

The Plantation – An Intriguing Application, Prosecution & Appeal Process

Noosa Parks Association
Friday Forum



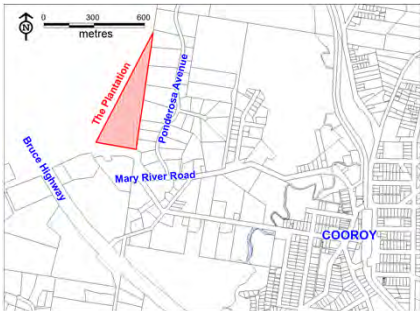
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Introduction

- o Review of The Plantation development application, prosecution and appeal
- o PSPS role – assistance to residents who appealed
- o Follow a chronology of key events in the process
- o Need for care due to legal nature of the topic and the potential for further development applications
- o Recognise the role performed by Sonya Maley

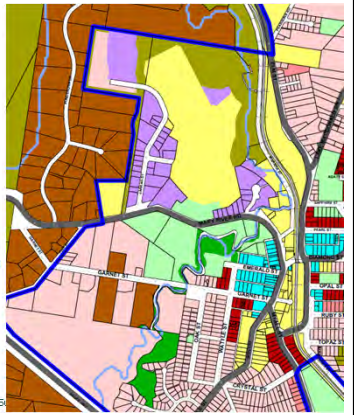
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Background: Site Location



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Background: Zoning



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Background: Existing Use & Development Application

- o Bed and breakfast approval (3 rooms) dating from around 2003
- o Messy initial application,
- o Eventually 'properly made' in October 2008 and clarified as:
 - Expansion of the bed and breakfast accommodation (to 8 rooms)
 - Conduct of a function venue (conference and wedding centre – up to 150 persons)

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Background: Site & Relationships



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Development Application

- o Advertised for submissions May-June 2009
- o Only 6 properly-made submissions lodged
- o 27 January 2010 Application recommended for refusal by staff as it:
 - will have a significant adverse impact on the amenity of the area for nearby residents as it has not been sufficiently demonstrated that noise from the outdoor function and ceremony area can be adequately mitigated.
 - conflicts with the Overall and Specific Outcomes of the Cooroy & Lake Macdonald Locality Code, as it will impact on the rural amenity of the area.
- o 04 February 2010 Cr Brennan moved the initial motion to approve the application arguing that most residents were in favour because there were only 6 submissions and saying that:
 - the proposed function and conference facilities will have economic benefits to the Cooroy township; and
 - impacts on amenity can be satisfactorily mitigated by conditions.
- o The latter despite the fact that staff had advised the opposite and without obtaining any technical evidence from a qualified party to support the contention.
- o Council staff were forced to prepare a set of conditions for an application that they did not believe could be conditioned satisfactorily.
- o The conditions were issued to the applicant and a negotiation process followed where Council agreed to change some of the conditions, but not others.

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20/03/2010 The Greek Wedding

- o At this time, an approval had been granted, but applicant negotiating conditions and submitters' appeal period yet to run ...
- o Summer House – abt 210m
- o [The Greek Wedding](#)



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Critical Condition 7

- o The use shall comply with the recommendations identified in an **Approved Acoustic Report**. In this regard, a revised acoustic report, prepared by a suitably qualified consultant shall be submitted prior to the issue of a Development Permit for Operational Works. The report shall incorporate the following:-
 - noise criteria for patron noise consistent with the criteria nominated by the Division of Liquor Licensing;
 - calculations shall include penalty adjustments; and
 - calculations shall not assume that surplus attenuation provided by vegetation would be the same for different types of noise (different spectra).

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Critical Condition 8

- o The use is to be carried out in accordance with an **event management report** which is to include, but is not limited to, the following self-management strategies:-
 - 8.1. the implementation of the recommendations of the **approved acoustic report**;
 - 8.2. a designated noise management officer in attendance at all functions and conference events who is responsible for:-
 - o 8.2.1. monitoring and controlling the conduct of all guests;
 - o 8.2.2. installing the acoustic panels required by the acoustic report;
 - o 8.2.3. the set up and monitor the use of a Bose amplification system which is to be set to a pre-determined maximum volume in accordance with the acceptable noise criteria levels;
 - o 8.2.4. taking db (A) readings at 30 minute intervals with a hand held db reader. The db (A) readings shall be logged and where levels are non complying with maximum noise criteria levels outlined in the approved acoustic report, the actions undertaken to achieve compliance shall also be logged. Immediate action shall be undertaken to reduce noise levels where identified to be noncompliant.

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Critical Condition 16

- o Functions and conference uses are only permitted in the areas described as the Summer House, Courtyard, Verandah, and Plantation Room. Marquees shall only be set up in these locations on site.



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Critical Condition 17

- o Function and conference uses shall only operate between the hours of **7am and 11pm, 7 days a week, with no outdoor functions permitted after 6pm, except on Fridays and Saturdays**. All non staying guests shall vacate the premises by no later than 11.30pm and the facility will submit a **management plan** prior to the issuing of the operational works permit for ensuring the quiet exit of nonstaying guests from the premises.

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08/05/2010 The Wedding Brawl

- Just before the Council granted the final approval to enable the submitters to appeal ...
- Near creek – abt 114m
- [The Wedding Brawl](#)



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06/2010 Appeals

- Met with submitters in June 2010
- One of the residents had kept a log of events, while another had 'video-taped' the noise of some of the prior events
- Each of these proved critical in the future processes
- Predicted that the Council would:
 - Struggle to get evidence to support its position
 - Eventually change sides and
- With this in mind the appeal strategy was to minimise costs i.e. avoid the need for lawyers and an acoustic expert
- Filed an appeal against the decision generally and specifically with regard to the legality of the 4 conditions
- Applicant appealed against one of the 4 conditions and of course was already operating the use

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Threats & Bullying

- The Plantation and its lawyers instigated a regime of threats and bullying which continued through much of the application and appeal periods:
 - Written threats of legal action against submitters and companies owned by submitters
 - Police calling on submitters with complaints from The Plantation about use of chainsaws and other equipment on weekends and about bagpipe playing
 - Letters sent to organisers of a fund-raising party threatening legal action if the party was held
- These very issues highlight the incompatibility of the use in its proposed form on the site – and it is a two-way impact (the events venue on the residents and the residents on the events venue)

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Event Management Plan

- *The Plantation is a beautiful and sophisticated addition to the Sunshine Coast visitor experience and is located in the Noosa Hinterland township of Cooroy. The property provides the Sunshine Coast Hinterland region with an outstanding opportunity to fill the gap previously not met in providing a facility capable of hosting functions and conferences of reasonable scale.*
- Is this about managing or marketing?
- *This Event Management Plan provides the guidelines and conditions to manage events and functions to ensure that the ongoing operation of The Plantation causes no detrimental effect upon the amenity of the neighborhood by reason of the creation of excessive noise, lighting nuisance or other emissions.*
- Well let's see how this beautiful and sophisticated addition performed ...

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28/08/2010 The Musical Wedding

- This was the straw that broke the camels back
- [28/08/2010 The Musical Wedding](#)
- The noise could be heard more than a kilometre away
- Residents cranked up and flooded the Council and Councillors with e-mails, petitions and letters



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30/09/2010 The Prosecution

- Proceedings initiated by the Council as a consequence of the resident complaints
- The Council made use of the log of noisy events and affidavits from residents
- The Court found that the respondent (The Plantation):
 - has been using (the land) for entertaining and dining business ... without a development permit for the use.
 - has thereby been unlawfully using the said premises.
- The Court also ordered that the use cease until appropriate approvals were in place ... but ...
- The suspended the restraining order until 12 December 2010 ...
- ... enabling booked weddings to occur up to that date (founded on the assumption that the appeals will be decided by then)

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11/2010 – 01/2011 The Acoustic Reports

- On the appeal front, little had happened in relation to the actual prosecution of the appeals during the period from June to September, except mountains of procedural paperwork; however ...
- August 2010 – without prejudice meeting with Council
- Finally in the October things started to move
- After a debacle with its first consultant, the Council engaged a second consultant and he and the appellants' acoustic consultant were required to prepare a joint report for the Court, the first draft of which was delivered in October 2010
- The recorded events vs the Council consultant's wizardry with the 'video' noise recordings
- Not unexpectedly, at least for the submitter appellants, the Council's acoustic consultant had all sorts of problems with the site and its development
- When the final report was released in January 2011 it was apparent that the use could not be conducted to an appropriate acoustic standard

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01/2011 The Mediation

- Consistent with the Court's order, The Plantation had ceased function-use of the land after 12 December 2010
- The residents quiet enjoyment of their land resumed
- Mediation took place in January and finally the point of the original strategy for the appeal came to fruition ... the Council changed sides
- The residents could finally take a back seat while the Council proceeded to deal with the matter appropriately
- No agreement was reached at mediation and mediation was adjourned and the matter potentially headed for trial, though it was obvious that there was no case capable of being argued by The Plantation

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02/2011 The Curious Finale

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The Learnings

- David can take on Goliath!
- An overall strategy helps enormously
- Not losing sight of that strategy when all the legal bulldust is floating around is just as important
- Keep a log of what happens, so that if the problem escalates, you have a record to show the authorities
- Making noise, at least as a submitter, pays dividends
- Most importantly, get your submission act together ... not doing so will be used against you (including by some Councillors)

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Questions

- View the slides: www.paulsummersplanning.com.au and click Presentations & Publications in the menu.
- Questions

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