

PLANNING AND ENVIRONMENT COURT

JUDGE ROBIN QC

P&E Appeal No 278 of 2007

FILESTOCK PTY LTD

Appellant

and

CABOOLTURE SHIRE COUNCIL

Respondent

BRISBANE

..DATE 03/04/2009

ORDER

CATCHWORDS: Integrated Planning Act 1997 s4.1.52(2)(b) - appeal against deemed refusal of application for reconfiguration. Minor change where access was now to be taken by a cul-de-sac road entering from the street to which the site had frontage, rather than by a much longer cul-de-sac road to another street dependent on part of the road being provided on adjacent land not yet developed - the new access arrangement was conformable with the Councils long term planning.

HIS HONOUR: The Court makes an order in terms of the initialled draft. Some time was devoted to the appeal last Wednesday. It was adjourned to today to enable the Council to prepare a formal order incorporating a conditions package to set out the way in which the development ought to proceed consequent on the anticipated allowing of the appeal, which was against a deemed refusal of a code assessable application for reconfiguration.

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The concerns the Council had have now been alleviated, but the Court still has to be satisfied that the appeal is an appropriate vehicle in which to consider the appellant's revised proposal. That depends on the changes made to satisfy the Council being accepted by the Court as minor change for the purposes of section 4.1.2(52)(b) of the Integrated Planning Act 1997.

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Another reason for the adjournment was to enable the co-respondent by election, the Main Roads Department, to consider its attitude to the dominating change, which is one of the road design instead of taking its access. From Lawrence Street to the south, along what would have been a long road culminating in a cul-de-sac, the seven new residential lots proposed will now take their access from Jocelyn Street to the east, and reasonably close to Beachmere Road which the Department controls. This change will provide the connection which the Council's local area structure plan, Exhibit 4, has been seeking as a part of its long-term planning.

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While there's a definite change in Jocelyn street by the introduction of a short cul-de-sac to the west, it's difficult to see anything but good in that, given the traffic imperatives of getting some suitable connection to the north and ultimately to Beachmere Road. The Council was justified in thinking the arrangements originally proposed by the appellant for access to the wider road system were less than optimal.

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Another change favourable to the application is the provision on lot 10, which was the south-eastern corner block, of a 300 square metre detention basin which will alleviate concerns the Council previously had regarding drainage issues. Lot 10 will now be the only one with a frontage to Jocelyn Street. There is a rearrangement of lots 9 and 10 by redefining the boundary between them by a north-south line rather than an east-west one so that lot 9's access will be to the new road leading to Jocelyn Street. From any relevant point of view, the changes are minor and beneficial.

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