

Minutes

Land Use Management Committee

Held at Council Chambers, 1 Belgrave Street Manly on:

Monday 3 April 2006

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TO THE MAYOR AND COUNCILLORS OF THE COUNCIL:

The Land Use Management Committee, having met at 7:50 PM on Monday 3 April 2006, in the Council Chambers, Town Hall, Manly, to consider the various matters referred to it, now reports the decisions reached and the recommendations made which are stated hereunder.

The decisions taken and indicated by the prefix "Resolved" as distinct from "Recommendations" made to the Council, were taken pursuant to authority delegated to this Committee vide Minutes Number 535 of 19th September, 2005.

PRESENT

His Worship, The Mayor, Councillor Dr Peter Macdonald
Deputy Mayor, Councillor B Aird
Councillor S Cant
Councillor P Daley
Councillor J Evans
Councillor J Hay, AM
Councillor A Heasman
Councillor J Lambert, AM Chairperson who presided
Councillor R Morrison, Deputy Chairperson
Councillor D Murphy
Councillor M Norek
Councillor B Pedersen

ALSO PRESENT

Henry T Wong, General Manager
Jennie Minifie, Branch Manager, Planning & Strategy
David Stray, Manager Development Control
Rachael Levey, Minute Taker

APOLOGIES

Nil.

LEAVE OF ABSENCE

Nil.

DECLARATIONS OF PECUNIARY INTEREST / CONFLICT OF INTEREST

Nil.

CONFIRMATION OF MINUTES**MOTION (Macdonald / Pedersen)**

That copies of the Minutes of the Meeting of the Land Use Management Committee held on Monday 13 March 2006, having been furnished to each member of the Committee, be taken as read and confirmed as a true record of proceedings of such meeting with an amendment to show that Councillor Pedersen voted against the Resolution with respect to Item 7, 30-38 Ethel St, Seaforth.

RESOLVED: (Macdonald / Pedersen)

That copies of the Minutes of the Meeting of the Land Use Management Committee held on Monday 13 March 2006, having been furnished to each member of the Committee, be taken as read and confirmed as a true record of proceedings of such meeting with an amendment to show that Councillor Pedersen voted against the Resolution with respect to Item 7, 30-38 Ethel St, Seaforth.

For the Resolution: Councillors Macdonald, Hay, Heasman, Lambert, Cant, Murphy, Daley, Morrison, Pedersen, Aird, Evans and Norek

Against the Resolution: Nil.

SUSPENSION OF STANDING ORDERS (Lambert / Macdonald)

That Standing Orders be suspended to allow for consideration of the item of public interest, being Environmental Services Division Report No. 12, 85-87 Lauderdale Avenue, Fairlight (DA403/05).

RESOLVED: (Lambert / Macdonald)

That Standing Orders be suspended to allow for consideration of the item of public interest, being Environmental Services Division Report No. 12, 85-87 Lauderdale Avenue, Fairlight (DA403/05).

For the Resolution: Councillors Macdonald, Hay, Heasman, Lambert, Cant, Murphy, Daley, Morrison, Pedersen, Aird, Evans and Norek

Against the Resolution: Nil.

ENVIRONMENTAL SERVICES DIVISION

Environmental Services Division Report No. 12

85-87 Lauderdale Avenue, Fairlight (DA403/05)

Application Lodged: 5 September, 2005

Applicant: S Rothwell

Owner: RX Developments P/L Clodene P/L Delbant P/L Susan Rothwell Investments P/L

Estimated Cost: \$500,000

Zoning: Manly Local Environmental Plan, 1988 - Residential and within the Foreshore Scenic Protection Area.

Surrounding Development: Residential flat buildings and dwellings

Heritage: Adjacent to Esplanade Park which is a listed Heritage item

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR ADDITION OF A BASEMENT STRATA APARTMENT AND ASSOCIATED WORKS IN RELATION TO PREVIOUSLY APPROVED YET TO BE CONSTRUCTED RESIDENTIAL FLAT BUILDING.
2. THE PROPOSAL WAS ADVERTISED AND NOTIFIED TO NEARBY AND ADJOINING PROPERTY OWNERS WITH ONE SUBMISSION RECEIVED.
3. THE PROPOSAL WAS REFERRED TO THE FAIRLIGHT PRECINCT COMMUNITY FORUM FOR COMMENT.
4. THE PROPOSAL WAS CONSIDERED BY COUNCIL'S DEVELOPMENT ASSESSMENT UNIT ON 28 FEBRUARY 2006 WHERE IT WAS RECOMMENDED FOR REFUSAL.
5. THE APPLICATION IS PRESENTED TO COUNCIL'S LAND USE MANAGEMENT COMMITTEE MEETING AT THE REQUEST OF COUNCILLOR NOREK.
6. A SITE INSPECTION IS RECOMMENDED.
7. REFUSAL OF THE APPLICATION IS RECOMMENDED.

SITE INSPECTIONS

A site inspection of 85-87 Lauderdale Avenue, Fairlight was conducted by Councillors on Monday, 3 April 2006.

Inspection Party Recommendation:

Refusal as per Staff Recommendation.

PUBLIC ADDRESSES

The following person addressed the meeting in relation to this item:

Applicant: Alan Kempster, on behalf of the Applicant

MOTION (Morrison / Macdonald)

That Development Application No.403/05 for alterations and additions to the approved residential flat building including an additional unit, car parking and associated works at No.85 to No.87 Lauderdale Avenue, Fairlight, be **refused** for the following reasons.

1. The proposal does not comply with the floor space ratio (FSR) requirements of the Development Control Plan (DCP) for the Residential zone 2001 Amendment 1 having regard to Section 79C (1)(a)(iii) and (c) of the Environmental Planning and Assessment Act 1979.
2. The proposed addition will result in an overdevelopment of the site and present excessive bulk and scale when viewed from adjoining public land and the Harbour, having regard to Section 79C(1)(a) (iii), (b) and (e) of the Environmental Planning and Assessment Act 1979.
3. The proposal would lead to a reduction in the extent of landscaping across the rear of the building facing the view, which would lead to exposure to view of additional bulk in terms of a three-storey building when seen from the scenic walkway and the water and have an adverse effect on the foreshore scenic protection area as well as the heritage listed reserve, having regard to Section 79C (1) (a) (i) (b) and (e) of the Environmental Planning and Assessment Act 1979.
4. The proposed development provides for excessive excavation of the basement area by

providing more car parking spaces than is required under the provisions of the Development Control Plan for the Residential Zone 2001 Amendment 1, having regard to section 79C (1) (a) (iii) (b) and (e) of the Environmental Planning and Assessment Act 1979.

5. The proposal has not had regard to the provisions of State Environmental Planning Policy No 65, Design Quality of Residential Flat Development pursuant to Section 79C (1) (a) (i) of the Environmental Planning and Assessment Act 1979.
6. The proposed development is not in the public interest, having regard to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979.
7. The application was not submitted to Council as an integrated development which given its position close to the Harbour requires comments from New South Wales Maritime. The applicant has not submitted a full set of plans with this application so that the development application is incomplete.
8. That Council note that in considering the original application, the Applicant resisted Council's request for the building to be lowered on the basis that the street-side apartments would be pushed underground and parking made unworkable and that they had a right to build to the maximum FSR under the DCP. The applicant has now identified living space in an undercroft and is claiming a right to retain the approved envelope. This strategy creates a precedent which may open the Council's process to abuse by applicants submitting an initial application claiming a right to the maximum allowed FSR in order to achieve a building envelope and then subsequently submitting an amendment to achieve FSR beyond that allowed by the DCP.
9. Council having assessed the original application and made a balance of judgement determination based on all the relevant factors that led to the subsequent granting of consent for what Council already considered to be an over-development of the site, any further increase in development of the site, having regard for the antecedents, would be contrary to public interest.
10. The proposal will result in an unacceptable increase in traffic movement over an already heavily pedestrianised area, being adjacent to the Manly Scenic Walkway. This inevitable increase in vehicular movement will have an unacceptable adverse impact on pedestrian safety.
11. The proposal will result in an unacceptable increase in vehicular movement over the proposed shared path for the East-West cycle link.
12. The proposal will result in the loss of significant rock outcrop contrary to the provisions of Council's Residential Development Control Plan.

RESOLVED: (Morrison / Macdonald)

That Development Application No.403/05 for alterations and additions to the approved residential flat building including an additional unit, car parking and associated works at No.85 to No.87 Lauderdale Avenue, Fairlight, be **refused** for the following reasons.

1. The proposal does not comply with the floor space ratio (FSR) requirements of the Development Control Plan (DCP) for the Residential zone 2001 Amendment 1 having regard to Section 79C (1)(a)(iii) and (c) of the Environmental Planning and Assessment Act 1979.
2. The proposed addition will result in an overdevelopment of the site and present excessive bulk and scale when viewed from adjoining public land and the Harbour, having regard to Section 79C(1)(a) (iii), (b) and (e) of the Environmental Planning and Assessment Act 1979.

3. The proposal would lead to a reduction in the extent of landscaping across the rear of the building facing the view, which would lead to exposure to view of additional bulk in terms of a three-storey building when seen from the scenic walkway and the water and have an adverse effect on the foreshore scenic protection area as well as the heritage listed reserve, having regard to Section 79C (1) (a) (i) (b) and (e) of the Environmental Planning and Assessment Act 1979.
4. The proposed development provides for excessive excavation of the basement area by providing more car parking spaces than is required under the provisions of the Development Control Plan for the Residential Zone 2001 Amendment 1, having regard to section 79C (1) (a) (iii) (b) and (e) of the Environmental Planning and Assessment Act 1979.
5. The proposal has not had regard to the provisions of State Environmental Planning Policy No 65, Design Quality of Residential Flat Development pursuant to Section 79C (1) (a) (i) of the Environmental Planning and Assessment Act 1979.
6. The proposed development is not in the public interest, having regard to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979.
7. The application was not submitted to Council as an integrated development which given its position close to the Harbour requires comments from New South Wales Maritime. The applicant has not submitted a full set of plans with this application so that the development application is incomplete.
8. That Council note that in considering the original application, the Applicant resisted Council's request for the building to be lowered on the basis that the street-side apartments would be pushed underground and parking made unworkable and that they had a right to build to the maximum FSR under the DCP. The applicant has now identified living space in an undercroft and is claiming a right to retain the approved envelope. This strategy creates a precedent which may open the Council's process to abuse by applicants submitting an initial application claiming a right to the maximum allowed FSR in order to achieve a building envelope and then subsequently submitting an amendment to achieve FSR beyond that allowed by the DCP.
9. Council having assessed the original application and made a balance of judgement determination based on all the relevant factors that led to the subsequent granting of consent for what Council already considered to be an over-development of the site, any further increase in development of the site, having regard for the antecedents, would be contrary to public interest.
10. The proposal will result in an unacceptable increase in traffic movement over an already heavily pedestrianised area, being adjacent to the Manly Scenic Walkway. This inevitable increase in vehicular movement will have an unacceptable adverse impact on pedestrian safety.
11. The proposal will result in an unacceptable increase in vehicular movement over the proposed shared path for the East-West cycle link.
12. The proposal will result in the loss of significant rock outcrop contrary to the provisions of Council's Residential Development Control Plan.

For the Resolution: Councillors Macdonald, Hay, Heasman, Lambert, Cant, Murphy, Daley, Morrison, Pedersen, Aird, Evans and Norek

Against the Resolution: Nil.

RESUMPTION OF STANDING ORDERS (Lambert / Macdonald)

That Standing Orders be resumed.

RESOLVED: (Lambert / Macdonald)

That Standing Orders be resumed.

For the Resolution: Councillors Macdonald, Hay, Heasman, Lambert, Cant, Murphy, Daley, Morrison, Pedersen, Aird, Evans and Norek.

Against the Resolution: Nil.

CORPORATE PLANNING AND STRATEGY DIVISION

Corporate Planning And Strategy Division Report No. 19

Changes to the Environmental Planning and Assessment Act 1979**SUMMARY**

- The gazettal of the new amendments to the Environmental Planning and Assessment Act 1979 has resulted in the loss of local government authority for planning and development in NSW.
- This report analyses the implications for Manly Council and the Manly Community.
- It recommends that Council make representations to the relevant state and federal ministers and members of parliament regarding the implications of the amendments.

MOTION (Pedersen / Aird)

1. That Council endorse the report and that representations be made to Local, Federal and State Ministers and members of parliament regarding the implications of the changes to the planning laws of NSW for local government and community.
2. That Council investigate the constitutional validity of the legislation and seek the support of the LGSA in further pursuing this matter.

RESOLVED: (Pedersen / Aird)

1. That Council endorse the report and that representations be made to Local, Federal and State Ministers and members of parliament regarding the implications of the changes to the planning laws of NSW for local government and community.
2. That Council investigate the constitutional validity of the legislation and seek the support of the LGSA in further pursuing this matter.

For the Resolution: Councillors Macdonald, Hay, Heasman, Lambert, Cant, Murphy, Daley, Morrison, Pedersen, Aird, Evans and Norek

Against the Resolution: Nil.

ENVIRONMENTAL SERVICES DIVISION

The following Item was withdrawn from the Agenda prior to commencement of the meeting:

Environmental Services Division Report No. 14

Manly Surf Pavilion, South Steyne, Manly (DA304/05)

Environmental Services Division Report No. 15

Development Applications Currently Being Processed**SUMMARY**

Development Applications Currently being Processed During April 2006.

MOTION (Heasman / Macdonald)

That the information be noted.

RESOLVED: (Heasman / Macdonald)

That the information be noted.

For the Resolution: Councillors Macdonald, Hay, Heasman, Lambert, Cant, Murphy, Daley,
Morrison, Pedersen, Aird, Evans and Norek**Against the Resolution:** Nil.

Environmental Services Division Report No. 16

Appeals List for April 2006**SUMMARY**

List of Appeals Received and their Current Status for Councillors Information.

MOTION (Macdonald / Cant)

That the information be noted.

RESOLVED: (Macdonald / Cant)

That the information be noted.

For the Resolution: Councillors Macdonald, Hay, Heasman, Lambert, Cant, Murphy, Daley,
Morrison, Pedersen, Aird, Evans and Norek**Against the Resolution:** Nil.

CLOSE

The meeting closed at 9:35pm.

The above minutes were confirmed at an **Land Use Management Committee** of Manly Council held on 1st May 2006.

CHAIRPERSON

***** END OF MINUTES *****