



City of
LAUNCESTON

AGENDA

COUNCIL COMMITTEE MEETING

**PETITION TO AMEND SEALED PLAN
NUMBERS 16325 and 19533 - 304 and 308 PENQUITE ROAD,
NORWOOD**

**9 JUNE 2022
5:00PM
COUNCIL CHAMBERS, TOWN HALL,
ST JOHN STREET, LAUNCESTON**

Notice is hereby given that a Meeting of the Council Committee established in respect of the Petition to Amend Sealed Plans Nos. 16325 and 19533 - 304 and 308 Penquite Road, Norwood will be held in the Council Chambers, Town Hall, St John Street, Launceston:

Date: 9 June 2022

Time: 5:00pm

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

Chief Executive Officer

General Manager pursuant to section 61 of the Local Government Act 1993 (Tas)

ORDER OF BUSINESS

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1 OPENING OF MEETING - ATTENDANCE and APOLOGIES

The Chair of the Committee, Councillor A G Harris, will open the meeting and note attendance and apologies.

2 DECLARATIONS OF INTEREST

Councillors will be invited to declare any interests in this matter before any discussion commences.

3 CONFIRMATION OF MINUTES

Local Government (Meeting Procedures) Regulations 2015 - Regulation 35(1)(b)

RECOMMENDATION:

That the Minutes of the Hearing of the Committee established in respect of the Petition to Amend Sealed Plans Nos. 16325 and 19533 - 304 and 308 Penquite Road, Norwood, held on 21 April 2022, be confirmed as a true and correct record.

4 DECISION - PETITION TO AMEND SEALED PLANS 16325 and 19533 - 304 and 308 PENQUITE ROAD, NORWOOD

FILE NO: 304 and 308 Penquite Road, Norwood

AUTHOR: Duncan Campbell (Team Leader Legal Services)

GENERAL MANAGER APPROVAL: Louise Foster (Organisational Services Network)

DECISION STATEMENT:

To consider making a formal decision, with reasons, in respect of the matters heard by the Committee on 21 April 2022.

RELEVANT LEGISLATION:

Local Government Act 1993 (Tas)

Local Government (Building and Miscellaneous Provisions) Act 1993 (Tas)

Local Government (Meeting Procedures) Regulations 2015

PREVIOUS COMMITTEE CONSIDERATION:

Hearing to Amend Sealed Plan - 21 April 2022

RECOMMENDATION:

That the Council Committee:

1. notes the hearing conducted by it on 21 April 2022.
2. pursuant to the delegation of Council on 24 March 2022 and section 103 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*, **refuses to exercise the discretion to cause the amendments to be made**, as sought by the Petition to Amend Sealed Plan Numbers 16325 and 19533, 304 and 308 Penquite Road, Norwood (Petition) on the basis of the following reasons:
 - (a) the covenants sought to be removed from Sealed Plan Numbers 16325 and 19533 confer proprietary rights in favour of third parties who were representors at the Meeting;
 - (b) representors objected to the removal of the relevant restrictive covenants on the basis that:
 - (i) properties benefiting from and restricted by the covenants were purchased with notice;
 - (ii) the covenants continue to provide proprietary rights holders with value, in terms of monetary value and amenity; and
 - (iii) the covenants and associated rights had not been abandoned;

- (c) the evidence provided by the petitioner, in the form of the Petition itself and the submissions made by Peter Woolston and the petitioner's representative Irene Duckett:
 - (i) fails to address how the removal of the restrictive covenants to facilitate the proposed development will not constitute an unreasonable detriment to the rights holders; and
 - (ii) provides an insufficient basis upon which to exercise the discretion in favour of causing the amendments to be made.

3. notes, therefore, that the amendments sought by the Petition will not be made.

REPORT:

Background

The Committee's attention is drawn to the minuted summary of the representations made at the Hearing on 21 April 2022, repeated here for convenience:

Irene Duckett (Proponent's Planner), on behalf of the proponent, spoke for the item and provided the following submission (and photographs) for consideration:

- *the subject land is Lot 1 on Sealed Plan Number 16325 and is land contained in the Certificate of Title Volume 165249 Folio 1 and Lots 3 and 4 on Sealed Plan Number 19533.*
- *the Schedule of Easements in both SP16325 and SP19533 created restrictive covenants on those titles with the following restrictions:*
 - (b) 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; and*
 - (h) not to subdivide the said lot into smaller lots nor alter nor amend subdivision plan as it relates to such lot in any way without the vendor's consent.*
- *the amendments sought by the proponent are to delete clauses b, d, f and h.*
- *explanation, via distributed aerial photographs, was provided to give some context to the land use since registration of the title on 2 February 1983.*
- *explanation was provided with context to the State's land use strategies, with particular reference to the Northern Tasmania Regional Land Use Strategy, in the context of land use patterns and application.*
- *it was suggested that there was no land use planning merit in retaining or enforcing the current covenants as the land has a combined size of 1.16ha, which has never had a single dwelling on it.*
- *it was claimed that the land has a greater value in providing much needed housing.*
- *in 2014 a planning application was lodged and approved by the Launceston City Council for the amalgamation of titles and construction of 24 dwellings and that permit remains valid today.*

- *vehicles from the approved development would have direct access to Penquite Road, with no adverse issues revealed in traffic studies.*
- *it was stated that there would be no direct impact on the amenity of neighbouring properties, other than the impact on the perceived status of their own houses.*

Rob Schaeche (Representor), spoke against the item and provided the following information:

- *both the proponent's property and his property were purchased knowing that the covenant was in place.*
- *concerns were raised about traffic issues, with particular reference to the roundabout, with a claim that traffic accidents will increase as a result of increased housing density.*
- *the proposed development is claimed to affect housing prices and amenity of the area.*
- *infrastructure and sewage issues are claimed to be prevalent and will increase with more housing.*
- *it was also noted that it felt surprising to be back in front of the Committee as this issue was dealt with seven years ago.*

Roger and Roz Daly, spoke against the item and provided the following information:

- *live next door to the proposed development and purchased the current property to engage in a different style of living in the area - semi-rural, gardens, etc.*
- *were very aware of the covenant of allowing only one house per block when property was purchased and that was one of the prime reasons for purchasing.*
- *Council's previous ruling appeared to protect the covenant.*
- *the developers have approached neighbours citing their proposal.*

Alex and Nicky Bigham, spoke against the item and provided the following information:

- *covenants were applied to develop a certain living style and purchase of their current property was made in the knowledge of applicable covenants as were the proponents.*
- *Council approved covenants and, therefore, should be upholding them.*
- *no multiple dwelling allotments were to be allowed and the covenants were a positive incentive to purchase the property.*

Peter Woolston, Proponent, spoke for the item and provided the following information:

- *noted that this has been a very long process and the first planning permit application was for 28 dwellings - the current application is for 24 dwellings.*
- *some properties in the area are not covered by the existing covenants and are claimed to be excluded from operation of the covenant or relying on them.*

Irene Duckett responded and summarised discussions saying that amenity of surrounding lots will not be affected by the proposed development and the current conditions will not be impacted. It was submitted by her that the Council has already assessed this development site as being appropriate for development.

Glynn Williams (Legal Counsel) provided a view as to the interpretation of the Schedule of Easements in response to the view raised by Peter Woolston that some properties are not covered by the existing covenant. Glynn noted that the starting point of negotiations should be the words initially proposed by the original developer, Mr Wilkes. Claims advanced application or non-application of the covenants to certain land were not raised in the Petition to the Council. Historically, restrictive covenants have been applied by private developers and these covenants were first applied in 1982. A person who has an interest in any Council decision has a right to appeal under the auspices of the Judicial Review Act.

On 21 April 2022, the Committee considered the above and came to the following consensus:

As the evidence presented by the proponent does not sufficiently address how the proposed development may impact on the proprietary rights of the adjoining property owners, the application does not provide the Council with a basis upon which it may justify exercising its discretion to overturn the relevant clauses of the restrictive covenant. The petition should, therefore, be rejected.

A determinative decision was not made by the Committee on 21 April 2022. Accordingly it is recommended such decision is now made in accordance with the terms of the Recommendation.

Delegated Authority

The Committee has delegated authority to make a decision in relation to the petition to amend sealed plans 16325 and 19533 - 304 and 308 Penquite Road, Norwood, evidenced by a delegation made by the Council to the Committee at the Council Meeting held on 24 March 2022.

RISK IMPLICATIONS:

In light of the evidence provided at the Hearing held on 21 April 2022 by the parties present, a decision to refuse the petition is thought to be an appropriate and defensible position for the Committee to take.

ECONOMIC, ENVIRONMENTAL AND SOCIAL IMPACT:

Any consideration of economic, environmental and social impacts raised by the parties present at the Hearing held on 21 April 2022 is contained in this report.

STRATEGIC DOCUMENT REFERENCE:

City of Launceston Corporate Strategic Plan 2014 - 2024

Strategic Priority 3: We are a progressive leader that is accountable to our governance obligations and responsive to our community.

10-Year Goal: To ensure decisions are made in a transparent and accountable way, that effectively meet our statutory obligations, support quality services and underpin the long-term sustainability of our organisation.

Focus Areas:

2. To fairly and equitably discharge our statutory and governance obligations.
3. To ensure decisions are made on the basis of accurate and relevant information.
5. To maintain a financially sustainable organisation.

BUDGET AND FINANCIAL IMPLICATIONS:

Not applicable.

DISCLOSURE OF INTERESTS:

The Author and General Manager have no interests to declare in this matter.

ATTACHMENTS:

Nil

5 CLOSE OF MEETING

Councillor A G Harris will close the Meeting.