



general
purpose
committee

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section

environment

GENERAL PURPOSE COMMITTEE - ENVIRONMENT

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ENVIRONMENT

Meeting Date: 27 January, 1998

Item: **89**

ITEM: 89 **Section 102 Application to Modify Consents for Subdivision of Lot 11 DP854396 54 Drummond Street, Windsor**

FILE NUMBER: SA30/97, SA31/97, SA32/97/EVD/ENA27LAX.V21

Applicant: Gilmour Property Partners Pty Ltd and Sellmour Real Estate
Applicants Rep: Not applicable
Owner: Gilmour Property Partners Pty Ltd and Sellmour Real Estate
Stat. Provisions: Hawkesbury Local Environmental Plan 1989, as amended by Amendment No. 44
Area: 3.130 hectares
Zone: Residential 2(a)
Advertising: Not required
Date Received: Application formalised on 16 January 1998

Key Issues: — Section 94 Contribution
 — Drainage
 — Public Benefit

Action: Amendment of Development Consents to reduce Section 94 cash Contributions.

REPORT:

Developments Consents were issued on 22 August 1997 for subdivision of the subject property into 48 residential lots in 3 stages. Prior to the applications being lodged, Council resolved to prepare a Local Environmental Plan to rezone the property from Light Industrial to Residential to allow the residential development to proceed. The LEP was gazetted in February 1997.

The 3 Development Consents issued in August 1997 were subject to a number of conditions, including:

- "4. Payment of a cash contribution of \$64,182 for recreational buildings, park improvements and community facilities as a consequence of the subdivision of the land ...
5. Payment of a cash contribution to works of \$1,360 for tree planting in Council's footway ...
22. A stormwater drainage pipeline with the capacity to carry the 1 in 20 year storm event is to be constructed from the end of the existing pipeline in Lot 5 DP261702 through the north eastern corner of the subject lot, then through the downstream Lot 12 DP854396 and Lot 4 DP240986 to its eastern boundary. A surcharge path sufficient to carry the 1 in 100 year storm event is to be constructed over Lot 12 and Lot 4. Drainage easements are to be created over the pipeline. Prior to work

commencing on Lot 5, written permission must be obtained from the owners and submitted to Council.

26. Offstreet carparking and footway area is to be provided along Drummond Street. Parking spaces to conform to Council's Development Control Plan are to be constructed with a sealed pavement, drained and marked. Details to be submitted for approval prior to works commencing. The dedication, free of cost to Council, of the land required for offstreet parking and footway area."

The applicant seeks a reduction of the amount of contribution payable in Condition 4. Condition 5 is requested to be deleted. The applicant also questions Condition 22.

Condition 4

The applicant submits the following:-

"The contribution payable is for the purpose of recreational buildings, park improvements and community facilities. Immediately across the road, along Drummond from the land, lies South Windsor Park. The park is used by the community for a variety of activities. It is clear that the requirements noted in Condition 26 are solely for the benefit of the public and not for the development alone. In fact, by reason of Condition 18 of the consent, the development will be separated from Drummond Street by means of a 1.8 metre high lapped and capped fence. Condition 26 is a condition imposed pursuant to Section 94 of the Environmental Planning & Assessment Act 1979. So are Conditions 4 and 5 of the consent. No allowance has been made in the calculation of the contribution for the dedication of land and construction of carparking and footway area pursuant to Condition 26. This is clearly a duplication of requirement for augmentation of the same public facilities.

Due to the duplicate requirement, Condition 4 of each consent should be amended so that the amount of contribution payable pursuant to Condition 4 of each consent is reduced from \$64,182 to \$47,868."

The applicant is requesting a total reduction of \$48,942 over the 3 consents. This is based on the applicant's estimate of the cost of the works of the carparking and the value of the land to be dedicated. It is understood that the requirement for provision of parking originally came from discussions concerning the rezoning of the site. As suggested by the applicant, the carparking spaces will clearly be used by the community in association with the adjacent park and playing courts. There is no legal ability to require provision of public facilities other than via Section 94 of the Environmental Planning & Assessment Act 1979. Preliminary calculations by Council staff confirm the cost put forward by the applicant and accordingly, it is recommended that the consents be amended to reduce the Section 94 Contributions in recognition of the material public benefit provided by the applicant.

The applicant argues in relation to Condition 5, that this is a requirement under Section 94. The planting of trees on public footpaths is the developer's responsibility and it has been found to be more practical by developers and Council staff for Council to plant the trees at the applicant's cost. Accordingly, this is not a Section 94 requirement and no modification should be made.

In relation to Condition 22, the applicant submits that the condition does not fairly and reasonably relate to the development as they are being required to construct a stormwater pipeline to drain not only the subject land but also other land. In our assessment, the subject development does require construction of a pipeline to drain the property. The current open drain is functioning without problem, but the increased flow brought about by the development of the subject property brings about the need for piping. It is incidental that stormwater from an upstream property will also drain through the pipeline. Accordingly, it is considered that this condition should not be amended.

RECOMMENDATION:

That Development Consents Nos SA30/97, SA31/97 and SA32/97 be amended pursuant to Section 102 of the Act as follows:

Condition 4 of each consent be deleted and replaced with the following:-

"Payment of a cash contribution of \$47,868 (forty seven thousand eight hundred and sixty eight dollars) for recreational buildings, park improvements and community facilities as a consequence of the subdivision of land. This sum will remain fixed for a period of 3 (three) months, after which it will be recalculated at the rate applicable at the time of payment. This condition recognises the material public benefit provided via Condition 26 of this consent."

ATTACHMENTS:

AT-1 Locality Plan

AT-2 Approved Subdivision Plan

oooO END OF ITEM 89 Oooo

ITEM: 90 **Extinguishment of Restriction as to User Lots 1 and 2 DP842730
Panorama Crescent Freemans Reach**

FILE NUMBER: SA122/97 P1602/478 PT02/EVD/ENA27LBX.V18

REPORT:

A linen plan for a resubdivision of the above lots has been submitted which includes an 88B instrument which seeks to extinguish a restriction as to user. The 88B instrument requires the affixing of Council Seal.

The restriction prohibits the erection of dwelling on that part of each of the lots which was originally public road.

The restriction was created at the request of the applicant's surveyor at the time of consolidation in 1991 as the portions burdened comprised closed road and Clause 15(5) of HLEP 1989 provides:

"A person shall not erect a dwelling-house on an allotment within Zone...created by the closing of a road".

At the surveyors request the beneficiary of the restriction was Council. The restriction assured that any purchasers were aware of the restriction.

Clause 15(5) only applies to a lot created solely by the closing of a road. Following consolidation and/or resubdivision of the lot with adjoining lands a dwelling may then legally be erected either on or partly on the land comprising the closed road i.e. the new lot is no longer one created by the closing of a road.

The two lots are each approximately 600m² in area and there are no physical constraints on the land which would require the restriction to be maintained.

RECOMMENDATION:

That:

1. Council agree to the lifting of the restriction on use of land created by DP842730 prohibiting erection of a dwelling.
2. Council's Seal be affixed to any documents necessary to lift the restriction.

ATTACHMENTS:

AT-1 Plan of Existing Lots
AT-2 Plan of Proposed Lots

oooO END OF ITEM 90 Oooo