

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Aldi Stores (A Limited Partnership) v Brisbane City Council*
[2016] QPEC 11

PARTIES: **ALDI STORES (A LIMITED PARTNERSHIP)**
(appellant)
v
BRISBANE CITY COUNCIL
(respondent)

FILE NO: 4505 of 2015

DIVISION: Planning and Environment

PROCEEDING: Application allowed

ORIGINATING
COURT: Planning and Environment Court

DELIVERED ON: 25 February 2016, ex tempore

DELIVERED AT: Brisbane

HEARING DATE: 25 February 2016

JUDGE: Everson DCJ

ORDER: Application

CATCHWORDS: ENVIRONMENT AND PLANNING – Whether change to a development application is a permissible change – whether change would cause a person to make a properly made submission objecting to the proposed change.

Sustainable Planning Act 2009 ss367, 369

COUNSEL: B D Job for the appellant
M Woodhead for the respondent

SOLICITORS: HopgoodGanim for the appellant
Brisbane City Council Legal for the respondent

- [1] This is an application seeking a permissible change to a development approval in respect of land situated at 367 Handford Road and 330 Roghan Road, Taigum, which is currently approved for use as an Aldi supermarket.
- [2] The applicant seeks a permissible change to the development approval pursuant to section 369 of the *Sustainable Planning Act 2009* (“SPA”) to extend the Aldi supermarket. The reason for the extension is set out in the affidavit of Mr Leyshon, a retail analyst, filed on 19 November 2015. The supermarket has increased its product range since it commenced trading and as consequence has become crowded and shopper convenience has declined. Mr Leyshon states that the primary purpose of the extension is to enable the supermarket to better accommodate and display the expanded range of goods now offered in a typical Aldi supermarket. What is proposed is an extension to the floor space of 12.3 per cent. In the context of this small supermarket the 12.3 per cent extension in real terms amounts to 165 square metres. Mr Leyshon expresses the opinion that this will not result in a significant increase in sales.
- [3] The proposed extension will expand the floor area of the supermarket into the adjacent car park and five car parking spaces will be lost as a consequence. The five spaces lost are in the context of a reduction of spaces from 81 as approved to 76. On behalf of the applicant, Mr Williams, a traffic engineer, deposes that as a consequence of a survey undertaken by him, the loss of the five spaces will have no practical consequences as there is more than sufficient capacity in the car park for prospective shoppers. He also deposes that the reduced number of spaces still comply with the current requirements pursuant to City Plan 2014.
- [4] A permissible change is defined in section 367 of SPA. Having regard to the material before me the relevant considerations are as follows:
- (1) A **permissible change**, for a development approval, is a change to the approval that would not, because of the change –*
- ...
- (c) for an approval for assessable development that previously required impact assessment – be likely, in the responsible entity’s opinion, to cause a person to make a properly made submission objecting to the proposed change, if the circumstances allowed;*
- [5] The term “**properly made submission**” is defined in Schedule 3 of SPA. What is therefore considered proper and what is not essentially refers to the technical requirements for making a submission. The applicant has some difficulties in addressing the requirement in section 367(1)(c) as when the then proposed Aldi supermarket was publicly notified it elicited a number of submissions. Most of these submissions dealt with traffic implications and I am satisfied that the change which is proposed would not have consequences which would be likely to cause a person to make a properly made submission in this regard.
- [6] There were, however, two submissions from commercial competitors who are the owners of retail facilities in the vicinity of the Aldi supermarket in question.

The submission in each instance focused upon the scale of the then proposed Aldi supermarket in the context of other proposed retail developments. One of these proposed developments was a Coles supermarket which now trades adjacent to the site of the Aldi supermarket. The other development application which was proposed at the time was for speciality stores also adjacent to the Aldi supermarket. This site has now been developed for a service station. It is submitted to me that the concerns of the commercial competitors were about the effective retail hub which was proposed to be created on and around the subject site and not specifically the proposed Aldi supermarket itself.

- [7] It is submitted that the change before me represents an increase of only 2.6 per cent to what was proposed for the three sites referred to in each of these submissions. It is further submitted, and I accept, that the change the subject of the application before me is of a very small scale in the context of the retail hierarchy in the area.
- [8] Having regard to these matters I am satisfied, when all of the relevant facts are considered, that the change the subject of this application would not be likely, in my opinion, to cause a person to make a properly made submission objecting to the proposed change if the circumstances allowed. I therefore allow the application.