

BETWEEN: **NEIL GRAHAM CRISP, CAROL ANNE CRISP, JULIE  
MAREE RITCHIE, PAUL JOHN RITCHIE, ROSS WILLIAM  
ST JOHN WOOD, BERYL DOROTHY EVANS, TATIANA  
GRASBON, ROMAN GRASBON, and MICHELLE DIAN  
SPENCER**

**Appellants**

AND: **BRISBANE CITY COUNCIL**

**Respondent**

AND: **PETER ROSS TORNABENE**

**Co-respondent**

### **CO-RESPONDENT'S SUBMISSIONS ON MINOR CHANGE**

#### **Material to be read:**

1. Affidavit of John Patrick Carroll, affirmed on 11 May 2009, except that the co-respondent does not read the words in paragraph 9(a) "from 5 to 6, thereby providing the total number of designated car parking spaces increases from 15 to 16".

#### **Introduction**

2. The parties have agreed to resolve the appeal subject to an increase in car parking spaces provided on the land the subject of the appeal to increase the number of designated car parking spaces from 15 to 18.
3. The Court must be satisfied that the change to car parking spaces is only a minor change pursuant to s 4.1.52(2)(b) of the *Integrated Planning Act 1997* (IPA).

#### **Background**

4. The land the subject of the appeal is comprised of two corner blocks on land abutting drainage reserve and parkland in Northgate.<sup>1</sup>
5. The co-respondent by election lodged a development application with the respondent on 18 September 2007 for a development permit for Material Change of Use – Multi Unit Dwellings (10 units) on land at 14 Elson Road and 31 Mann Avenue, Northgate, being Lot 3 on RP 76215 and Lot 39 on RP 34599 ("the proposed development").

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<sup>1</sup> See the aerial photograph annexed as JC-7 to the affidavit of John Patrick Carroll, affirmed 11 May 2009.

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CO-RESPONDENT'S  
SUBMISSIONS ON MINOR  
CHANGE  
Filed on behalf of the Co-respondent

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6. Exhibit JC-8 to the affidavit of John Carroll is a copy of the site plan for the proposed development as applied for by the co-respondent showing the provision of 5 visitor car parking spaces external to the 10 units. A further 10 car parking spaces were provided on the ground floor of each unit and are not visible in Exhibit JC-8
7. The proposed development, including the 15 on-site parking spaces, was impact assessable under the *Brisbane City Plan 2000* and was publicly notified in accordance with s 3.4.4 of the IPA.
8. The 5 visitor car parking spaces originally applied for and as proposed during the public notification period included a tandem car park beside Unit 4 and did not include a visitor car space between Unit 1 and Elson Road.
9. During the assessment process the respondent council indicated that it did not support tandem car parking due to concerns over its functionality in practice.
10. As a result of the respondent's concerns over the tandem car park, the co-respondent agreed to modify the proposed development to remove the tandem car park beside Unit 4 and include a single visitor car space between Unit 1 and Elson Road.
11. A delegate of the respondent approved the proposed development, including the provision of 15 on-site car parking spaces, subject to conditions, on 20 November 2008 ("the approved development").
12. The approved development included a condition that the approved development be carried out generally in accordance with the approved drawings, which included provision for 15 on-site car parking spaces.
13. Exhibit JC-9 to the affidavit of John Carroll is a copy of the approved site plan for the proposed development incorporating this slight change to the visitor car parking arrangement. It shows the provision of 5 visitor car parking spaces external to the 10 units. A further 10 car parking spaces were provided on the ground floor of each unit and are not visible in Exhibit JC-9.
14. The appellants appealed to the Court against the respondent's decision to approve the proposed development on 2 February 2009. The grounds of the appeal were town planning, flooding and traffic.
15. The parties have agreed to resolve the appeal on the basis that the co-respondent provide 3 additional onsite car parking spaces. Exhibit JC-10 to the affidavit of John Carroll is a copy of a proposed amended layout for visitor car parking to:
  - (a) increase the number of designated visitor car spaces from 5 to 8, thereby providing the total number of designated car parking spaces increases from 15 to 18; and
  - (b) modify the layout of visitor car parking to allow two, informal tandem car spaces adjacent to Unit 4 and Unit 9 in addition to the designated car spaces.

**Minor change**

16. Section 4.1.52(2)(b) of the IPA allows the Court to consider a “minor change” the a development application. The test for this has been variously stated in different judgments of the Court.
17. In *Butler v Kingaroy Shire Council* [2006] QPELR 804; [2006] QPEC 093 at [18] Brabazon QC DCJ noted that there were at least 17 decisions of the Court on the question of “minor change” and summarised their effect as:<sup>2</sup>

Each depends on its own facts. Two influential circumstances are identifiable in the cases. Are the changes likely to make the proposal more acceptable, or beneficial, to those who have objected? Are the changes such that they would be likely to cause a person to make an objection to the proposal, if the circumstances allowed? It can also be accepted that the court can often be generous in considering an application for a change.

18. Applying these principles it is submitted that the change proposed in this case is clearly a “minor change”. The addition of 3 extra onsite car spaces is likely to make the proposal more acceptable, or beneficial, to those who have objected and the changes such that they would not be likely to cause a person to make an objection to the proposal, if the circumstances allowed.

**Chris McGrath**  
**Counsel for the co-respondent**  
**12 May 2009**

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<sup>2</sup> See also *Studio Tekton Pty Ltd v Redland Shire Council & Ors* [2007] QPELR 174; [2006] QPEC 107, where Wilson SC DCJ helpfully collated and summarised several of the Court’s decisions on “minor change”.