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Our Ref. KMB:170371

Your Ref. DA0015/2017

3 April, 2017

The Planning Officer
Launceston City Council
PO Box 396
LAUNCESTON TAS 7250

Attention: Duncan Payton

| | | | |
|----------|----------------|-------------------------------------|-------------------------------------|
| FILE No. | DA0015/2017 | | |
| EO | OD | Box | |
| | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| RCVD | | -3 APR 2017 | LCC |
| Doc No. | | | |
| | Action Officer | Noted | Replied |
| | C. Wronkmore | | |

Dear Sir

Re: DA0015/2017 – 102 Station Road, Norwood

Douglas & Collins acts for Renison and Tracey Bell, the owners of property situate at:

The property owned and occupied by my clients, as clearly evidenced from a site inspection, includes a portion of land the subject of DA0015/2017. For your information, the relevant portion of land is shown as "Roadway (Private)" on SP126475.

I advise the applicant under DA0015/2017 has not sought, nor obtained my clients' written permission to the proposed development.

To the extent DA0015/2017 relates to land owned my clients, my clients do not consent to the application nor will they permit any works to be carried out on their property.

Yours faithfully,
DOUGLAS & COLLINS

KAI BEYERLE

29th March 2017

Duncan Payton
Senior Planner,
Launceston City Council,
St John St
LAUNCESTON TAS 7250



Dear Duncan

Subject DA0015/2017 – 102 Station Road, Norwood - Representation

I act on behalf of Mr and Mrs Bell

We submit this representation as a response to the advert placed in the local paper, the notice given to us as neighbours and the notices placed on site. My client appreciates the time given by Ms Pip Glover and Mr Duncan Payton in assisting to understand the details of this proposal.

MATERIAL AVAILABLE FOR VIEWING AS A RESULT OF ADVERTISING

The material available to peruse as a result of advertising seems to be somewhat scant. We will highlight what we believe are deficiencies in the application which at the least will mean readvertising.

Bearing in mind we are told the role of planners these days is to assess rather than make a judgement from first principles one would assume there would need to be sufficient material provided to allow the assessment to take place.

SECTION 57 ADVERTISING

The first issue we would highlight is section 57 of LUPAA (which has been reproduced below) – words highlighted to make point.

LAND USE PLANNING AND APPROVALS ACT 1993 - SECT 57

57. Applications for discretionary permits

(1) This section applies to an application for a permit in respect of a use or development which, under the provisions of a planning scheme–

(a) is of a kind specified as being a use or development which a planning authority has a discretion to refuse or permit; or

(b) may not proceed as proposed by the applicant unless a planning authority waives, relaxes or modifies a requirement of the scheme, or otherwise in its discretion consents to the use or development proceeding.

(2) The planning authority may, on receipt of an application for a permit to which this section applies, refuse to grant the permit and, if it does so –

(a) it does not have to comply with subsection (3); and



(b)

(c) it must, within 7 days of refusing to grant the permit, serve on the applicant notice of its decision.

(3) Unless the planning authority requires the applicant to give notice, the authority must give notice, as prescribed, of an application for a permit.

(4) A notice referred to in subsection (3) is, in addition to any other matters required to be contained in it, to name a place where a copy of the application, **and of all plans and other documents submitted with the application**, will be open to inspection by the public at all reasonable hours during the period for which representations may be made.

It was noted from a first inspection of the material advertised that there was no Bushfire Assessment of the proposal/site despite the subject land being in a bushfire prone area. However, during a meeting with Council a bushfire assessment was produced. Still missing and required to make the application valid would be the application form and titles. We stress - all plans and other documents submitted with the application

NO TRAFFIC IMPACT ASSESSMENT (TIA)

Extract from the Planning Scheme Roads and Railway Assets Code (again highlights added):

E4.2 Application of this Code

E4.2.1

This Code applies to use or development of land:

- (a) that will require a new vehicle crossing, **junction** or level crossing; or
- (b) **that intensifies the use of an existing access**; or
- (c) that involves a sensitive use, a building, works or **subdivision within 50m** metres of a Utilities zone that is part of:
 - (i) **a rail network**;
 - (ii) a category 1 - Trunk Road or a category 2 - Regional Freight Road, that is subject to a speed limit of more than 60 kilometres per hour.

E4.5.1 Existing road accesses and junctions

A3

The annual average daily traffic (AADT) of vehicle movements, to and from a site, using an existing access or junction, in an area subject to a speed limit of 60km/h or less, must not increase by more than 20% or **40 vehicle movements per day**, whichever is the greater.

P3

Any increase in vehicle traffic at an existing access or junction in an area subject to a speed limit of 60km/h or less, must be safe and not unreasonably impact on the efficiency of the road, having regard to:

- (a) the increase in traffic caused by the use;
- (b) the nature of the traffic generated by the use;
- (c) the nature and efficiency of the access or the junction;
- (d) the nature and category of the road;
- (e) the speed limit and traffic flow of the road;
- (f) any alternative access to a road;
- (g) the need for the use;
- (h) any traffic impact assessment; and
- (i) any written advice received from the road authority.

As a 10 lot subdivision will generate more than 40 vehicle movements per day and a new junction/access is proposed some assessment against this Code would be required. A TIA would address all these matters and provide certainty to the developer and neighbours. However, we are told “the engineers” do not require a TIA. That’s all very well – but the Planning Scheme still requires some assessment against the Code.

NO LANDSLIP RISK ASSESSMENT

E3.2 Application of this Code

E3.2.1 This Code applies to use or development of land:

- (a) shown as landslide hazard areas on the planning scheme overlay maps; or
- (b) identified in a report prepared by a suitably qualified person, that is lodged with an application for a permit, or required in response to a request under section 54 of the Act, as subject to risk from landslide or that has the potential to cause increased risk of landslide.

A letter from 1996 (John Dent - Campbell, Smith, Phelps and Pedley) confirms discussions with Council that land which makes up this site is subject to landslip assessment (copy attached). Reference to the hazard maps on the LIST shows the subject land as being predominantly “medium risk” in terms of Landslip.

There should therefore be some expert assessment against this Code (by a suitably qualified person) to address the Performance Criteria in clause E3.6.1 Development on Land Subject to Risk of Landslip, particularly given the amount of cut and fill required to form the new road.

SCENIC MANGAGEMENT AREA

E7.2 Application of this Code

E7.2.1

This Code applies to the development of land within a scenic road corridor, or within a scenic management area shown on the planning scheme overlay maps.

E7.2.2

Where land is located within both a scenic road corridor and scenic management area, only the scenic management area provisions of this Code apply.

Subdivision is development in terms of the Act
development includes –

- (a) the construction, exterior alteration or exterior decoration of a building; and*
- (b) the demolition or removal of a building or works; and*
- (c) the construction or carrying out of works; and*
- (d) the subdivision or consolidation of land, including buildings or airspace*

There will be tree loss with this subdivision (as it is currently proposed) so the Code applies. None of the clearing exemptions apply to this development.

There is no assessment made against the Code.

PERMISSION OF COUNCIL TO LODGE APPLICATION

There is no application form advertised on the website. If this development is making use of a Council asset (the unmade road) and it is proposed to construct this road then Council permission would be required to lodge the application and the application form would need to be endorsed.

Has this been done?

If the land covered by the road is not in the ownership of Council then has the “owner” been notified? A letter from LCC to the now owners of 289a Penquite Road suggests that the road is not owned by Council (copy attached).

It is worth noting at this stage that the section of the “road” to the rear of the Bell’s property is subject to legal investigation as to ownership and rights of possession due to the long term occupation of this land by owners of . There is surveyed evidence of this land being occupied by the owners of since 1984. Until this matter is resolved the Bells will take all legal steps to prevent land under dispute from being impacted by this development. This legal action could take many months to resolve, if indeed it does resolve.

NO ENGINEERING DETAIL OF ACCESS ROAD

Due to the likely impact on a neighbouring property from landslip there is a real need to show an engineering detail as to where the roadway turns into the subdivision. Retaining wall details and stormwater management of the road would also assist in determining the impact of this development on my client’s property?

NO SERVICING PLAN

Is there a servicing plan for the development? If not why not? If there is why is it not advertised?

Neighbours who have owned property in this area for around 30 years will highlight sewer capacity issues which have restricted other developments in this area. A servicing plan would address this issue.

In terms of stormwater has the General Manager addressed Clause 10.4.17 Discharge of stormwater?

A2 The Council's General Manager has provided written advice that the public stormwater system has the capacity to accommodate the stormwater discharge from the subdivision.

Again, this material should have been advertised as being documentation integral to the application.

SOLUTION

If access to the site can be restricted to the area south of the existing field gate within the "road" to the rear of 291 Penquite Road; if no excavations were to occur on the land to the rear of 291 Penquite Road and no trees were to be lost as a result of this subdivision (in the area to the rear of 291 Penquite Road) then many of Mr and Mrs Bell's issues would be addressed.

I would suggest an on-site meeting – Council, applicant and my client – may assist in moving this matter forward.

But at this stage at the least the matter will require to be re-advertised and the legal actions over the land to the rear of 291 Penquite Road considered by the applicant in the timeframes for dealing with this matter.

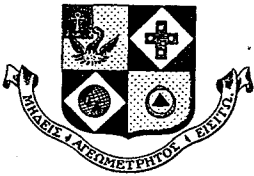
Yours sincerely



Ian Abernethy

Principal Planner

Enc. Letters referenced in text (2)



CAMPBELL SMITH, PHELPS, PEDLEY PTY. LTD.

A.C.N. 009 514 452

CONSULTING SURVEYORS, ENGINEERS and PLANNERS

P. A. PHELPS, R.S., GRAD.DIP.PROF.MGT., F.I.S.AUST.

J. W. DENT, B.SURV., R.S., M.I.S.AUST.

I. R. GREEN, R.S., B.APP.SC.(SURV.), Cert.Mine Surv., M.I.S.AUST.

D. SAUL, B.E., F.I.E.AUST., C.P.ENG., F.I.Arb.A.(CONSULTANT)

21st November, 1996.

Mr. Brian Edmunds,
102 Station Road,
NORWOOD, 7250.

Dear Brian,

Thank you for a copy of the title and your recent enquiry in relation to the subdivision of your land.

I have had a preliminary look at the site and the possibilities for subdividing the land and believe it would be possible to subdivide the back portion of the land into approximately 4 - 6 lots. This would depend on the costs of development and maximising the return out of development at the end of the process.

The first steps are as follows;

1. Take some levels on the site to determine the probable location of services etc.
2. Look at a subdivision layout showing one or two different options.
3. Cost estimates to undertake both options. Once you have these cost estimates you can then determine the likely return from either option and decide which option you wish to proceed with.
4. Submit a proposal plan to the council for their formal approval.

To undertake steps 1-4 above we would expect our fees to be within the vicinity of \$350-\$400. There would also be council fees of \$200.00 plus \$10.00 per lot.

We would also expect that the council would require a geotechnical report of the site as the City Council plans indicate that the land is in the area of potential land stability concerns. You will probably be able to arrange this through your brother Simon. Depending on the results of the geotechnical report this may have an impact on the layout of the lots and the services provided to them. We would therefore suggest that you undertake this assessment at an early stage of the development.

Once an approval has been obtained it would then be a matter of undertaking the necessary designs and constructing the relevant roads and services and conducting the necessary surveys. All these costs will be outlined in the two options we provide.

If you have any questions of the matters outlined above, or if you wish to proceed with the initial investigation please feel free to contact us.

Yours faithfully,



J.W. DENT



LAUNCESTON CITY COUNCIL

A Leader in Community & Government

File No: 33975
MR

Your Ref:

24 January 2003

Ms Kristine Johnstone

NORWOOD TAS 7250

Dear Ms Johnstone

Penquite Road – Status of Roadway (Private), SP 126475

I refer to your letter addressed to the General Manager, dated 19 January 2003 and my discussions, today, with your partner, Steve Bye.

You have requested a ruling on the parcel of land, which abuts the eastern boundary of your property and is shown as Roadway (Private) on SP 126475.

To the best of my knowledge Council does not do not own the "roadway", nor does it maintain any of the unmade portion of the land. Ownership of that strip of land may rest with the Crown, or it may still be in the name of the original subdivider of the land.

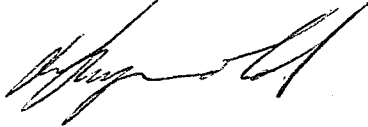
Council officers are currently investigating the feasibility of a Road Construction Scheme over a portion of the unmade roadway. It is envisaged that the Scheme would extend 100m northwards from Station Road to serve properties 301, 303 & 305 Penquite Road and 102 Station Road. The Scheme is conditional on the benefiting property owners contributing to the cost and has yet to be formally submitted and considered by Council.

I believe that the nature of the topography over the remainder of the "roadway", and particularly where it adjoins your property, is so steep as to preclude any future road construction.

You have alluded in your letter to the terms "adverse possession" and "encroachment licence" as a means of securing that portion of the "roadway" immediately to the East of your property. These terms were discussed in very general terms with Mr Bye. It is recommended that you speak to your legal adviser for specific detail on the process relating to adverse possession. A licence over the land would probably be possible, if an owner for the land can be found. Council has a number of encroachment licences issued, but only in circumstances where it owns or is responsible for maintaining the land to be occupied by a licensee. We will not issue an encroachment licence for the portion of land you are interested in.

I suggested to Steve that he may wish to pursue the ownership issue, through the Recorder of Titles. There is a Land Titles Searches & Enquiries No 6233 6467. Unfortunately there's no northern office for Lands Titles, but their southern office is located at 134 Macquarie St, Hobart Tas. Their postal address is GPO Box 541F, Hobart Tas 7001.

Yours sincerely



Martin Reynolds
Corporate Secretary

Telephone: 6323 3121

E-mail: Martin.Reynolds@launceston.tas.gov.au

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|----------------|--------------|---------|--|
| FILE No. | DA 0015/2017 | | |
| EO | OD | Box | |
| ROVD | 29 MAR 2017 | LCC | |
| Doc No. | | | |
| Action Officer | Noted | Replied | |
| C. Wronkmore | | | |

E COPY - D. Payton

Norwood

7250

28th March 2017

Dear Mr Payton,

Subdivision of 102 Station Road, Norwood

We are [redacted] to the above property with a mutual boundary on our southern side.

We also lease from Tasrail the land between the railway line fence and the property boundary of the subject site.

We have an intimate knowledge of landslips in this area being the owners of a property on which a boy died as a result of a landslip in the 1990s. Whilst we were not the owners of the property [redacted] at the time of his death, discovering the detail of the incident has had a profound effect on us and the way we manage the land.

We have taken an interest in development matters in this area of Norwood in regard to landslip due to the past event on our property.

It is then very concerning to note that within the application material advertised on your website there is scant regard to the issue of landslip. Other subdivisions in the Norwood area in similar classification in terms of Medium landslip risk were required to provide expert reports on this topic (Eastman Oval).

Why not this application? How will this issue impact on us?

We lease the land between the railway line and the eastern boundary of the subject site from Tasrail. Our leased land sits well below the escarpment of the subject site. We are concerned that subdivision works or works on houses approved within the subdivision could cause landslip which would have a direct impact on this leased land.

Deal with the landslip issue, or give us a guarantee that as Council you will take responsibility for any landslip resulting from this development. You are now aware of the issue.

We are currently working alongside our relations who live at [redacted] to take legal advice in regard to landslip and other issues in this area relative to this development.

Yours,



Rafe and Alice Bell

28.3.17

To whom it may concern

Subdivision of land 102 Station Road, Norwood- Ref. DA0015/2017

We have examined the documents on line for the above 10 lot subdivision.

The documents seem lacking in any detail in regard to landslip and possible impact on the tree belt on the NE side of the "roadway".

When we developed our block we required a full landslip assessment. We have letters from the 1990's stating that the whole area around this part of Norwood is landslip. Given there was a very serious incident on the adjoining land with landslip resulting in the unfortunate death of a child we would have thought that some risk assessment would be needed.

Along with the previous owners of [redacted] we have maintained, fenced and gated the section of roadway for around 30 years and planted trees in this area and we would hate to see any of these lost as a result of this subdivision. Whilst loss of these trees would be seen by many as a bonus (opening up a view across the valley) we look on this as a severe loss of privacy and detrimental to the environment.

It is our understanding that part of this site has been extensively filled and enquire as to what testing has been carried out on this land to prove that the soil structure is there to take the formation of the road, etc?

We are aware that since around 1995/96 there has been some infrastructure issues in this area. Has an assessment of sewer and stormwater capacity that supports this proposal been done?

We are of the understanding that the land had a zoning under the previous planning scheme which allowed much larger lots of 1500sqm. If this is the case we enquire as to what research went into the change that can now see lots of 500sqm allowable in this area? As an impacted party we believe we should have been notified? If not why not?

Further, we understand that the roadway is not in the ownership of Council (we have previously enquired about its status). If this is the case please explain how a development can rely on this road as an access if the owner has not been advised or given consent if in fact ownership has been established?

Kristine Johnstone

Steve Bye