# PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

| | |
|---|---|
| CITATION: | *Maroochydore Sands Pty Ltd v Sunshine Coast Regional Council & Ors* [2019] QPEC 30 |
| PARTIES: | **MAROOCHYDORE SANDS PTY LTD (ACN 160 391 051)**<br>(Appellant)<br><br>**v**<br><br>**SUNSHINE COAST REGIONAL COUNCIL**<br>(Respondent)<br><br>**v**<br><br>**MONTESSORI INTERNATIONAL COLLEGE LIMITED (CAN 128 791 828)**<br>(First Co-Respondent by Election)<br><br>**v**<br><br>**FRANCIS J ANDREW**<br>(Second Co-Respondent by Election) |
| FILE NO: | 4249 of 2016 |
| DIVISION: | Planning and Environment Court |
| PROCEEDING: | Minor Change Application |
| ORIGINATING COURT: | Planning and Environment Court of Queensland, Brisbane |
| DELIVERED ON: | 20 June 2019 (delivered ex-tempore) |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 20 June 2019 |
| JUDGE: | RS Jones DCJ |
| ORDER: | **It is declared that:**<br><br>1. **The proposed changes to the development application the subject of this appeal ("The Changed Development Application") constitute a minor change for the purposes of sections 350 and 495(2)(b) of the *Sustainable Planning Act* 2009.** |
| LEGISLATION: | *Sustainable Planning Act* 2009 (Qld) |
| COUNSEL: | J Houston for the appellant<br>B Rix for the respondent<br>C Wirz for the first co-respondent by election<br>D Bryar as agent for the second co-respondent by election |

| | |
|---|---|
| SOLICITORS: | Corrs Chambers Westgarth for the appellant<br>Sunshine Coast Regional Council Legal Services for the respondent<br>GANTT Legal for the first co-respondent by election |

[1] The application before me is, in effect, for orders that I am satisfied that the proposed changes to the existing application are minor changes. For reasons it is not necessary to go into, the relevant legislative regime is that provided for in the now superseded *Sustainable Planning Act* 2009. Relevantly section 350(1)(d) provides:

> "A minor change in relation to an application is any of the following changes to the application: a change that does not result in a substantially different development and does not require the application to be referred to in any addition referral agencies, does not change the type or development approval sought and does not require impact assessment for any part of the changed application if the original application did not involve impact assessment."

[2] The proposed use is a quarry. Not surprisingly, it was assessable in its original form, and will remain so in its now proposed form. It was and it remains a substantial quarry. That has not changed, and I am satisfied that no additional referral agencies would be required to be involved as a consequence of the intended changes.

[3] I have been provided with the statutory guidelines dated 11 December 2009. There, there is a series of dot points which is meant to be indicative only of what may constitute changes other than minor change. It is by no means an exhaustive list, but it is perhaps helpful to identify some of the matters that are addressed in that guideline. The first is:

> "Does it involve a new use with different or additional impacts?"

[4] Clearly, it does not involve a new use and, on the material I will come to in a moment, I am satisfied that it does not result in any material way in different or additional impacts, and, indeed, it would appear that a number of the changes are addressed to reduce impacts.

[5] The next question:

> "Does it result in the application having to involve a new parcel of land?"

[6] The answer to that is no.

> "Does it dramatically change the built form in terms of scale, bulk and appearance?"

[7] Again, the answer to that question is no. In respect of the issue of:

> "Does the change involve significant impacts on traffic flow and the traffic network to such an extent to have serious ramifications?"

[8] The answer to that question is part yes and part no. That is because of the change, in particular to the haulage route, something that I will touch on in more detail in a moment. There is no suggestion that the changes will have any material impact on infrastructure.

[9] In support of the application, reliance has been placed on the evidence of a number of highly qualified and well-experienced experts. As Mr Houston pointed out, none of those experts' evidence has been challenged either by contradictory expert evidence or cross-examination or, indeed, by any other means.

[10] Mr Natoli is a geologist. In his affidavit, after dealing with a number of issues, in paragraph 26 by way of summary he states that the proposed reduction in the annual extraction limit which was initially proposed will have the benefit of reducing the external operation amenity impacts and assist in the management of the extraction and processing operations. The proposed changes would also allow the extraction operations to be conducted more efficiently targeting the sand lenses and reducing the volume of waste material (over burden, inter-burden and fines) generated by the proposed development.

[11] He also, in paragraph 27, expresses the opinion that the proposed changes would not affect the ability of the proposed development to operate as originally intended, would not remove a component that would be integral to the operation of the development and does not introduce new impacts, at least at a geological level. He also expresses a similar view in respect of infrastructure.

[12] Mr Sutherland, the principal agricultural and environmental scientist with Gilbert & Sutherland, deals in particular with a number of matters, and more specifically, acid sulphate soils, groundwater, sediment and erosion control and climate change issues. Again, after setting out in some detail the matters that he had considered, in paragraphs 33 to 36, he identifies that the proposed changes would make no difference to climate change. He also identifies that the proposed changes which specifically target sand lenses within the landform, reduces the overall potential environmental risk, particularly in respect of acid sulphate soil management, groundwater drawdown and sediment transport offsite.

[13] He goes on to deal with those matters in paragraphs 35 and 36, but I do not consider it necessary to say anything more than that I have read those paragraphs and considered their content.

[14] The next area of expertise I was taken to was that of Mr Collins, the principal hydraulic and water resource engineer with the firm BMT. He, in paragraph 14, states:

> "Upon being briefed as an expert in the appeal, I:
>
> '(a) reviewed the flood modelling/management and water management arrangements proposed and recommended some modifications, including the provision of low bonding around each of the proposed extraction pits to exclude frequent low-level flooding from the pit in the interest of better water quality management and from the operational viewpoint;
>
> (b) conducted flood modelling to ensure that the modifications did not adversely impact on flooding elsewhere in the floodplain;
>
> (c) conducted water quality modelling to demonstrate that the environmental authority discharge requirements would be met, and refined the FEMP to provide for safe refuge for the site staff to address possible difficulties that I saw with the proposal by water technology.'"

[15] In paragraph 17, he then goes on to deal in more detail, if I can put it that way, with various aspects of the changes, and then in paragraph 8 sets out a number of conclusions which culminate in paragraph 9, also expressing the opinion that the proposed changes did not change the ability of proposed development to operate as intended, nor have any other meaningful impacts, particularly in respect of infrastructure. It would appear that the proposed changes are more likely to have positive consequences rather than negative consequences.

[16] Traffic was a particular issue or concern insofar as the first correspondent by election was concerned. However, based on the evidence of Mr Trevilyan, a traffic engineer, the first correspondent's concerns were addressed. That is not to suggest, though, that the concerns about traffic of those represented by Mr Bryar have been met. It is not necessary to go into Mr Trevilyan's evidence in any great detail, other than to note, in paragraphs 38 to 41, he deals with a number of particular features and conclusions and, in particular, in paragraph 41, concluded that, based on his assessment, it was his opinion that the proposed changes would not have any detrimental impacts on traffic operations, safety or the need for modified pavement contributions, and would not constitute a substantially different development, at least

insofar as traffic issues are concerned. That, of course, is a matter for me to decide, but based on his evidence I accept his summary of conclusions.

[17] As I understand it, while expertise addressing noise and dust was not initially considered by the applicant, as a consequence of concerns expressed by those whom Mr Bryar represents, a Mr King was retained specifically to address those issues. Mr King is a principal engineer with NWA environmental.

[18] His report, deals specifically with both noise and dust issues. It was his conclusion that, insofar as noise was concerned, the proposed changes would not result in any exceedance of acceptable noise limits, and, in respect of dust, his view was that the proposed changes would have no material impact on dust. He concludes that, by way of summary, on the basis of previous noise and air quality assessments and his consideration of the proposed amendments, in respect of both noise and dust, there would not be any increase that would be likely to cause an exceedance of the regulatory criteria at any sensitive receptor.

[19] On balance, I am satisfied that the changes are minor for the purposes of the *Sustainable Planning Act*. The original proposal was for a substantial quarry. That remains the current situation. Indeed, it would seem to me that most of the changes are for the better. That is not to say, of course, that there will not still remain impacts on amenity. That seems to be the inevitable consequence of all but the most remote of quarries.

[20] Of course, whether or not the proposal ought to proceed will be determined upon a full review of the merits, where it will be the applicant's burden to satisfy the decision maker that the proposal ought be approved, and in that context, Mr Bryar and those he represents will be able to test the evidence of any of the experts to whom I have referred and, indeed, any other experts that might be called, but that is a matter for another day.

[21] Mr Rix, counsel for the local authority, did not oppose the orders being sought. Mr Wirz, solicitor acting for the first co-respondent by election also advised me that he, on behalf of his clients, did not oppose the order as sought. Mr Bryar in effect said that, while his clients still have concerns, they were prepared to abide with the order of the Court.

[22] For the reasons given, I propose to make the orders in the form handed up to me, which I will initial and place on the file.