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Community request for an External review of the RTI20/011 Decision and Internal Review Decision by Sunshine Coast Regional Council (SCRC)

Name of applicant

Melva Hobson PSM

President

Organisation Sunshine Coast Association of Residents (Inc) (OSCAR)

Contact details – as above

Date of Original RTI application

8 September 2020 (attached) - there were 2 changes to the application on 8 and 10 October initiated by SCRC and agreed to by OSCAR

Date Decision received

18 January 2021 RTI20/011(attached) - several extensions of time were requested by the RTI Officer and agreed to by OSCAR

Date of Internal review request

17 February 2021 - attached

Date Internal Review decision

15 March 2021 - attached

Commentary about the community involvement in this matter

The Sekisui House Development Application (MCU 17-0095) to which this RTI application relates has for several years been strongly contested by the Sunshine Coast community in general and the Yaroomba/Coolum community in particular. Some background information follows.

- In 2015, at a Special Meeting of the Sunshine Coast Regional Council open to the public, Councillors voted 10-1 against a Planning Scheme Amendment for a development proposal by Sekisui House, with Council citing planning conflicts as its main reason for refusal.
- In 2017 Sekisui House lodged an application to override the Sunshine Coast Planning Scheme (PS), for a slightly modified version of the 2015 development which was to be enabled by the proposed but rejected Planning Scheme Amendment. There were some 12000 submissions to this Impact Assessable application, approximately 9000 of which were objections.
- In June 2018 Councillors approved the application to override the PS with a 6-5 vote.
- The community, concerned that their submissions and the provisions of the PS were not given due consideration, appealed the matter to the Planning & Environment Court and subsequently to the Supreme Court, Court of Appeal. A decision from the Supreme Court is expected within the coming months.
- To fund this court process, the community has spent several years raising some \$600,000, so demonstrating the level of concern generated by the approval of this application.

The community has not been able to understand how Sunshine Coast Council could in the first instance recommend refusal of a PS amendment based on planning conflicts but subsequently approve a slightly modified version of the same development where the same planning conflicts were still relevant.

The Organisation of Sunshine Coast Association of Residents (OSCAR), as the Peak Residents Group on the Sunshine Coast, submitted an RTI requesting copies of all documents, emails, correspondence etc. between Council officers

for the period 1 May 2018 to 30 June 2018, to assist the community in understanding the assessment and approval process undertaken by Council staff.

OSCAR hoped that the release of information could go some way towards restoring community confidence in Council's development decision-making.

Review Request

OSCAR is seeking an external review of the RTI decision of the 18 January 2021 (9RTI20/011) and the internal review decision of 15 March 2021 due to the quantity and opacity of redactions and reasons supplied.

OSCAR has no objection to the redaction of privacy matters (mobile phone numbers etc.) under s. 47(3)(b) and some pages being redacted because the topic was not relevant to the Sekisui House application.

The majority of the redactions, however, have been applied under Schedule 3(7), Legal Professional Privilege (LPP). In relation to the redacted pages, a common element regardless of under which provisions applied, is the lack of indication as to the topic of discussion—who is involved in any exchange of correspondence and/or the exchange of documents, lack of description of the contents of the documents and how any of the redacted documents relate to this particular development – they are just blank pages.

Where s.47 (3)(b) has been applied, the author and recipient of correspondence has been supplied, date sent and subject of the correspondence. OSCAR considers that where Schedule 3(7) LPP is applied, exactly the same information should have been supplied: name of sender and receiver of correspondence, date sent and the subject of the correspondence, even if the body of the correspondence was redacted.

Whilst OSCAR acknowledges the provisions of legal/client privilege, our premise for seeking this information is underpinned by the preamble to the RTI Act as copied below:

An Act about rights to government and other information

Preamble

Parliament's reasons for enacting this Act are—

Parliament recognises that in a free and democratic society—

(a) there should be open discussion of public affairs; and

(b) information in the government's possession or under the government's control is a public resource; and

(c) the community should be kept informed of government's operations, including, in particular, the rules and practice followed by government in its dealings with members of the community; and

(d) openness in government enhances the accountability of government; and

(e) openness in government increases the participation of members of the community in democratic processes leading to better informed decision-making; and

(f) right to information legislation contributes to a healthier representative, democratic government and enhances its practice; and

(g) right to information legislation improves public administration and the quality of government decision-making; and

(h) right to information legislation is only 1 of a number of measures that should be adopted by government to increase the flow of information in the government's possession or under the government's control to the community.

The RTI revealed on pages 1322/1323 (repeated 1327 and 1328) (attached) that the Principal Assessment Planner (Marc Cornell) wrote to his immediate supervisor Patricia Jensen, (Manager Development Services Branch) and James Ruprai (Group Executive Customer Engagement and Planning Services Group), noting what he considered "insufficient grounds" (pursuant to the *Planning Act 2016*) for approving the Sekisui application to override the 2014 PS and his reasons for that conclusion. He states:

To this end, any report authored by myself would be forwarded to you with a recommendation for refusal based on not meeting the sufficient grounds test. (Page 1323).

The reply from Patricia Jensen to the Principal Development Planner (cc'd James Ruprai) with the Subject Heading **RE: Yaroomba Report – Officer recommendation** (page 1326 and attached) stated:

James and I have reviewed the assessment and consider that the sufficient planning grounds can be meet (sic) on the public and economic benefits associated with the proposal.

Patricia Jensen then makes reference to the Council Regional Economic Development Strategy.

In her last sentence, Patricia Jensen states:

I would also rely on advice previously provided by the Strategic Planning Branch on their assessment of the proposal and sufficient planning grounds.

The Strategic Planning Branch is a group on the same level in the Organisational Structure as the Development Services Branch, and OSCAR considers it should not override DSB advice provided in compliance with the *Planning Act 2016*.

It is significant that nowhere in these communications, or anywhere in the RTI documents received to date can be found references to "legal documents and/or legal advice" so OSCAR is perplexed as to what the redacted documents could be. The legal proceedings in the Planning & Environment Court or Supreme Court should not have any bearing on redaction because when an Appeal is lodged in the Planning & Environment Court against the approval or refusal of a DA, the planning assessment process begins anew and the DA is assessed by the Court. That means all documents relating to the prior assessment by Council cannot be used in evidence, so if the legal documents are in-house advice relating to the approval of the DA, then OSCAR believes they can and should now be released. If they are not legal documents relating to in-house advice, then what are they?

Given the information listed following in the Preamble to the RTI Act points b,c,d and g:

- (b) information in the government's possession or under the government's control is a public resource; and*
- (c) the community should be kept informed of government's operations, including, in particular, the rules and practice followed by government in its dealings with members of the community; and*
- (d) openness in government enhances the accountability of government; and*
- (g) right to information legislation improves public administration and the quality of government decision-making;*

the following community concerns are raised –

- How can the community have confidence in the development assessment process of Sunshine Coast Regional Council, if some documents relating to that assessment process (such assessment now being undertaken by the Supreme Court, Court of Appeal) are being hidden from the community?
- Because there were 260+ pages redacted from the RTI release, under LPP, (approximately 8% of the documents), but there was no reference to any legal comment in key communication relating to the final report released to Councillors, then the community and Councillors need to understand what the documents relate to.
- Given the information available in the RTI and the amount redacted, and the enormous community interest in the matter (approximately 9000 members of the community wrote submissions objecting to this proposal) the community has become suspicious and now has NO confidence in the planning decisions of the Council. Providing redacted documents may assist the community to understand Council's position and restore that confidence.
- Furthermore, redacting so much of the release under the LPP provisions raises questions in relation to the effectiveness of the Legal Department of the Council which does not auger well for Council's transparency, accountability and good governance.

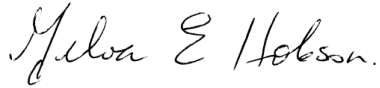
It is interesting that a number of the then councillors when approached by the Sunshine Coast Daily reported no knowledge of the possibility of a refusal of this contentious application based on any grounds either internal or

external legal discussion or advice being sought or given in relation to the approval. (See the reports from the Sunshine Coast Daily attached)

OSCAR therefore requests that:

1. The redacted documents be made available to the public; or
2. If the Commissioner considers the documents are so privileged, at the very least, direct Council to provide a description of the contents and author/recipients of the documents and why they are privileged.

Yours sincerely

A handwritten signature in cursive script that reads "Melva E Hobson".

Melva Hobson
President OSCAR

Att.

RTI20/011 Original Application

RTI Decision Notice 18 January 2021

RTI Internal Review request 17 February 2021

RTI Internal Review decision 15 March 2021

RTI pages, 1322-1323 (repeated on 1327 and 1328)

RTI page 1326

Media Report from Sunshine Coast Daily