

In the Planning and Environment Court
Held at: Brisbane

No.

Between:

Mr Ken Park 1st Appellant

Major General David Ferguson AM CSC 2nd Appellant

Mr Ken Simper 3rd Appellant

Mr Peter Dallimore 4th Appellant

Mr Kevin Cranston 5th Appellant

Mrs Trixie Jones 6th Appellant

Mrs Dianne Oxenford 7th Appellant

And: **MORETON BAY REGIONAL COUNCIL** Respondent

And: **BRIBIE WATERS PTY LTD (ACN 152 668 203)** Co-Respondent

NOTICE OF APPEAL

Filed on

Filed by: Mr Ken Park as Agent for the Appellants
Service address: 8 Green Street Banksia Beach Qld 4507
Phone: 0406407626
Email: franken@iinet.net.au

Mr Ken Park, Major General David Ferguson AM, CSC, Mr Ken Simper, Mr Peter Dallimore Mr Kevin Cranston, Mrs Trixie Jones and Mrs Diane Oxenford in the State of Queensland appeal to the Planning and Environment Court at Brisbane against the Respondent's decision to approve a Development Approval for a Material Change of Use – Development Permit for Air Services at 1780-1820 Bribie Island Rd Sandstone Point (Lot 6 on SP 281638) (**Application**).

The Appellants seek the following orders or judgements:

- a. The appeal be allowed; and
- b. The Application be refused; and
- c. The Co-respondent pay the Appellant's costs of, and incidental to, the appeal; and
- d. Such further order or orders as the Court deems appropriate

AFFIDAVIT OF SERVICE
Filed by Appellants

Mr Ken Park, Major General David Ferguson, Mr Ken Simper, Mr Peter Dallimore, Mrs Trixie Jones, Mrs Diane Oxenford, Mr Kevin Cranston
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The Land

1. The Land:

- a] is described as lot6 on Survey Plan 281368
- b] is situated at 1780-1820 Bribie Island Road, Sandstone Point 4511
- c] has an area of 32.4369 Ha
- d] for the purposes of the Moreton Bay Regional Plan is included in the:
 - i. Rural Zone
 - ii. and in the General Residential Zone Next Generation Neighbourhood Precinct

2. The application was lodged on 7th April 2021. [DA 2021/1375]

3. The application was properly made and was impact assessed.

4. Between 16th June and 9th July 2021 the appellants and others lodged 733 submissions of which 686 were properly made.

5. By letter dated 14th December the Respondent issued a Decision Notice approving the application subject to conditions.

Grounds of Appeal

6. The proposal is in conflict with the Strategic Outcome 3.3.5 of the planning scheme; land, air, noise.

Particulars: The proposal will lead to environmental harm and nuisance through unacceptable levels of noise.

7. The Proposal is in conflict with the Strategic Outcome 3.4.3 of the planning scheme: coastal management.

Particulars: The proposal will not manage the coastal areas, specifically Bribie Island and Pumicestone Passage to ensure ecological health, maintenance of natural physical processes and continued enjoyment by the community.

The proposed western flight path encroaches within 150m of existing noise sensitive uses and the north eastern flight path encroaches within 150m of potential noise sensitive uses.

8. The proposal is in conflict with Strategic Outcome 3.13.5.2 of the planning scheme: specific outcomes for coastal communities including Sandstone Point foreshores and Bribie Island planning area.

Particulars: Tourism and helicopter operations are not identified in 3.13.5 as part of the wide range of facilities and services required by the coastal communities or Bribie Island.

The proposal fails to recognise that the foreshores of Sandstone Point and the Pumicestone Passage waters are declared fish habitats, form part of the Moreton Bay Marine Area, and are declared wetlands and aquatic bird habitats; which are to be protected by their inclusion in the coastal and river lands place type. That place type excludes developments incompatible with protecting the

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significant values of these areas. The area also includes areas of special cultural significance to the Ngunda-Joondoburri Land Trust people.

9. The proposal fails to satisfy Planning Scheme Policy-Noise.

Particulars: The noise generated by multiple helicopters exceeds the allowable levels. The noise generated by any aircraft that deviates from the recommended flight path will exceed the allowable levels at the nearest noise sensitive receptor.

10. The proposal fails to achieve the following Performance Objectives for the General Residential Next Generation Neighbourhood Precinct {both at the adjoining residential areas and within the hotel property itself}

Particulars:

PO11: The amenity of the area and sensitive land uses will not be protected from the impacts of noise and other environmental nuisances.

PO12: Noise generating uses will adversely affect existing and potential noise sensitive uses.

PO 123: The development does not provide or maintain a suitable setback from waterways and wetlands that protect natural and environmental values.

11. The assessment of helicopter noise and nuisance at neighbouring properties needs to take account of the following:

a] Neither the respondent nor the applicant can regulate the flight path that an individual pilot chooses to use in a particular circumstance. Many such flight paths will be directly over neighbouring properties at low altitude, thus exceeding noise limits.

b] It is likely that more than one aircraft will be audible simultaneously so any noise assessment must consider that likelihood.

c] The noise and nuisance impact should also take account of the unregulated additional flights by the property owner in his private helicopter.

12. The development poses an unacceptable risk to life.

Particulars: Aircraft using the recommended flight path will pass directly over the Bribie Island Bridge at low altitude, giving rise to driver panic and bird strikes.

The applicant will find it difficult to separate hotel patrons on the ground near the landing zone from landing and taking-off helicopters.

13. The proposal does not conform with and is inconsistent with the amenity, character and community expectations for the adjoining residential zone next generation neighbourhood precinct nor does it conform with the expectations of environmental protection that has been provided to the waters and foreshores of Pumicestone Passage.

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Particulars: The development is incompatible with community expectations for residential areas and with a number of environmental agreements and legislative requirements at state and federal levels.

The development does not offer any community benefits as the facility is entirely for private use.

The development is unable to manage adverse noise impacts generated by the use of the development upon adjoining sensitive land uses, existing and future.

The respondent cannot regulate the flight paths.

14. In the event that the appeal against the approval is to be dismissed the following issues with Conditions remain:

a) The Fly Neighbourly Policy and Landing Procedure is to be amended to remove any doubt that all flights by the owners or by the owner's aircraft are to comply with all conditions and are to be included within the allowable flights specified in Condition 5.

b) Indicate that Condition 2 is always subject to Condition 4.

c) Conditions 5E and 5F are unenforceable on third parties: absent these conditions as the impacts of the use cannot be managed and the application should be refused.

d) Condition 8 should require a minimum 150m horizontal offset distance from ALL noise sensitive USES.

e) Conditions 10C and 11 purport to make the applicant responsible for recording, investigating and taking action on all complaints and non-compliances with the approval. The obvious conflict of interest fails to satisfy natural justice and fails to meet community expectations. Such conditions will be unenforceable. Conditions 10 and 11 should provide for independent monitoring, investigation and reporting of complaints and non-compliance.

f) The ENPLP should indicate that, except in an emergency, any aircraft movement flight path that is within 150m horizontally of any noise sensitive use is to be immediately aborted unless 1000ft. or more vertically above the noise sensitive use.

15. The Application ought to be refused for the following reasons:

a) The conflicts with the Planning Scheme and other instruments identified above; and

b) The proposal is contrary to the orderly development of the area having regard to existing and future sensitive uses; and

c) The proposal will result in unacceptable adverse amenity impacts and is contrary to the reasonable community expectations for a residential area.

16. In the premises, the Appellant seeks the following relief:

a) The appeal be allowed; and

b) The Application be refused; and

c) The Co-respondent pay the Appellant's costs of, and incidental to, the appeal;

and

d) Such further order or orders as the Court deems appropriate.

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Kenneth E. Park

Agent for the Appellants

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- a) **within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and**
- b) **serve a copy of the Entry of Appearance on each other party.**

The Entry of Appearance should be in Form PEC - 5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- a) **within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and**
- b) **serve a copy of the Notice of Election on each other party.**

The Notice of Election should be in Form PEC - 6 for the Planning and Environment Court.

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