urban strategy. The others are the “Future Urban” and the “Permissible Area for Rural Residential”, which do not apply to the subject site. The objectives relevant to the Urban designation seek to, amongst other things, develop upon and consolidate existing residential areas, provide for a diverse range of housing and residential lots, enhance the amenity of existing and proposed residential areas and minimise the impact of multi storey residential development.
- [8] While the DEOs and other strategic level provisions provide a relevant context, they do not give detailed guidance in relation to the particular planning intent for the part of the Urban area within which the subject site falls.<sup>2</sup> That is provided by the Planning Area and Precinct provisions contained in Volume 3 of the Planning Scheme, which are said to “represent council’s specific planning intent to relevant locality”. The primary function of those provisions is stated to be as assessment criteria for applications for impact assessable development.
- [9] Volume 3 includes descriptions of Planning Areas, Precincts and precinct classes. Each Planning Area provides an overall description of the character and relevant issues for the district or local area, while each individual Precinct describes the unique character of the particular locality within the relevant planning area. Each precinct class identifies a general intent for individual precincts which are similar in nature throughout the Shire.
- [10] The Sippy Downs Planning Area comprises the site of the Sunshine Coast University, lands designated as “Major Activity Centre” and “Urban” by the Strategic Plan, and adjoining lands along the Shire boundary. The area is intended to provide for the ongoing development of the university, in conjunction with a new major activity centre for the Sunshine Coast and surrounding residential communities.

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<sup>2</sup> While various provisions within Volume 2 were referred to in Council’s grounds for refusal, as particularised, and in the expert reports, none were ultimately referred to in the written submissions on behalf of the respondent.

[11] The provisions relating to the Sippy Downs Planning Area include a District Structure Plan (Figure 3.3.3(a)). It shows the subject site as within one of three urban areas. Those areas are suitable for residential development of varying densities. The scheme provides that:

“Development within these areas is intended to be of a form and character which embraces the concepts of urban villages and transit orientated development; that is, the development of complete and integrated communities containing housing, shops, employment, schools, parks and civic facilities.

...

In order to maximise the economic viability and vitality of the town centre core and the public transport terminus, and to minimise the use of private vehicles:

- The community must be provided with a high quality interconnected access network providing a choice of pedestrian friendly streets and focussing on the town centre core;
- There is a need to encourage higher densities of development throughout the community and an implied increase in intensity in land use towards the town centre core.”

[12] The Sippy Downs Planning Area is broken up into twelve precincts. The town centre core is in the Sippy Downs Central precinct (Precinct 1), which lies to the south of the motorway and immediately north of the University and Other Education precinct (Precinct 3). The Sippy Downs West Precinct (Precinct 2) adjoins Precinct 1 on its east, north and western boundaries. To the north of the motorway lies the Stringybark Road East Precinct (Precinct 4) and the Stringybark Road West Precinct (Precinct 5), within which the subject site is located.

[13] Precinct 5 is classified as a Master Planned Community precinct. The statement of general intent for that precinct class envisages orderly growth into “greenfield” areas. Predominantly low density residential development is intended, but sites close to centres and accessible to public transport are the preferred locations for medium density housing. Where a particular precinct is not the subject of an existing development approval, the statement of general intent foreshadows that the proponent will be asked to carry out master planning for the locality, the outcomes of which are to be presented in a Local Area Structure Plan (LASP) to guide future development in the locality.<sup>3</sup>

[14] The intent for Precinct 5 provides, in part, as follows:

“This precinct comprises relatively new detached housing on large lots. Due to the proximity of the southern part of this precinct to the town centre and university, and the anticipated future provision of good bus services along Stringy Bark Road and Crosby Hill Road, it is intended that further new housing and in-fill development should be allowed in the future to achieve a wider range of residential dwelling types and densities.

...

The precinct should contain high quality residential development in accordance with a Local Area Structure Plan or other comprehensive Plan of Development approved by council.

...

Small lot housing should be allowed at suitably accessible locations and medium density housing development should be located close to the public transport facilities. Any development of this precinct should be designed to minimise impacts on the surrounding rural residential areas.

...

In assessing development applications in this precinct particular consideration will be given to:

...

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<sup>3</sup> Which will either be incorporated in the planning scheme or in a preliminary approval pursuant to s 3.1.6 of the Act.

- Minimisation of impact on visual amenity”

[15] Multiple dwelling units are expressly identified as one of the uses which “may be considered consistent with the intent and desired character of this precinct, and suitable for inclusion in detailed master planning, where appropriately located, sited and designed.”

[16] The planning intent for Precinct 5, and its relationship to Planning Area 3 was summarised in the respondent’s written submissions as follows:

“Examination of Planning Area 3 reveals that it is intended to achieve a structure of efficiency and orderly town planning principles with more intense forms of residential developments in and adjacent to the town centre and the university and close to public transport.

In particular, the Precinct 5 intent makes it plain:

- (1) That the precinct comprises relatively new detached dwellings on large lots;
- (2) That, because of the proximity of the southern part of this precinct to the town centre, it is intended that further new housing and landfill development should be allowed in the future to achieve a wider range of residential dwelling types and densities;
- (3) Small lot housing should be allowed at suitably accessible locations and medium density housing development should be located close to the public transport facilities;
- (4) Any such development should be designed to minimise impacts on the surrounding rural residential areas.”

[17] New medium density development is contemplated within Precinct 5. That is proposed to be achieved here by redevelopment. The intention is not however, to achieve medium density housing on every site in Precinct 5 in general or on every lot

within Toral Drive in particular. What is sought is a “wider range of residential dwelling types and densities” within a precinct currently characterised by relatively new detached housing on large lots. Medium density housing is to be part of that wider range, but should be located close to the public transport facilities. Mr Trotter compared this with the intent for other precincts, which afford somewhat greater encouragement to medium density development. For example:

- In Precinct 1, the intention is for medium and higher density residential accommodation to be “encouraged above and alongside other compatible uses in mixed use developments wherever practicable.”
- Precinct 2 is intended to accommodate “both a wide range of businesses and substantial medium density housing” with medium density housing being “encouraged throughout the precinct, except along the frontage to the Sunshine Motorway and the Bruce Highway due to noise impacts.”

[18] The intent for precinct 5 envisages residential development proceeding in accordance with a LASP or other comprehensive plan of development. That reflects similar statements in the general intent for the masterplanned community precinct. The subject application is for what may be described as a “stand alone” proposal, physically separated from other like development (existing or approved) and not part of any truly comprehensive planning for the precinct. A LASP was attached to the proponent’s response to the council’s information request but, as Mr Venn (the town planner called by the council) pointed out, it did not provide meaningful forward planning.

[19] Mr Venn characterised the proposal as ‘ad hoc opportunism’ rather than ‘comprehensive planning’. Mr Ryter (the town planner called by the appellant) pointed out that we are not dealing with a ‘greenfield’ area. Land ownership is fragmented. There are practical difficulties for an individual applicant, with respect to a particular allotment, in attempting to carry out masterplanning to guide development for the greater locality. In the circumstances Mr Ryter saw it as incumbent on the council to carry out any masterplanning.

- [20] Although there is some evidence that the council has undertaken to commence masterplanning for the precinct<sup>4</sup>, that has not, as yet, come to fruition, notwithstanding the age of the current planning scheme. The council has published an “implementation note”, but it has no statutory force and Mr Trotter did not seek to place weight on it. Development approvals have been granted in respect of individual multi-dwelling developments on individual sites within Toral Drive. Those circumstances provide a sufficient basis for considering the subject application on its merits, notwithstanding the absence of an LASP to guide development in the locality more generally. Mr Trotter did not go so far as to submit that the absence of a LASP should, of itself, lead to a refusal.
- [21] There was debate in this case, as there was in *MLK Newton Pty Ltd v Maroochy Shire Council* [2006] QPEC 128, as to whether the “surrounding residential areas” referred to in the intent for Precinct 5 mean, or include, the area of “detached housing on large lots”, including the lots in Toral Drive near the subject site. It was submitted, on behalf of the appellant, that it does not. It was pointed out that those lots are within the Urban area and not within the Permissible Area for Rural Residential. The planning scheme does not otherwise describe the land in Toral Drive as rural residential. Further, the relevant statement of intent does not speak of development in the precinct minimising impacts on other land in the precinct. Rather, it speaks of development “of this precinct” minimising impacts on “the surrounding rural residential areas”. It was submitted that the statement is concerned not with the impacts of the subject site on its neighbours in Toral Drive, but on the prospect of development of Precinct 5 impacting on rural residential areas which surround Precinct 5. It was pointed out that two areas which adjoin almost the entire length of the northern boundary of the precinct (and the planning area) and more than half the western boundary of the precinct (and planning area) are so designated.
- [22] The appellant’s contention does not appear unmeritorious, but was rejected by White DCJ in *MLK Newton Pty Ltd v Maroochy Shire Council* (supra). It is ultimately unnecessary for me to resolve that issue of interpretation. The likely impact of an impact assessable proposal on existing development in the area, including on its existing and likely future character and amenity, are relevant considerations in any event.

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<sup>4</sup> T66.

- [23] Mr Venn regards the proposed development as inconsistent with the character of what he perceives to be a rural residential enclave, the sense of place of which would be eroded by the proposal. In his view, the existing ‘detached house on large lots’ land use should be seen as the “end” land use in this part of Toral Drive and as a legitimate component of the residential land use diversity and choice offered in Precinct 5. Mr Ryter conceded that the development would have some impact on the character, but did not consider that the impact would be undue. That issue was considered, in more detail, by Mr O’Brien, who was also called by the appellant.
- [24] It is apparent that the planning scheme (including the relevant Area and Precinct provisions) intends there to be a wider range of residential dwelling types and densities. That will inevitably have some impact on the existing character of the area. The planning provisions do not quarantine Toral Drive from that. Indeed, Toral Drive is in the southern part of the precinct, the proximity of which to the town centre and university is relevant to the intention to achieve a wider range of residential dwelling types and densities. That wider range will start to become evident, within the eastern part of Toral Drive, once the existing approvals are acted upon.
- [25] The respondent’s case emphasised the location of the subject site towards the western extremity of Toral Drive, in a location which is removed from the sites of the existing approvals and which is also to the west of a deviation in Toral Drive. In *MLK Newton Pty Ltd v Maroochy Shire Council* (supra) White DCJ was satisfied that “that part of Toral Drive which has a rural residential character of any significance commences to the west of Lot 4, the smaller parcel of land, the subject of the application.” The subject site is west of Lot 4.
- [26] The likely impact of the proposal on visual amenity and on character was the subject of a detailed and careful assessment by Mr O’Brien. In his opinion:
- (a) The proposed development would have minor visual impacts on neighbours to the east and west and no impact on sites to the south or from the motorway;
  - (b) The visible catchment of the development would be very small and would affect few passers-by and few local residents. In any event,

the extent of building that would be readily visible to passers-by on Toral Drive would be a two-storey residential building;

- (c) Once planting matures, the views of the proposed development from the street would be little different from that of other lots in Toral Drive and Jorl Court, which are currently occupied by larger detached houses, garages etc.
- (d) The existing character of most of Toral Drive and Jorl Court does not portray a rural residential character, but portrays the character of a suburban residential area of large houses close to the street on large lots set in relatively close proximity to each other. Rural characteristics are not evident from the street.
- (e) The character of the proposed development, while not identical to the existing area, will be sufficiently compatible with it and the likely future character of the area will be influenced by other approved multi-unit developments.
- (f) Irrespective of whether the phrase “surrounding rural residential areas” is intended to describe areas that are designated under the planning scheme as “rural residential” or less specifically to describe adjoining or nearby lots which have a rural residential character, the proposed development will have minimal impact on adjoining or nearby land which does not, in any event, exhibit a rural residential character.

[27] It is legitimate, in considering the likely future character of the area to have regard to the existing development approvals, although one must also acknowledge that the sites of these approvals are in a different part of Toral Drive. Reference was also made to certain undecided development applications. While they may reflect development interest and desire, I have disregarded them, since I am not in a position to speculate about their merits or prospects of success.

- [28] The proposed development differs from that which exists in the part of Toral Drive within which the subject site is situated. That difference would not be a secret. The development would have some effect on the existing character and sense of place of that part of Toral Drive. Having regard to the evidence of Mr O'Brien however, the extent of that impact would not, of itself, lead me to refuse the application, were it otherwise consistent with the planning scheme.
- [29] The proposed development would increase traffic along Toral Drive, including in the western part of Toral Drive, where the subject site is situated. That would not cause any undue specific traffic problem in Toral Drive or at its intersection with Stringybark Road. Mr Pekol, the traffic engineer engaged by the appellant, estimated the increase in volume at about 140 vehicles per day. The western part of Toral Drive has very low traffic volumes at present (about 80 vpd), which would not be affected by development further to the east. The contribution of the subject proposal to traffic volumes along Toral Drive would be proportionally greater for the western end, where volumes are otherwise low, than for the eastern end, where volumes are otherwise greater. For the western end, the increase would be numerically significant and would also be noticeable, although the total volume would remain relatively low. The council relied upon this not so much as a specific noise issue, but as something which would also be a change to the character of the locality.<sup>5</sup> I accept that there would be some noticeable change in this regard but, again, the extent of that change is not such as would, of itself, lead me to refuse the application.
- [30] Mr Holland, the traffic engineer called by the respondent, gave evidence that the proposed development is unsatisfactory on the grounds that it is unacceptably remote from public transport and on the basis of its reliance on a single means of access to the general road system.
- [31] The traffic engineers agreed, in their joint report, that the provision of higher density residential development in proximity of the Sippy Downs town centre and the Sunshine Coast University would be a logical outcome, but they also agreed that the proposal's consistency with that outcome is subject to, amongst other things:

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<sup>5</sup> See Ex 1 pg 92.

“the provision of additional road network connections from Toral Drive to the surrounding road network (eg Jorl Court), to facilitate emergency access and an efficient bus service for the area”

No such additional road network connections are proposed.

[32] In the absence of such a connection, Mr Holland saw the proposal as inappropriately removed from public transport facilities and as failing to have appropriate alternative emergency access. Mr Pekol was of the opinion that the scale of this proposal is sufficiently small that, in itself, it is unlikely to adversely affect local traffic operations or residential amenity or significantly increase the need for a separate emergency access route to Toral Drive. Reliance on the small scale nature of an otherwise undesirable proposal needs to take account of the need to guard against cumulative impacts. In this case Mr Holland is opposed to ongoing incremental development of the type proposed, in the absence of a “more holistic traffic and access solution” for Toral Drive.

[33] Not all development has alternative emergency access. The existing large lot development in Toral Drive does not have alternative emergency access. Mr Holland referred to a “rule of thumb” that an alternative emergency access ought be available where the number of dwellings served is more than one hundred. He saw that as being reflected in Acceptable Measure A2.3 of the Reconfiguration of a Lot code which provides:

“All residential neighbourhoods of more than 100 lots or dwelling units are provided with more than one connection to a district collector street or higher order road.”

[34] That provision is only an acceptable measure and, as Mr Ure pointed out, the Reconfiguration of a Lot code is not applicable to this application.

[35] Mr Pekol did not cavil with the desirability of an alternative means for emergency access. In his report Mr Pekol acknowledged that “Queensland Streets and the local planning scheme highlight the need to provide an alternative means for vehicular access into residential areas where the number of lots served by a single street exceed

100.” He also acknowledged, in his oral evidence, that the figure of 100 is “a desirable limit”<sup>6</sup>.

[36] There was some speculation, in the course of the evidence, that emergency access might be available via a power easement or through the MLK proposal (which is proposed to have emergency access via Stringybark Road<sup>7</sup>), but the evidence fell short of establishing that an alternative access would be available.

[37] Mr Pekol pointed out that the requirement for alternative access had not been rigorously applied in the past and that, leaving aside the MLK proposal (which is to have its own emergency access) the number of existing and approved dwellings is less than 100 and the subject proposal would lead to only a relatively small exceedence of the ‘limit’. Mr Holland, on the other hand, queried where the line would be drawn if the ‘limit’ could be exceeded incrementally.

[38] I accept that the subject site, towards the end of a long cul-de-sac, is not the ideal place to be increasing density in the absence of alternative emergency access. That might not, of itself, present an insurmountable barrier to approval, given that the ‘limit’ is not reflected in a provision of the applicable code and given the matters upon which Mr Pekol relied. The emergency access issue is not however, the only traffic or transport planning issue.

[39] The remaining issue is the proximity of the subject site to public transport. That is a significant issue because, in providing for a wider range of residential dwelling types and densities, the intent for the Stringybark Road West Precinct expressly provides that medium density housing development should be located “close to the public transport facilities”. Indeed, in the absence of an LASP or other more comprehensive planning for the precinct, that is the criterion by which the statement of intent identifies where medium density housing development should be located within Precinct 5. That proximity to public transport facilities should be seized upon as the touchstone for the location of medium density housing development is unsurprising in the context of the planning scheme provisions otherwise. Mr Holland’s evidence is to the effect that the proposal is unacceptably remote from public transport facilities.

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<sup>6</sup> T23.

<sup>7</sup> See para [3] of the reasons for judgment.

- [40] The planning scheme does not, in terms, define what distance is said to be “close” to the public transport facilities, for the purposes of that part of the intent for Precinct 5. The word “close” is a relative and imprecise term relating to the distance or interval between one thing and another. The determination of what is ‘close’ involves issues of fact and degree, in the relevant context. The subject provision is concerned with closeness to public transport facilities. The public transport facilities of relevance for present purposes are the bus facilities in Stringybark Road. Whether the proposed development is ‘close’ to those facilities should be judged by reference to the distance between the development and the closest bus stops, being the point where the bus facilities are accessed.
- [41] Mr Holland’s evidence is that there is a very widely accepted rule of thumb that planning should seek to achieve 90% of residences being located within 400m of a bus route. That equates to a five minute walk. The Maroochy Shire Planning Scheme Policy No. 6 – Transport, Traffic & Parking contains (in Section 3.2) guidelines to be followed in order to ensure that convenient and effective bus services can be achieved. Those guidelines seek to achieve bus routes within 300 – 400m walking distance (to 90% of establishments) within Urban areas and within 200m in the case of demand responsive routes. Attention was also drawn to the provisions for the Stringybark East precinct, within which medium density housing “should be encouraged adjacent to the centre within 400m (a five minute walk) where there is high accessibility to ... public transport routes”.
- [42] While those provisions may be illustrative of the 400m rule of thumb referred to by Mr Holland, it must be remembered that they are not the provisions in question. The statement of intent for Precinct 5 uses the word ‘close’, rather than any specific distance measured in metres. A strict 400m criterion cannot simply be substituted for words used in the statement of intent.
- [43] The closest public bus stops are located in Stringybark Road, north of its intersection with Toral Drive. The closest bus stop on the western side of Stringybark Road (for services heading north), is over 700m from the subject site, while the bus stop on the eastern side (for services heading south), is more than a kilometre away.<sup>8</sup> The subject proposal could not be described as “close” to those existing public transport facilities.

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<sup>8</sup> Mr Ryter’s evidence is that the stop for southbound services is 1.2km from the Toral Drive / Stringybark Road intersection.

- [44] The appellant relied upon the “anticipated future provision of good bus services along Stringybark Road”. In particular, it was pointed out that in the intent for Precinct 1 (Sippy Downs Town Centre Core) it is said that “the design of Sippy Downs Drive and Stringybark Road should provide for bus stops approximately every 400 metres and taxi ranks in suitable locations.” It was contended that one could reasonably expect the future provision of a bus stop in Stringybark Road at or near its intersection with Toral Drive, particularly if and when the other approved multi-unit dwelling developments are constructed.
- [45] The planning intent for bus stops approximately every 400m (assuming that intent relates to the whole of Stringybark Road) has not yet been realised, notwithstanding the age of the planning scheme. Whether it is achieved and if so when, and what the specific bus stop locations will be, is not certain on the evidence and might possibly be influenced by the decisions of others, as to whether and when to act upon development approvals which might serve as the catalyst for the provision of more bus stops. Any claim that the proposal would locate medium-density housing close to the public transport facilities would appear to be, at best, premature.
- [46] Mr Holland was prepared to accept that, if the approved developments were constructed, it is logical for a new bus stop to be located in the vicinity of the Stringybark Road / Toral Drive intersection. His report dealt with access to public transport on the basis that “the development is 550m walking distance to bus services operating along Stringybark Road”<sup>9</sup>. Even on that basis however, he described the access to public transport as “poor” and the proposed development as “unacceptably remote” from public transport.
- [47] The difficulty, in this respect, is not just the number and positioning of bus stops along Stringybark Road, but the length of Toral Drive and the location of the subject site towards the western extremity of that long<sup>10</sup> cul-de-sac. Consequently, anyone wishing to walk between the proposed development and either the existing or future bus stops along Stringybark Road would be required to travel in the order of half a kilometre or more.

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<sup>9</sup> The distance from the site to the intersection was also said, in other evidence to be 520m.

<sup>10</sup> Indeed I note that the subject site appears to be, if anything, geographically closer to the western boundary of Precinct 5 than to Stringybark Road to which it is connected by road, at the eastern boundary of the precinct.

[48] In his report, Mr Ryter said:

“If a new bus stop was situated at or near this location (the intersection) then the subject land would be 600 m from that new bus stop. Whilst this slightly exceeds 400 m walking distance, the additional distance is not considered to be significant, particularly when the age of the majority of university students, who are likely to occupy these premises, is taken into account.”

In that regard however:

- (a) Mr Ryter’s opinion is premised on the assumption of a new bus stop, at some future time. It does not relate to the existing situation.
- (b) Mr Ryter focuses on what might be ‘significant’ in the context of university students. While the site’s location and the ‘all ensuite’ design of the proposal may attract some university students, it is not unsuitable for others and the evidence does not permit any confident prediction about the precise future tenancy profile
- (c) The test is not what distance a young university student might be prepared to walk. It is whether the development is ‘close’ to the public transport facilities. Further, as Mr Holland explained in the course of cross-examination, the transport planning objective served by that closeness is related to positively enticing people to use public transport.<sup>11</sup>

[49] I am not satisfied that the proposal is “located close to the public transport facilities”. It would be remote from the existing bus stops in Stringybark Road and would be closer, but not close, to any future bus stop located at or near the Toral Drive / Stringybark Road intersection.

[50] What then is the justification for permitting a multi-unit development other than where the intent for Precinct 5 says medium-density housing should be located? It was submitted, on behalf of the appellant, that any conflict with the planning scheme in this regard should be viewed as minor and judged to be outweighed by the following grounds advanced by Mr Ryter, as being sufficient to justify approval:

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<sup>11</sup> T40-41.

- (i) The subject land is extremely well located for the type of development proposed, including its density, having regard to its proximity to a number of community and commercial facilities (a view shared by the traffic engineers engaged by the parties in the appeal);
- (ii) The proposal will add to the diversity of housing choices available in the subject locality;
- (iii) The proposal consolidates and expands upon existing and approved residential development (including medium density residential development) in the subject locality;
- (iv) The proposal is for a high quality medium density residential development designed for, and likely to accommodate students;
- (v) (The proposal) will have no unacceptable environmental amenity or traffic impacts, subject to appropriate conditions being imposed.

[51] It is relevant to consider the role and importance of the planning scheme provision which would be infringed should the development proceed. The potential suitability of multiple dwelling units in this precinct is qualified by the requirement that they be ‘appropriately located’. As I have already observed, closeness to public transport facilities is the touchstone, used by the intent for Precinct 5, for identifying where medium density housing should be located, as part of achieving a wider range of residential dwelling types and densities. I do not regard the conflict as trivial.

[52] Insofar as the particular grounds relied upon:

- (i) While it is true that the traffic engineers agreed that the provision of higher density residential development in proximity of the Sippy Downs town centre and the Sunshine Coast University would be logical, that point of agreement went on to state that the proposed development’s consistency with that logical outcome was subject to (amongst other things):

“the provision of additional road network connections from Toral Drive to the surrounding road network (eg Toral Court), to facilitate emergency access and an efficient bus service for the area”.

- (ii) The proposal would, if developed, change the mix of housing choices in the precinct, by adding a modest amount of medium density housing at the expense of one dwelling on a large lot, but the evidence did not demonstrate

the extent of the need for further development of that kind, having regard to the approvals which have been granted or establish that the additional diversity could not be achieved while locating medium density housing close to the public transport facilities.

- (iii) The proposal may consolidate and expand on the existing and approved residential development in the locality, in the sense of providing another multiple dwelling unit development, but it is a 'stand alone' proposal, separated from other like development and not part of any comprehensive planning for the pattern of future residential development in the locality (as might have been the case if there were a meaningful LASP).
- (iv) I accept that the proposal would be of a high quality and may attract some students, although the evidence does not permit an assessment of the extent of the need for such accommodation or the likely precise future tenancy profile. There is no evidence that any such need cannot be met by locating medium density housing close to the public transport facilities, as the scheme intends. I have previously dealt with Mr Ryter's contention that the distance from the subject site to the public transport facilities is not significant for students.
- (v) The mere absence of unacceptable impacts is not, of itself, a sufficient ground to warrant approval. In any event, the development would not be devoid of consequence or impact, if it were to proceed. The resultant increase in density in a location without an established alternative emergency access and the impact of the proposal otherwise have been dealt with earlier. While none of those matters may, in and of themselves, have led to a refusal, they remain relevant, particularly when considering whether an absence of significant impacts weighs in favour of an approval.

[53] The proposal falls within a precinct where multi-dwelling units may be considered consistent with the intent and desired character, subject to appropriate location, siting and design. The difficulty, in this case, lies in the location. While it is within the southern part of Precinct 5, where a wider range of residential dwelling types and densities are intended, it lies towards the western extremity of a long cul-de-sac. The

consequence is that it is not located close to the existing or likely future public transport facilities along Stringybark Road. The site is not where the statement of intent for Precinct 5 says medium density housing development should be located, as part of the intended range of residential dwelling types and densities. I am not persuaded that there is sufficient justification to depart from the statement of intent for the precinct in that regard.

[54] The appeal is dismissed.