
Minutes of an ordinary meeting of the Development Support Special Committee held in the Council Chamber of the Administration Centre, 19 King Edward Street, Ulverstone on Monday, 12 November 2007 commencing at 6.00pm

Members attendance

Cr Mike Downie (Mayor)
Cr Warren Barker
Cr Tony van Rooyen

Cr Brian Robertson (Deputy Mayor)
Cr Ken Haines
Mrs Kathy Schaefer

Employees attendance

Acting Director Development Services (Mr Michael Stretton)
Land Use Planning Group Leader (Mr Shane Warren)

Public Attendance

One

CONFIRMATION OF MINUTES OF THE COMMITTEE

79/2007 Confirmation of minutes

The Land Use Planning Group Leader reported as follows:

“The minutes of the previous meeting of the Development Support Special Committee held on 29 October 2007 have already been circulated. The minutes are required to be confirmed for their accuracy.

The *Local Government (Meeting Procedures) Regulations 2005* provide that in confirming the minutes of a meeting, debate is allowed only in respect of the accuracy of the minutes.”

- Cr Robertson moved and Cr Haines seconded, “That the minutes of the previous meeting of the Development Support Special Committee held on 29 October 2007 be confirmed.”

Carried unanimously

MAYOR'S COMMUNICATIONS

80/2007 Mayor's communications

The Mayor reported as follows:

“Under the terms of appointment of the Development Support Special Committee, it acts in agreed circumstances as if it were the Council and, accordingly, as a planning authority under the *Land Use Planning and Approvals Act 1993*.

Members are reminded that the *Local Government (Meeting Procedures) Regulations 2005* provide that the general manager is to ensure that the reasons for a decision by a council acting as a planning authority are recorded in the minutes.

In the event that items listed for consideration are referred, under the terms of the Committee’s appointment, to the Council (e.g. any matter the Committee cannot determine unanimously), or if the Committee is unable to make a determination within the relevant statutory time limit, such items will be referred to a meeting of the Council for a decision.”

- Cr Robertson moved and Cr Van Rooyen seconded, “That the Mayor’s report be received.”

Carried unanimously

PECUNIARY INTEREST DECLARATIONS

81/2007 Pecuniary interest declarations

The Mayor reported as follows:

“Members are requested to indicate whether they have, or are likely to have, a pecuniary interest in any item on the agenda.”

The Land Use Planning Group Leader reported as follows:

“The *Local Government Act 1993* provides that a member must not participate at any meeting of a special committee in any discussion, nor vote on any matter, in respect of which the member has an interest or is aware or ought to be aware that a close associate has an interest.

Members are invited at this time to declare any interest they have on matters to be discussed at this meeting. If a declaration is impractical at this time, it is to be noted that a member must declare any interest in a matter before any discussion on that matter commences.

All interests declared will be recorded in the minutes at the commencement of the matter to which they relate.”

No interests were declared at this time.

ADJOURNMENT OF MEETING

82/2007 Adjournment of meeting

The Mayor reported as follows:

“In order to effectively consider the reports before this meeting of the Committee it is appropriate that I adjourn the meeting to enable the related documents to be workshopped prior to resumption of the meeting and formal resolution of the agenda items.”

The workshop having been concluded, the Mayor resumed the meeting.

DEPUTATIONS

83/2007 Deputations

The Land Use Planning Group Leader reported as follows:

“No requests for deputations to address the meeting or to make statements or deliver reports have been made.”

OPEN REPORTS

84/2007 House with variation to Development Standards (height and number of storeys) at 12–14 Harley Court, Ulverstone Application No. DEV2007.46

The Land Use Planning Group Leader reported as follows:

“The Town Planner has prepared the following report:

<i>DEVELOPMENT APPLICATION No.:</i>	DEV2007.46
<i>APPLICANT:</i>	J Lawson
<i>LOCATION:</i>	12–14 Harley Court
<i>ZONING:</i>	Residential (RA) – Closed
<i>PLANNING INSTRUMENT:</i>	Central Coast S.46 Planning Scheme No.1 of 1993 (the Scheme)
<i>ADVERTISED:</i>	17 October 2007
<i>REPRESENTATIONS EXPIRY DATE:</i>	31 October 2007
<i>REPRESENTATIONS RECEIVED:</i>	4
<i>42–DAY EXPIRY DATE:</i>	22 November 2007
<i>DECISION DUE:</i>	12 NOVEMBER 2007

PURPOSE

The purpose of this report is to consider the merits of the representations received in objection to a discretionary planning application for a house with height and storey variation requests at 12-14 Harley Court, Ulverstone.

BACKGROUND

On 12 October 2007 the application was received at the Council for a house with height and storey exemptions at 12-14 Harley Court, Ulverstone.

A location plan is attached as Annexure 1.

This report will consider:

- 1 the compliance of the application with the relevant objectives, provisions and development standards of the Scheme;
- 2 the specific intent of the Residential (RA) – Closed Zone; and
- 3 the merits of the representations received.

DISCUSSION

The subject site is within the Ulverstone township. The proposal is for a single dwelling, with variations requested to the height and number of storeys.

Plans of the proposed development and associated application documents are attached as Annexure 2.

1 compliance of the application with the relevant provisions and development standards of the Scheme

The proposal includes a request for exemptions from the height and number of storeys. Other than these, the development would not have required a planning permit under the Scheme.

When granting an exemption, the Council must be of the opinion that enforcement of a requirement would be impracticable, unreasonable, inequitable and not of sufficient importance in respect to the objectives of the Scheme to warrant enforcement. The Council cannot consider granting an exemption unless it has received a request from the applicant, a submission detailing the exemption and the reasons for the request and why they cannot be met and a statement as to the likely effect of the exemption on adjoining developments or uses. It is this demonstration that is assessed when exemptions are being considered (Clause 7.1.3).

The application documentation includes a letter which covers this request, detailing the exemptions and the reasons and is attached as part of Annexure 2. In short, the Scheme determines that:

- . the height of a building is the “maximum vertical distance between a point against an external wall of a building and the horizontal plane which rests on the highest part of the building (excluding minor protrusions) where the point is the lowest ground level existing prior to construction works for that building”. This transfers the proposed height to just over the 10m height listed in the development standards;
- . a storey is generally taken to mean a level which includes a habitable room. The Scheme refers to the Building Code in defining storeys, which is misleading as the Building Code does not specifically define storeys for houses (class 1a buildings under the Building Code).

In considering the granting of an exemption, the Scheme (Clause 7.3.1a) provides the following guidance:

Council may, at its discretion and in respect to a particular development, grant an exemption from one or more of the relevant requirements of this part if, in the circumstances of the case and after consideration of the tenor of the Scheme, the Council is of the opinion that enforcement of the requirement(s) would be:

- (i) impracticable;*
- (ii) unreasonable; or*
- (iii) inequitable; and*
- (iv) not of sufficient importance in respect to the objectives of the Scheme to warrant enforcement;*

and the grant of any such exemption shall not be considered to create a precedent in the case of future applications of a similar nature.

The developer submits that the requested exemptions will not impact on adjoining properties. This has some merit in relation to Clause 7.1.3(a) with regard to the number of stories, as in reality, disregarding the height issue, the same building could go up, minus the ground floor, with the same impact as the three storey building.

1 the specific intent of the Residential (RA) – Closed Zone.

The Residential (RA) – Closed Zone is “intended to accommodate dwelling units primarily on the basis of one dwelling per lot, but providing for other

forms of housing allowing innovation and higher densities under controlled conditions”.

CONSULTATION

The application was subjected to the required 14-day public scrutiny process required by s.57 of the *Land Use Planning and Approvals Act 1993*. This requires advertising of the development by a notice on site and also by a notice placed once in a daily local newspaper. Correspondence to the adjoining owners inviting them to view the application was also undertaken.

The application as a matter of procedure was referred to the Council’s Planning and Assessment Team. Other than standard engineering conditions, no comments were received from the Planning and Assessment Team that required inclusion in the final determination of the application.

Representation

Four letters of objection were received during the 14-day advertising period.

Copies of the representations are attached as Annexure 3.

2 the merits of the representations received.

The following table provides a summary of the issues raised in these representations.

#	DETAIL	PROPOSAL
1	Height: <ul style="list-style-type: none"> ▪ overshadowing; ▪ blocking views and privacy; ▪ devaluing other properties. 	The Permitted height for this lot is 10m. The proposal is just over this height, scaling at 10.6m (approximately) as height is defined in the Scheme. Protection of views are not covered by the Scheme. No evidence of devaluation was submitted.
2	Number of storeys: <ul style="list-style-type: none"> ▪ out of keeping with surrounding areas; ▪ one storey limit. 	Two storeys are Permitted on this lot. A variation to this is at the discretion of Council.
3	Design of building (square, flat roof).	The Scheme provides little, if any, guidance on building design. The development standards generally

		play this role.
4	Timeframe for people to respond to development applications.	The timeframe is set by state legislation (<i>Land Use Planning and Approvals Act 1993</i>).
5	Setting a precedent.	Clause 7.1.3(a) of the Scheme, which covers the granting of variations, states that “the granting of any such exemption shall not be considered to create a precedent in the case of future applications of a similar nature”.

IMPACT ON RESOURCES

This report has no impact on resources.

CORPORATE COMPLIANCE

The Central Coast Strategic Plan 2004–2009 includes the following objectives:

- Meet our statutory and regulatory obligations
- Plan for and develop a sustainable community
- Create a municipal area that is productive and socially and aesthetically attractive.

CONCLUSION

The proposal is for a house on a sloping site. The discretion is invoked because of the height of the proposal and the number of storeys. The number of storeys is generally regarded as an unsophisticated measure of scale and bulk as the same impact could be generated by a two storey structure. Other than the height variation, the proposal is within the “3D envelope” provided for under the Scheme. In light of this, it is feasible for the same building to be reasonably built within the height limit (by small engineering/design alterations).

Recommendation

It is recommended that the representation of objection be deemed to have some merit on planning grounds to justify conditions on the application and that the Development Standard of the Central Coast S.46 Planning Scheme No. 1 of 1993 in respect of the number of storeys is deemed unreasonable in this case to warrant enforcement but that the standard in relation to height is not unreasonable to enforce and that Application No. DEV207.46 be approved subject to the following conditions and restrictions:

-
- 1 The development generally conforming with the documents submitted with this application unless otherwise altered by subsequent conditions of this permit;
 - 2 That the development be managed to reduce the height of the proposed structure as defined by the Scheme to 10m. Revised plans are to be submitted to the Council and to the Building Surveyor;
 - 3 The developer shall (where required):
 - (a) Remove any redundant driveways as a result of the development; and
 - (b) Provide a new concrete driveway and footpath crossover;
 - 4 Any damage or disturbance to footpaths, roads, kerbs, nature strips or existing services to be rectified to the satisfaction of Council's Director Assets and Engineering;

and that the applicant be further requested to note:

- A the Permit expires two years from the date advice of this decision is received unless the development has been substantially commenced. An extension of time to this period can be granted once only but only if the request is received prior to the expiry of the specified time;
- B any works associated with existing kerb and channel, footpath or roads will be undertaken by the Council at the developers cost unless alternative arrangements are approved by the Council;
- C any works undertaken within the Road Reservation requires a Road Permit to be issued prior to construction. Contact the Assets and Engineering Division;
- D a Council stormwater main exists along the southern and eastern boundaries of the property;
- E contact the Council's Assets and Engineering Department to discuss any infrastructure work requirements, organise a road permit or arrange any works;
- F applications for Building and Plumbing Permits are required for the development; and
- G this Permit is based upon the particulars provided with DEV2007.46. Any variation may require an amendment to the Permit or a further application for planning approval.'

The report is supported."

The Land Use Planning Group Leader reported as follows:

“Copies of the Annexures referred to in the Town Planner’s report have been circulated to all members.”

■ Cr Van Rooyen moved and Cr Haines seconded, “That the representation of objection be deemed to have some merit on planning grounds to justify conditions on the application and that the Development Standard of the Central Coast S.46 Planning Scheme No. 1 of 1993 in respect of the number of storeys is deemed unreasonable in this case to warrant enforcement but that the standard in relation to height is not unreasonable to enforce and that Application No. DEV207.46 be approved subject to the following conditions and restrictions:

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 - G this Permit is based upon the particulars provided with DEV2007.46. Any variation may require an amendment to the Permit or a further application for planning approval."

Carried unanimously

Closure

There being no further business, the Mayor declared the meeting closed at 6.12pm.

CONFIRMED THIS DAY OF , 2007.

Chairperson

(ms:kaa)

QUALIFIED PERSON'S ADVICE

The *Local Government Act 1993* provides (in part) as follows:

. A general manager must ensure that any advice, information or recommendation given to the council is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.

. A council is not to decide on any matter which requires the advice of a qualified person without considering such advice unless the general manager certifies in writing that such advice was obtained and taken into account in providing general advice to the council.

I therefore certify that with respect to all advice, information or recommendation provided to the Development Support Special Committee within these minutes:

(i) the advice, information or recommendation was given by a person who has the qualifications or experience necessary to give such advice, information or recommendation; and

(ii) where any advice was directly given by a person who did not have the required qualifications or experience that person has obtained and taken into account in that person's general advice the advice from an appropriately qualified or experienced person.

Katherine Schaefer
GENERAL MANAGER