

Development Watch Inc

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6 December 2015

The Chief Executive Officer
Sunshine Coast Council

By Email: mail@sunshinecoast.qld.gov.au

Dear Sir,

NOTICE OF SUBMISSION
MCU15/0069 - DEVELOPMENT PERMIT FOR A MATERIAL CHANGE OF USE
(SERVICE STATION AND RESTAURANTS)
797- 833 DAVID LOW WAY, MUDJIMBA

Surfing World Sunshine Coast Pty Ltd (the Applicant) has submitted an Application MCU15/0069 (the Application) to build a service station and two fast-food restaurants at 797-833 David Low Way, Mudjimba (the subject site). Development Watch objects to the Application for the reasons stated below and contends that Council should refuse the Application.

CONFLICT WITH THE PLANNING SCHEME

The Application conflicts with the planning scheme in that the proposed use does not comply with the specified use in Maroochy Plan 2000 (MP2000).

Development Watch accepts that, under certain circumstances, Council may approve an application that conflicts with MP2000. Any departure from the planning scheme must of course be justified by the applicant demonstrating to Council that there are sufficient grounds for that departure. The Sustainable Planning Act (SPA) requires that Council's decision on an impact assessable application must not "*conflict with [the planning scheme], unless ... there are sufficient grounds to justify the decision, despite the conflict.*"¹ "Grounds" are defined as "*matters of public interest*" but do not include "*the personal circumstances of an applicant, owner or interested party.*"²

¹ Sustainable Planning Act 2009 (SPA), s326(1)(b).

² SPA Schedule 3, Dictionary.

If Council does resolve to approve the application despite the conflict with MP2000, then it must publish in its Decision Notice *“the reasons for the decision, including a statement of the sufficient grounds ...”*³

NO OVERRIDING NEED

Council requested the Applicant provide a formal economic assessment of the proposal, which could perhaps demonstrate an overriding need for the development. The Applicant thought this unnecessary and merely provided a number of unquantified and unsubstantiated statements regarding the possible customer base for the service station and fast-food restaurants.

The Applicant places considerable hope for increased trade on approval of an expanded Sunshine Coast Airport. As no approval for this expansion exists, there can be no public interest grounds from this source to justify approval.

A PIECEMEAL APPLICATION

Although Council requested details of what was proposed for the balance of the site, the Applicant merely stated, “,,, *the future use of the balance of the subject site is not yet known ...*”. There is much case law to show that piecemeal applications are not looked on favourably by the courts⁴. Council should not approve an application where it does not know the full extent of uses to which the subject site will be put.

A FLAWED APPROVAL PROCESS

The Application was submitted on 18 May 2015. Five months earlier, Council issued a Decision Notice approving OPW14/0258, an application to fill the subject site. Council approved this application without being told (despite a request to the applicant) the purpose of the fill.

The extent of fill approved for the subject site matches the fill required to provide flood immunity for the use proposed in the Application now before Council. Development Watch is most concerned about this process of approving operational works before a related material change of use application is approved. It appears to pre-empt approval of the Application

³ See SPA s335(1)(n).

⁴ See, for example, *Fox & Anor v Brisbane CC & Ors*; *Fox & Anor v Brisbane CC & Anor*; *Stop Master Butchers Industrial Estate in Hemmant & Tingalpa Action Group & Ors v Brisbane CC & Anor* [2003] QCA 330

CONCLUSION

We strongly believe that the Applicant has not provided sufficient information that would allow Council to approve the Application. In addition, there are no matters of public interest involved in this application that would justify approval, merely the commercial interest of the landowner.

We ask that Council refuse the Application.

Yours faithfully

A handwritten signature in cursive script that reads "Lynette Saxton".

Lynette Saxton
President