

Debrief by Council Staff on Yandina Service Station Approval.

Cr Law organised a meeting on 14 July 2023 with Council staff and the YADCA, Business Yandina and Yandina School of Arts executive, in the hope that it would provide answers to why the Planning Scheme with its Overlays and Codes failed to prevent the service station being approved in the Planning and Environment Court

Participants

- Marie Reeve (YADCA President)
- Peter Baulch (YADCA Vice-President and OSCAR delegate)
- Elizabeth Synnott (YADCA Secretary)
- Bill Gissane (Business Yandina President)
- Daniel Weepers (Yandina School of Arts President)
- Lindsay Holt (OSCAR representative)

The Council was represented by

- Debra Robinson, Group Executive- Customer & Planning Services
- Damien Frey- Coordinator Appeals Management & Compliance
- Marcia Thompson- Appeals Management Lead
- Patricia Jensen- Development Services Manager
- Cr David Law

Meeting outcome

A power point presentation highlighted the changes made to the layout of the service station and the process involved in coming to a mediated agreement for approval. There was little time for Q&A but Cr Law has since sought answers to our questions. Responses are in blue. There is a requirement that Council follow the protocols of a "Model Litigant" and endeavour to avoid legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution. Council must uphold the highest ethical and professional standards by acting honestly and fairly and seeking to resolve the dispute as quickly as possible. This is mandated and regulated by the State Department of Justice.

<https://www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles>

Follow up Q&A

Planning scheme performance measures:

1. Why didn't the 2014 Planning Scheme's Hierarchy of provisions and Overlays [Heritage and Character & Scenic Amenity] protect our community and this block of land from such inappropriate development? And why did it not at least flag the block as having particular sensitivities and constraints that required the DA to be Impact Assessable?

- The site is identified as being in a character area under the Heritage and Character areas overlay and this does impose additional requirements which recognise the sensitivities of the site from a character perspective;
- The site is identified as adjoining a primary active frontage and primary streetscape treatment area on the Yandina Local Plan Elements Figure which also specifies additional streetscape activation and treatment outcomes;
- The level of assessment (code assessment) applies consistently to different levels of centre across the planning scheme area and at the time it was set, reflected an intentional policy response aimed at calibrating assessment levels to the level of assessed risk identified for different uses;
- It is only in rare cases that the current planning scheme triggers for an overlay, an increase in assessment level from, for example code assessment to impact assessment;
- The appropriateness of current assessment level settings is being further considered as part of the development of the new planning scheme.

2. Why was a red flag not raised at the pre-lodgement meeting when the applicable Overlays clearly provide a 'means of identifying physical constraints and other features that may 'affect the use of land and development'?

- Prelodgement Meetings are confidential and the meeting notes are only available to the applicant requesting the meeting. For your information, Council's assessment team highlighted the relevant overlays and constraints on the site for the built form outcome and that the site is in a Centre Zone where a Service Station use is an acceptable, code assessable use.

3. As the P&E Court required a new assessment of the DA and Council employed Shane Adamson as it's town planning expert what was his final analysis of whether the modified DA meet all the Sunshine Coast Planning Scheme requirements?

- Mr Adamson's final assessment of the proposed service station development included a summary of all other independent experts Joint Expert Reports and comments.

Mr Adamson concluded that:

- as the use was acceptable and code assessable at the location there were no planning grounds to maintain a refusal of the use;
- amendments to the built form achieved through the appeal process had removed issues of non-compliance; and
- on balance the refusal on built form could not be maintained in a performance based planning system.

Traffic Matters:

4. Why didn't Council's legal team delay signing the mediated agreement until the co-respondent's traffic engineers' reservation about the line of sight on Farrell Street was assessed and addressed to his satisfaction?

Council, and all parties including the State government, signed the Mediation agreement on the 15 March 2023. The Mediation agreement was dependant on a number of matters being attended to by the Appellant, this included the assessment of sight lines by the State government. The Department of Transport and Main Roads, via their legal representatives, provided consent to the proposed development on 21 March 2023 and their conditions on 5 May 2023.

5. Please confirm that the tanker exit route along Stevens Street, Buckle Street and Old Gympie Road was not assessed by the traffic experts. There is no record of it except in the "On Site Management Strategy" within the Judgement document.

As explained during our meeting on the 14th July, assessment of tanker routes for this type of development is not an assessment consideration in Council's Planning Scheme. In this case, the State government, as a party to the appeal, required that the tankers only accessed the site via a left turn from Farrell Street. Accordingly the "On Site Management Strategy" approved as part of the development approval ensures that this occurs. The exit via a right turn to Stephens Street was also required to ensure safe and viable exit from the site.

6. Will Council adopt a wait and see policy on the ability of a 19 m fuel tanker to turn left, out of Steven Street into Buckle Street with cars parked on both sides of the street, or will it assess the sweep path and take pre-emptive, remedial measures if required prior to completion of the service station?

Council does not expect that it will need to take any remedial measures at this time. In the first instance the applicant will need to construct as per the approval and then in the first instance this is an operational matter for the operator of the site to ensure that vehicles can enter and exit the site safely and effectively.