

MINUTES

AMENDMENT TO SEALED PLAN

COUNCIL COMMITTEE

COUNCIL COMMITTEE MEETING
4 APRIL 2019

3.25PM
TOWN HALL RECEPTION ROOM, TOWN HALL,
ST JOHN STREET, LAUNCESTON

A Council Committee Meeting to conduct a Hearing - Petition to Amend Sealed Plan No. 143829 - 61 Belgrave Parade, Youngtown, of the City of Launceston Council was held in the Town Hall Reception Room, Town Hall, St John Street, Launceston:

Date: 4 April 2019

Time: 3.25pm

Certificate of Qualified Advice

Background

To comply with section 65 of the *Local Government Act 1993* (Tas):

1. A general manager must ensure that any advice, information or recommendation given to the council or a council committee is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.
2. A council or council committee is not to decide on any matter which requires the advice of a qualified person without considering such advice unless -
 - (a) the general manager certifies, in writing -
 - (i) that such advice was obtained; and
 - (ii) the general manager took the advice into account in providing general advice to the council or council committee; and
 - (b) a copy of that advice or, if the advice was given orally, a written transcript or summary of that advice is provided to the council or council committee with the general manager's certificate.

Certification

I certify that:

- (i) the advice of a qualified person has been sought where required;
- (ii) this advice was taken into account in providing general advice to the council or council committee; and
- (iii) a copy of the advice, or a written transcript or summary of advice provided orally, is included with the agenda item.



Michael Stretton
General Manager

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1 OPENING OF MEETING - ATTENDANCE and APOLOGIES

The Chair of the Meeting, Councillor D H McKenzie, opened the Meeting at 3.25pm.

The Chair welcomed all to the Meeting and outlined the process to be undertaken at the hearing.

Committee:

Councillor D H McKenzie (Chairman), Councillor J Finlay, Councillor A G Harris and Councillor P S Spencer

City of Launceston:

Mrs L Hurst (Director Development Services), Mrs A Osborne (Statutory Officer), Mrs C Mainsbridge (Senior Town Planner), Mr D Campbell (Governance and Paralegal Officer) and Mr G Williams (Legal Counsel)

Proponent and Representors:

Mr Phillip Atherton, Mr Ashley Brook, Mrs Mandy Young, Mr Max Young, Mrs Aileen Wilson and Mr Jim Wilson

2 DECLARATIONS OF INTEREST

There were no declarations of interest for this Meeting.

**3 HEARING - PETITION TO AMEND SEALED PLAN NUMBER 143829 - 61
BELGRAVE PARADE, YOUNGTOWN - SECTION 103 - *Local Government
(Building and Miscellaneous Provisions) Act 1993***

The following presentations/discussions occurred during the Meeting:

Mr Ashley Brook, on behalf of the proponent, spoke for the item and provided the following submissions for consideration:

- The covenant against subdivision would be contrary to the provisions in the Council's current planning scheme, which allows for sub-division with the Low Density Residential Zone subject to the issuing of a discretionary planning permit by Council's Planning Authority. The removal of the covenant would also be consistent with the Northern Tasmanian Regional Land Use Strategy, which encourages infill development.
 - As identified in the Agenda Item, the lots within the Sealed Plan are also subject to an Agreement with the Council's Planning Authority that has been registered under Section 71 of the *Land Use Planning and Approvals Act 1993*. The Section 71 Agreement was informed by an arborist's report which was completed in 2004. It identified trees and vegetation which can only be removed with a discretionary permit. Most of the relevant trees within the site have been removed in conjunction with dwelling development. This has also occurred in conjunction with dwelling development on other lots in the Sealed Plan, although there are quite a number of trees that remain, particularly on the eastern side of Belgrave Parade. The trunks of the remaining trees at the rear of the site would be clear of the building envelope identified on the subdivision proposal plan which we have prepared.
 - The Section 71 Agreement (at Part 3.2) also contains requirements relating to identified landslide hazards within the Sealed Plan. It is noted that the subject site is not identified as being subject to a landslide hazard on any available mapping produced by Mineral Resources Tasmania, including the Advisory Landslide Zoning for Launceston which existed when the subdivision was undertaken.
 - The building envelope associated with the suggested new lot shown on the subdivision proposal plan has an area of 524m², which would be sufficient to accommodate a future dwelling. It is clear of the sewer main within the site and also satisfies the side and rear boundary setback requirements in the planning scheme.
 - The effect of the proposed internal driveway on the street character would be minimal given that it would be created over the existing driveway within the site and would be utilised as a shared driveway providing access to the existing dwelling. There are other examples of internal driveways within the street, including Lots 10 and 14 within the Sealed Plan. It is also a common arrangement in low density residential areas where there is typically less public road infrastructure than in medium and higher density areas.
 - In terms of the precedent that could be set by the application, that would be dependent upon the making of a similar application by relevant landowners. It is anticipated that up to half of the lots within the Sealed Plan have re-sub-
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division potential, however, of these constrained by the location of existing buildings and the Section 71 Agreement which would have the greatest impacts on Lots 9 and 12. In any event, the sub-division of these properties can otherwise be considered under the planning scheme subject to a discretionary permit and would be consistent with the regional land use strategy.

- The application is accompanied by advice which suggests that it would not have a material impact on the value of the adjacent property to the south. Construction of any future dwelling within the identified building envelope would not have an unreasonable impact on amenity, including any overshadowing or overlooking impacts, by virtue of its compliance with the applicable setback requirements.
- The traffic volumes associated with the site to the application would be relatively low and within the levels permitted by the planning scheme and can reasonably be assumed to be less than the five multiple dwellings to the south-east. Belgrave Parade is a fully constructed urban street and therefore was designed in an engineering sense to carry higher traffic volumes than it does. Its termination as a cul-de-sac and the minimum lot size requirements in the planning scheme impose a restriction on the amount of traffic that it carries in reality, even if other lots within the Sealed Plan are re-sub-divided in the future. It also ensures consistency with traffic volumes in other low density residential areas.
- Subsequently, Mr Brook explained that, due to planning requirements, as the proposed sub-division was 2,000m², it was only possible to make one new lot and thus build one dwelling on the lot.

Mr Max and Mrs Mandy Young (representors) made submissions:

- Indicated that they purchased their property on the basis of and in reliance on the covenant and its restrictions and they were aware and supportive of its conditions in relation to their decision to purchase.
- Noted that the top-side blocks can not be sub-divided or developed.
- Raised concern regarding traffic congestion because of existing units.
- Noted that future development may well be restricted.
- Will set a precedent if the covenant is removed.
- Suggested that the existing covenant remain in place as that was the basis on which they purchased their property and all residents purchased land under the same conditions.
- Indicated that the dwelling on their property has only been completed for six years in June.

Mr Jim and Mrs Aileen Wilson (representors):

- Indicated that they have only recently purchased their lot (lot 4) and were fully aware of the restrictions and existence of the covenant when purchasing.
 - Indicated that their property is designed with the covenant in place and part of the reason for purchase was the fact that privacy by the covenant was guaranteed.
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- If there had been no covenant on the property, the design and placement of their dwelling would have been vastly different.
- Noted that outbuildings on their property (a shed) are situated at the rear of their lot.

Mr Phillip Atherton (proponent)

- Noted that the prime reason for requesting removal of the covenant was lifestyle - a family and the requirement to scale down and the desire to rebuild in the same area.
- Provided information as to initial plans for the lot layout, for example - the house at the front of the lot would have been supplemented by a shed and an orchard - there had never been an intention to seek removal of the covenant (which he indicated he was unaware of at the time of purchase), nor sub-divide the lot. Circumstances and lifestyle has altered.

Other points raised during the Meeting were:

- Issues relating to privacy of dwellings and buildings.
- No building allowed on the top side of the area.
- The fact that only two representors had come forward out of all those in the area.
- Changes in the planning scheme over time - now restricting one lot construction of dwellings only compared to the unit development nearby.

Summary from the Chair:

- The Chair indicated that a decision would be provided as soon as possible and an Agenda Item would be forwarded to Council as soon as practicable.
- All parties were asked for final comments or questions.

4 CLOSE OF MEETING

The Chair, Councillor D H McKenzie, closed the Meeting at 4.10pm thanking those in attendance and conduct at the hearing. Councillor McKenzie and indicated a decision would be provided as soon as possible.

Summary from Legal Counsel:

Mr Williams summarised the key points of the Meeting, noting that the legal concerns for him were those relating to:

- The effect on the value of the properties.
 - Misgivings on the quality of the valuation advice provided.
 - Size and effect of building envelopes and it may well be advisable to gain a valuation opinion.
 - Noted that some residences had outlaid large sums of money developing their properties under the existing covenant.
 - Noted that the existing sewer main is prohibitive in terms of development.
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Summary from the Chair:

Councillor McKenzie raised the following questions/points:

- What right does Council have in terms of removing the covenant?
- Will compensation be an issue and who would be responsible?
- Noted that the covenant is reasonably new, raised in 2004, therefore purchasers should have been aware one existed.
- Could set a precedent if it is removed and what are the implications?
- Once a decision is made there is no further avenue for appeal so it is important to get it right.

Following the completion of the hearing, the Committee suggested the following as their recommendation to Council for decision:

- the covenant was applied to the land at the time of the sealing the final plan of subdivision in 2004 - it is, therefore, neither an obsolete or out-dated covenant;
- A Section 71 agreement is registered on the title. Its intent is to preserve vegetation on the site;
- all intending purchasers who have become the relevant land owners were aware, or had the opportunity to be aware, of the lot shapes and configurations, and the existence of the restrictive covenant to the effect that the lots could not be further subdivided or strata titled. This appears to have been a deciding factor in purchasing the properties for all parties and in them building dwellings in the chosen locations;
- if the covenant is removed, then the general amenity of the area will be affected;
- if the covenant is removed this could set a precedent for future applications in the area of the Sealed Plan; and
- the necessary location of a future dwelling to be clear of the sewer main which is across the centre of the site would further impact the amenity of adjoining properties

The Committee indicated it would seek to reconvene, for final discussions and checking of an Agenda Item to be forwarded to the earliest possible Council Meeting, prior to the 2 May 2019 Council Meeting.
