

JURISDICTION : TOWN PLANNING APPEAL TRIBUNAL

CITATION : ZIMMERMAN & ORS and CITY OF STIRLING
[2003] WATPAT 46

CORAM : MR P MCGOWAN
MR R HOPE-JOHNSTONE
MS M CONNOR

HEARD : 3 AND 4 JULY 2003

DELIVERED : 25 JULY 2003

FILE NO/S : APP 40 of 2003

BETWEEN : B K ZIMMERMAN
M E ZIMMERMAN
ZIMMERMAN NOMINEES PTY LTD
Appellants

AND

CITY OF STIRLING
Respondent

Catchwords:

Development - Supermarket - Metropolitan Centres Policy - Heritage considerations - Traffic - Amenity

Legislation:

Nil

Result:

Appeal dismissed.

Category: B

Representation:

Counsel:

Appellants	:	Mr M Hardy
Respondent	:	Mr J Skinner

Solicitors:

Appellants	:	Hardy Bowen
Respondent	:	McLeods

Case(s) referred to in decision(s):

Nil

MR P MCGOWAN, MR R HOPE-JOHNSTONE, MS M CONNOR:

1 The property the subject of the appeal comprises all of the land contained in:

- 1 Lot 10 Swan Location Y on Plan 2473 and being the whole of the land contained in Certificate of Title Volume 1733 Folio 267;
- 2 Lot 11 Swan Location Y on Plan 2473 being the whole of the land contained in Certificate of Title Volume 1702 Folio 868;
- 3 Lot 12 Swan Location Y on Plan 2473 being the whole of the land contained in Certificate of Title Volume 1884 Folio 81;
- 4 Lot 44 Swan Location Y on Plan 2553 being the whole of the land contained in Certificate of Title Volume 2022 Folio 23;
- 5 Lot 53 Swan Location Y on Plan 2553 being the whole of the land contained in Certificate of Title Volume 1429 Folio 844 (all of which are collectively referred to as the subject property).

Lots 10, 11 and 12 referred to above are on the corner of Beaufort Street and Second Avenue, Mount Lawley. Lots 44 and 53 are separated from Lots 10, 11 and 12 by Wenberi Lane.

2 The Appellants made application to the Respondent to:

- 1 Demolish the existing buildings on the subject site;
- 2 Establish a supermarket and two retail tenancies on Lots 10, 11 and 12;
- 3 Provide undercroft parking on Lots 10, 11 and 12; and
- 4 Provide additional parking on Lots 44 and 53 (“**the development application**”).

3 The development application was lodged with the Respondent on 7 November 2002. Because of matters said to arise under Statement of

Planning Policy No. 9 Metropolitan Centres Policy the application was also referred to the Western Australian Planning Commission (“WAPC”).

4 For reasons which will be explored in more detail later, ultimately the WAPC appears to have no difficulty with the application so far as the Metropolitan Centres Policy is concerned.

5 The Appellants’ application was refused by the Respondent and by notice dated 17 February 2003 formal notice was given to the Appellants by the Respondent of the refusal. In addition, reasons for refusal were provided:

- 1 The nature of the proposal and the proposed floor area, in conjunction with the already excessive retail floor area in the vicinity, does not comply with the City’s Draft Local Commercial Strategy, the Beaufort Street Land Use and Zoning Strategy and the WAPC Metropolitan Centres Policy;
- 2 The design of the proposal, being contrary to the Mount Lawley Heritage Area Guidelines and involving the demolition of a Municipal Inventory listed property;
- 3 The character and scale of the proposal being consistent with intent and provisions of commercial planning strategies, the streetscape and adjoining development;
- 4 The proposal does not comply with the City’s District Planning Scheme No. 2 in respect of parking provisions;
- 5 The detrimental affect of the proposal on traffic management and safety;
- 6 Amenity concerns as illustrated by the strong objections received by the City from residents in the locality and the likely impact of the proposal on commercial provision, streetscape, heritage, traffic management, noise and safety.

6 This appeal is brought from that refusal.

7 In the formal statement by the Respondent dated 1 April 2003, the Respondent also raised the following additional ground:

“The proposed development will not enhance existing local convenience retail facilities.”

- 8 However, during the course of the hearing, no evidence was led in relation to this question and it does not seem to arise as a matter for determination.
- 9 Further, the issue of car parking does not seem to have played any significant part in the issues put for determination in this appeal. In all other respects however, the reasons for refusal articulated by the Respondent in its refusal received by the Appellants on 17 February 2003 remain the issues in this appeal.
- 10 The three principle issues in the appeal therefore can be consolidated as follows:
- 1 Application and role of Metropolitan Centres Policy;
 - 2 Heritage considerations;
 - 3 Traffic and safety considerations (which also incorporate questions of amenity).

Metropolitan Centres Policy

- 11 Metropolitan Centres Policy is a statement of planning policy which by reason of Section 5AA and Section 61(1)(a) of the Town Planning and Development Act is a policy to which this Tribunal is to have due regard.
- 12 The underlying philosophy of this Policy is to establish a hierarchy of metropolitan centres. In Metropolitan Centres Policy the Beaufort Street (Inglewood) District Centre is identified as a traditional main street centre.
- 13 The WAPC has effectively identified the subject property as being part of the Beaufort Street (Inglewood) District Centre.
- 14 The Respondent contended that this allocation was incorrect. It sought to lead direct evidence that in fact the subject property was properly included as part of the Third Avenue Local Centre. Reliance was placed by the Respondent on the Commercial Land Use Survey used by the Department for Planning and Infrastructure, which identified by numbers properties between the intersection of Beaufort Street and Walcott Street and Beaufort Street and Central Avenue as part of what are said to be on the one hand the Inglewood District Centre and on the other the Third Avenue Local Centre.
- 15 Nevertheless the accepted decision, which appears as part of Mr Collier's statement (Mr Collier being the relevant planning officer called on behalf of the Respondent), was that WAPC had since classified the subject

property as part of the Beaufort Street (Inglewood) District Centre and has determined as a result that the additional net lettable (NLA) area resulting from the Appellants' application for approval falls within the level referred to in the Metropolitan Centres Policy for the Inglewood District Centre.

16 By this is meant that within the structure and hierarchy of the Metropolitan Centres Policy the local centre should not have a total NLA area exceeding 4,500sqm.

17 The present application would involve an NLA of approximately 2,400sqm.

18 As an ancillary argument, the Appellants led evidence from Mr Ian Booth. Mr Booth is an economist and a statistician. He gave detailed evidence in relation to an analysis of the provision of shops within the immediate and adjacent areas. From that detailed exercise he was able to conclude:

- 1 There is a general absence of major supermarkets in the 2km to 3km area around Mount Lawley;
- 2 There is substantial existing retail outside these suburbs;
- 3 The positioning of Mount Lawley providing good access from neighbouring suburbs.

19 Having so concluded, he undertook an exercise from which he derived the conclusion that there is "an unsatisfied marketplace demand for the supermarket type of shops proposed for the subject site."

20 In essence he was able to demonstrate that, even with the introduction of the proposed development on the subject site, there would be an oversupply of 60sqm based on projections for the year 2005.

21 Such evidence was led not in relation to an issue as to whether or not there was a commercial need, but rather to supplement the conclusions reached by WAPC as to the appropriateness of this development in the context of the Metropolitan Centres Policy and in particular in the context of the classification of the subject site as being part of the Beaufort Street (Inglewood) District Centre.

22 We accept the evidence of Mr Booth and accept the conclusions to which he has come. There was no countervailing evidence nor was he in cross examination subjected to any contrary views advanced on behalf of the Respondent.

- 23 As a result, we have come to the conclusion that the subject site is properly classified by the WAPC and as such is consistent with the terms and provisions of the Metropolitan Centres Policy which, as we have indicated above, is a Policy to which we pay due regard.
- 24 In those circumstances, we are of the view that the matter is appropriately before us, and as indicated above, the remaining issues to be addressed are:

“23.1 Heritage and Design Issues

23.2 Traffic and Safety (including Amenity)”

Heritage and Design Issues

- 25 The proposed development requires the demolition of buildings on Lots 10, 11 and 12 Beaufort Street, Mt Lawley and Lot 53 Third Avenue, Mount Lawley. The only building of particular concern is the existing building on Lot 10, which is listed in the City of Stirling’s Municipal Inventory as a Category 2A building and is described as:

“A shop of a type that was once common in Beaufort Street and now scarce. It contributes to the streetscape in concert with its neighbours.”

- 26 Expert witnesses called by both parties agreed that the building itself is not of high significance in terms of heritage value such as to require its retention, although Ms Rosario, called on behalf of the Respondent, does contend the building has a significant role in defining the street corner of Beaufort Street and Second Avenue in a traditional manner and that any replacement building should provide the same articulation to the street corner.
- 27 The subject land is situated in the Mt Lawley Heritage Protection Area as depicted in Schedule 4 of DPS 2. The intent of the Heritage Protection Area as specified under subclause 2.2.3.1 is to ensure that any new development is in harmony with and reflects, in this instance, the local streetscape and existing pattern of development. Heritage Protection Area Design Guidelines (“Design Guidelines”) have been adopted by the Respondent in accordance with subclause 2.2.3.2(c) of DPS 2.
- 28 Part 3.7 of the Design Guidelines refers specifically to commercial development and encourages new commercial development to reflect established street patterns and to respect traditional forms of development. The Design Guidelines also advocate a zero front setback for new

commercial buildings, noting that some properties may be subject to regional road widening, and that the main entrance should face the street.

- 29 The proposed development is set back approximately 2.1 metres from the Beaufort Street alignment. Mr Gill (an architect of considerable experience who had designed the plans for the proposed development) in his evidence stated that the 2.1 metre setback is required for road widening purposes and as such, the development has been designed to take into account the Metropolitan Region Scheme (“MRS”) road reservation. Mr Collier confirmed this in his evidence.
- 30 The Design Guidelines acknowledge that some properties may be affected by regional road widening, as is the case of the subject land. Given these circumstances, the 2.1 metre setback to the Beaufort Street alignment is appropriate.
- 31 The Respondent contends that the design of the proposed development is contrary to the Design Guidelines, as it does not reflect the traditional built form of historical development in the area, particularly in relation to the treatment of the street corner of Beaufort Street and Second Avenue. Mr Collier in his evidence also expressed some concern over the Beaufort Street elevation in regards to the scale and bulk of that portion of the building abutting the existing adjoining shop on Lot 13 Beaufort Street, Mount Lawley. The Respondent considers the height difference between the two buildings to have a negative impact on the streetscape.
- 32 The Appellants called Mr Ronald Bodycoat. Mr Bodycoat is an architect of considerable experience. Mr Bodycoat explained in his evidence that the Beaufort Street elevation presents as a uniform height, which results in the eastern most portion of the building being a full storey above the existing shop on the adjoining property. Mr Bodycoat said that the existing streetscape has been eroded and is erratic and unresolved and that the proposed development presents a continuous frontage to Beaufort Street, which incorporates elements that reflects the traditional pattern of commercial development along Beaufort Street.
- 33 The Tribunal is not convinced that the building should provide a stronger articulation of the Beaufort Street/Second Avenue corner. However, the Tribunal is concerned that the floor level of the Beaufort Street elevation is significantly higher than street level for a substantial portion of the elevation and that at pedestrian level, the undercroft car park will be a visually dominant aspect of the proposal. This element of the design also results in a height disparity between the proposed development and the

adjoining building which does not reflect established street patterns or the traditional built form of commercial development along this section of Beaufort Street.

Traffic and Safety Amenity:

- 34 The subject site has frontages to Beaufort Street on the south-eastern side, Second Avenue on the south-western side and Wenberi Lane on the north-western side. The proposed development has been designed to have a frontal aspect to Beaufort Street and Second Avenue, and the intersection they form, with pedestrian access being gained from Second Avenue through a covered piazza area.
- 35 Apart from nine right-angled parking bays along Second Avenue, all car parking associated with the development will be accessed from Wenberi Lane. Of the 177 on-site parking bays proposed, 107 will be located in the basement of the proposed structure and the remainder along Wenberi Lane between Second and Third Avenues.
- 36 The Appellants commissioned Mr Behnam Bordbar of Transcore Pty Ltd, an experienced Traffic Engineer, to assess the proposal and prepare a Traffic Impact Statement in relation to it and this was prepared in November 2002. The conclusions drawn in the Traffic Impact Statement were to the effect that the resultant additional traffic would have no significant impact on the operation of the intersection of Beaufort Street and Second Avenue, it would not undermine the safety of pedestrians and in particular school children and the traffic and safety related issues should not provide an impediment to the approval process for the proposed development.
- 37 After this Traffic Impact Statement, and following the refusal of the planning application by the City, further discussions took place between Mr Bordbar, Mr Evan Williams, a Traffic Design Engineer with the City and Mr Gary McCarney, a Transport Engineer with the Department for Planning and Infrastructure (DPI). As a result of those discussions, Mr Bordbar undertook additional traffic surveys and analysis which were documented in a letter dated 2 May 2003 and referred to both the City and the WAPC/DPI.
- 38 As a result of the further analysis, Mr Bordbar concluded that the introduction of traffic signals at the intersection of Beaufort Street and Second Avenue would improve the overall operation of the intersection significantly. That is a fact with which there is no dispute.

- 39 Mr Bordbar's Traffic Impact Statement states that traffic crash data sourced from Main Roads WA indicates a total of 53 crashes at the intersection of Beaufort Street and Second Avenue in the last five years. These figures, and the likelihood that the problem will be compounded by the increased traffic generated by the proposed development, raises traffic safety concerns.
- 40 In order to analyse the traffic operations at the intersection of Beaufort Street and Second Avenue, Mr Bordbar has utilised a computer modeling package known as SIDRA which is a widely recognised and commonly used intersection modeling tool. Considerable caution must be exercised when relying on SIDRA outputs which, in the case of the subject proposal, has resulted in some anomalies. Additionally, we are told by Mr Bordbar that the SIDRA software was upgraded between the November 2002 published Traffic Impact Statement and his May 2003 review of it, thereby producing different results.
- 41 From the results of Mr Bordbar's analysis, it can be expected that, without traffic signals, the impact on the Beaufort Street/Second Avenue intersection of the development proposal would be too great to be realistically contemplated. As a consequence, the Appellants indicated a preparedness to pay for the installation of the traffic signals.
- 42 The increased traffic volumes expected to be generated as a result of the proposed development are set out in Mr Bordbar's Traffic Impact Statement. He has estimated that, at its anticipated peak on Thursdays, the proposed development will increase traffic by a total of 3740 daily vehicle trips with an average of 2823 additional daily vehicle trips across the week.
- 43 As pointed out by Mr Williams of the City in his witness statement, there has been no attempt to identify the routes likely to be taken by these vehicles in travelling to and from the proposed development although it can be concluded that they will all be using either Second Avenue or Third Avenue and, given the development's orientation, predominantly Second Avenue.
- 44 Based on these predictions, Mr Williams expresses concern about what he describes as "a massive increase in terms of the capacity of Second Avenue and Third Avenue" which he claims "will have a substantial adverse impact on the operation of these roads".
- 45 Further, Mr McCarney of the DPI highlights his concern about the approach adopted by Mr Bordbar in his Traffic Impact Statement which,

in his opinion, fails to address a number of issues required to enable a full assessment to be made of the impact of traffic signals at the intersection of Beaufort Street and Second Avenue. Mr McCarney contends that “the installation of signals may have an adverse impact on the surrounding local area”. He further states that the:

“signals may concentrate traffic onto Second Avenue, particularly in peak periods, as the signals would make right turns onto Beaufort Street easier and safer to make than at the adjacent priority junctions, eg. at Third or Fourth Avenues.”

- 46 The Tribunal concurs with these concerns and considers that without traffic signals and from the traffic volumes predicted, the development proposal cannot be seen as a realistic proposition. Alternatively, with the benefit of traffic signals, there could be expected to be a marked improvement on the operation of the intersection but at the expense of the operation of the local residential streets.
- 47 Mr Bordbar’s assessment concentrated on the intersection of Beaufort Street and Second Avenue because, as he pointed out to the Tribunal on several occasions, that was all he was asked to do. No assessment was made of the impact of the anticipated development traffic on Second Avenue and Wenberi Lane, particularly given the fact that the Mount Lawley Primary School (“**the school**”) is located within the same street block and only about 200m from the subject site in Second Avenue.
- 48 On the matter of the potential impact of traffic as a result of the proposed development, Mr George Hajigabriel, a town planner called by the Appellant, agreed that the proposed development would effect a significant change in the area . He said that it would be a question of degree but nevertheless accepted that there would be an impact on the amenity of the area caused by the development in terms of the general operation of the road network, traffic and pedestrian movements and traffic signals.
- 49 As a consequence of the design of the proposed development, and in particular the configuration of the parking bays and the means of access to them, the vast majority of traffic movements resulting from the proposed development will necessitate the use of Wenberi Lane. Wenberi Lane is currently a relatively narrow accessway characterised by rear service access to existing business premises fronting Beaufort Street and restricted sight-lines due to development occurring right up to the boundary. Although the shortcomings of Wenberi Lane have been

recognised to a certain extent by its proposed widening to 6m between Second and Third Avenues, neither the City nor the Tribunal believe that Wenberi Lane is appropriate for the considerable increased level of use that it will be expected to accommodate as a result of the proposed development.

- 50 The influence of the school on the use of the immediate road network was clearly enunciated in the evidence of various witnesses called on behalf of the Respondent. In particular, Mr Ian Brown, a resident of Second Avenue between the subject site and the school, and Mr Philip Lucas, the current President of the school P & C, both gave a first hand account of the situation.
- 51 In an effort to control the flow of traffic around the school and improve the safety of its pupils, the school has implemented an unofficial and informal one-way system around the street block within which the school is situated to eliminate the need for children to cross roads when getting dropped off or picked up. With the school having a dual frontage to both Second and Third Avenues, the school traffic is asked to only circulate the school in an anti-clockwise direction utilising Second Avenue, Wenberi Lane, Third Avenue and Clifton Crescent.
- 52 The difficulty with this one-way system is that it only operates within the school community. It is neither marked nor signposted and is not designed to apply to the general populace. While it is sanctioned by the City and Main Roads WA, there is a reluctance to formalise it because of doubts about its workability for the wider community based on experience gained from elsewhere.
- 53 Although it only applies to school users, however, it is apparent that anybody who tries to travel against the flow, albeit lawfully, is going to incur the wrath of those for whom the system is designed. Photographs tendered in evidence clearly show that school traffic uses the roads as if they are only one-way making it difficult, if not impossible, for those who may seek to travel, as the roads are intended, in the opposite direction.
- 54 While any attempt to improve the traffic flow around a school to address the usually chaotic situation at either end of the school day cannot be denied, the Tribunal believes that this particular system, with its selective application, is manifestly unacceptable and inherently dangerous and it is surprising that the City is prepared to sanction it in the present circumstances. As a consequence, caution is required when affording any

weight to the level of opposition to the proposed development based on its impact on the school's one-way traffic flow system.

55 Notwithstanding, there is little doubt that the additional traffic generated by the proposed development will have a deleterious impact on the amenity of the residential area north-west of the subject site. Further, should the installation of signalisation at the intersection of Beaufort Street and Second Avenue occur, it will act as a magnet for traffic seeking the relative ease and safety which they will undoubtedly provide for traffic seeking to enter Beaufort Street.

56 It is proposed that the servicing of the development will occur via a loading bay accessed off Second Avenue in the vicinity of its intersection with Wenberi Lane. This servicing arrangement will necessitate large trucks reversing into the loading bay from Second Avenue. Concern about the safety of children making their way to school was proposed to be overcome by ensuring that the loading bay is closed during school peak times. No specific evidence was presented as to how that arrangement might be implemented or what may happen if trucks arrive while the loading bay is closed, but it has been indicated that a formal undertaking to facilitate its implementation could be provided. Notwithstanding, the operation of the loading bay will constitute a significant disruption to the efficient and safe use of Second Avenue by both vehicles and pedestrians, a situation which could be exacerbated by the situation arising from the installation of traffic signals at the Beaufort Street and Second Avenue intersection. Additionally, the noise factor resulting from large vehicles manoeuvring on Second Avenue, particularly when the mandatory reversing beepers are operating, must be considered.

57 For the above reasons the appeal will be dismissed.