

# **AGENDA**

## **AMENDMENT TO SEALED PLAN HEARING COMMITTEE**

**COMMITTEE MEETING  
MONDAY, 6 FEBRUARY 2017**

**9.00am  
COMMITTEE ROOM, TOWN HALL, ST JOHN STREET, LAUNCESTON**

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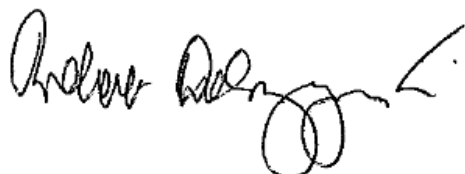
## Section 65 Certificate of Qualified Advice

### Background

Section 65 of the *Local Government Act 1993* requires the General Manager to certify that any advice, information or recommendation given to Council is provided by a person with appropriate qualifications or experience.

### Declaration

I certify that persons with appropriate qualifications and experience have provided the advice, information and recommendations to Council in the Agenda Items for this Meeting.



**Robert Dobrzynski**  
**General Manager**

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**Venue:** Committee Room, Town Hall, St John Street,  
Launceston

**Time:** 9.00am

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## AGENDA

- 1 OPENING OF MEETING - ATTENDANCE AND APOLOGIES
  - 2 DECLARATION OF INTERESTS
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**3 Petition to Amend Sealed Plans Numbered 16325 and 19533 - 304 and 308 Penquite Road, Norwood**

**FILE NO:** DA0418/2014

**AUTHOR:** Michael Jacques (Senior Corporate Legal Advisor)

**DIRECTOR:** Leanne Hurst (Director Development Services)

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**DECISION STATEMENT:**

To consider the petition to remove certain covenants from Sealed Plans 16325 and 19533.

**PREVIOUS COUNCIL CONSIDERATION:**

Council Meeting - 25 July 2016 - Item 15.1- 304-308 Penquite Road, Norwood - Petition to Amend a Sealed Plan

**RECOMMENDATION:**

That Council, in relation to the petition to remove certain covenants from Sealed Plans 16325 and 19533:

1. approves the removal of covenants (f) exterior cladding and (i) pets; and
  2. rejects the petition to remove covenants (b) private dwelling, (d) one building per lot, (g) signage and (h) Vendor's consent.
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**REPORT:**

**Report**

This matter requires Council to consider:

- (a) the procedural requirements of the amendment of a sealed plan pursuant to section 103 of the *Local Government (Building & Miscellaneous Provisions) Act 1993 (the Act)* have been satisfied; and
- (b) to balance the benefits and impacts of granting or refusing the petition.

The rights that are the subject of the petition are registered covenants that have been attached to the Sealed Plans. The petitioners are seeking to remove these covenants in order to facilitate a proposed residential development. The petitioner's development proposal has planning approval.

**Background**

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Council has received a request from Sproal and Associates on behalf of Brian Robert Overton, Alistair James Knight, Philip Andrew Rose, John Ernest Tchappat and Peter Geoffrey Woolston being the Trustees for the Tamar Properties Gospel Trust, for a Petition to Amend Sealed Plans 16325 and 19533, under section 103 of the Act.

The petitioners have planning approval DA0148/2014 to build 24 residential units on the properties 304 and 308 Penquite Road, Norwood (CT 19533/3 and 165249/1)

In order to proceed with the development the petitioners seek to amend the Schedule of Easements for Sealed Plan numbers 16325 and 19533 by deleting the covenants listed below:

- (b) *That the main building erected on such lot shall not be used for any purpose other than a private dwelling house;*
- (d) *That not more than one main building shall be erected on such Lot.*
- (f) *That there shall not be erected any building or outbuilding (excluding carport) on such lot with outer walls other than of masonry brick or brick veneer construction;*
- (g) *That no hoarding or other structure for the purpose of exhibiting any advertisement or sign shall be erected or placed or suffered to be upon any part of such Lot other than shall relate to the letting of such Lot;*
- (h) *Not to subdivide such Lot into smaller lots nor alter nor amend the subdivision plan as it relates to such Lot in any way without the Vendor's consent first had and obtained;*
- (i) *That other than domestic animals approved by the vendor no animals or birds of any kind shall be kept or permitted or suffered to be kept upon such Lot;*

As an alternative to deletion, the petitioners have also proposed varying the words of covenants.

Sealed Plan numbers 16325 and 19533 and the associated Schedule of Easements are attached to the petition.

The Sealed Plan 16325 consists of 1 lot currently owned by the petitioner. The Sealed Plan 19533 consists of four lots currently owned by the petitioners and the objectors Gibbons (Lot 1) and Sanzaro (Lot 2).

## **Summary of the Arguments**

The key arguments put to the Committee by the petitioners and the objectors were:

1. *Jurisdiction and Standing to Object*
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(a) Objectors - The Council has no jurisdiction to amend the sealed plan.

*Answer:* Based on legal advice the Committee does not support this view.

(b) Petitioner - While the Council has jurisdiction to amend the covenants, several of the objectors are not actually affected by the petition and have no standing to object.

*Answer:* Based on legal advice the Committee does not support this view.

2. Relevance of the planning scheme

Petitioner - That the petitioner's development has been given planning approval and should be allowed to proceed. The old covenants act to subvert the planning process.

*Answer:* The Committee did not view approval under the planning scheme as automatically overriding the registered covenants. The power to amend the Sealed Plan is exercised under the Act is explicitly exercised by the "council" not a "planning authority". The Act requires the Council to exercise its municipal powers and consider a broader balancing of interests and issues than simply enforcing the planning scheme.

3. Consistency in decision making

Petitioner - The Council has previously removed similar covenants and to reject the petition would be inconsistent.

*Answer:* The Clements', who are objectors to this petition, earlier sought to amend similar covenants affecting their nearby land. The petitioner argues that the Council needs to be consistent with this earlier decision and offer the same outcome to the current petitioner.

While consistency in decision-making is desirable, each application also needs to be taken on its merits. The lack of objectors would have meant that the Council's consideration of the merits would have been limited to predominantly assessing the petitioner's evidence at face value, without any contrary evidence about the ongoing value of the covenants from those benefitting from the right. The circumstances of the current petition are not the same as the Clements' earlier petition.

4. Immediate impacts of the development

(a) Petitioner - On the facts, the objectors are not significantly affected by the amendment.

*Answer:* While it is accepted that there will be some impacts on view and other aspects of amenity from the currently proposed development, it may well be that these immediate impacts are relatively minor and will likely have

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been adequately addressed by the planning application and permit conditions.

The petitioner also validly points out the economic benefits of the development, which could be realised by approving the petition. At the hearing, the petitioner's barrister conceded that substantial parts of the development could still proceed if there was no amendment to the sealed plan. While not detailed, it is likely this would lead to a sub-optimal financial outcome for the petitioner.

(b) Objectors - There are unacceptable direct impacts from the development.

*Answer:* The objectors principally raise issues around amenity, but there was some commentary about traffic and other issues. There are some immediate impacts of the development, but they are mainly a planning issue, which has been adequately addressed by the Planning Authority.

5. Interference with covenant rights.

Objectors - Removal of the covenants will have a longer-term impact on the character of the area and property values. The objectors are entitled to rely on the protections of the covenant rights and did so when making purchasing decisions.

*Answer:* The immediate issue for many of the objectors is the petitioner's currently proposed development. Similarly, the objector's focus is to remove covenants that inhibit his current proposal. The ongoing role, relevance and value of the covenants as property rights in perpetuity are of significant relevance to the current petition. The more detailed objections about longer-term impacts were around amenity, the current character of the area, property values, and the objector's reliance on the protections of the covenant rights when making purchasing decisions. Objectors who would be directly affected by the removal of these covenants as lot owners on the plan, raised these concerns.

The Committee also noted that the covenants conflict with the planning scheme for the Council area. The planning scheme zone characteristics do not support the retention of the particular values raised by the objectors in this particular zone. Covenants like these can lead to inefficient use of infrastructure and therefore increase total cost for the community. It is arguably the case that the maximum benefit cannot be derived in terms of the available residential land in the Launceston urban area if the covenants were to remain in place.

However, the Committee agreed that the power to 'interfere' with these property interests should be exercised sparingly where it extinguishes a valid proprietary right of current utility. The Committee also concluded that if the sealed plans covered a large and strategically valuable development area, like a large future development zone or intensive use CBD area, there may well-be a compelling reason to grant the petition in full.

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As the area affected is relatively small, and further development is not actually prevented by the covenants, these considerations were seen as a less compelling in this particular case.

### **Summary Assessment**

While the Committee see that this petition is a 'borderline' case, it does not support the petition in relation to the deletion of the majority of the covenants currently on the title.

The Committee narrowly favoured retention of the majority of the covenants. It was agreed that the strategic value of the area to future development plans for the city is relevant, but not so great in the present circumstances to warrant granting the petition in full. The development can still proceed in a revised form even if the covenants remain.

On balance, while the Council has the power to amend a sealed plan, on the facts of the present case, it should not do so in this instance in relation to the main disputed covenants (covenants (b) - private dwelling; (d) one building per lot; (g) signage and (h) Vendor's consent). These covenants are still current, material and not obsolete. These property interests should not be extinguished. The majority of the covenants are still performing their function of protecting the character and amenity of the area for future owners, from the desires of a single current owner. The amendments proposed by the petitioner's do not adequately protect the objector's property interests.

The petition should be approved in relation to the minor covenants (covenant (f) exterior cladding and (i) pets), which were not the subject of dispute between the parties and appear to be obsolete and of no clear ongoing benefit.

### **ECONOMIC IMPACT:**

Not considered relevant to this report.

### **ENVIRONMENTAL IMPACT:**

Not considered relevant to this report.

### **SOCIAL IMPACT:**

Not considered relevant to this report.

### **STRATEGIC DOCUMENT REFERENCE:**

City of Launceston Strategic Plan 2014-2024

Priority Area 8 - A secure, accountable and responsive Organisation

Ten-year goals -

To communicate and engage consistently and effectively with our community and stakeholders

To ensure decisions are made in a transparent and accountable way

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To continue to meet our statutory obligations and deliver quality services

Key Directions -

1. To develop and consistently use community engagement processes
3. To ensure decisions are made on the basis of accurate and relevant information

**BUDGET & FINANCIAL ASPECTS:**

Not considered relevant to this report.

**DISCLOSURE OF INTERESTS:**

The officer has no conflict of interest in this item.

**ATTACHMENTS:**

1. Nil
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**4 CLOSE OF MEETING**