



DEVELOPMENT CONSENT AUTHORITY

PALMERSTON DIVISION

MINUTES

MEETING No. 239 – MONDAY 7 DECEMBER 2020

**BOULEVARD ROOM
QUEST PALMERSTON
18 THE BOULEVARD
PALMERSTON**

MEMBERS PRESENT: Suzanne Philip (Chair), Steve Ward, Trevor Dalton, Sarah Henderson and Ben Giesecke

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Rebecca de Vries and Elissa Gee (Development Assessment Services)

COUNCIL REPRESENTATIVES: Damien Scalora

Meeting opened at 10.00 am and closed at 10.45 am

THE MINUTES RECORD OF THE EVIDENTIARY STAGE AND THE DELIBERATIVE STAGE ARE RECORDED SEPARATELY. THESE MINUTES RECORD THE DELIBERATIVE STAGE. THE TWO STAGES ARE GENERALLY HELD AT DIFFERENT TIMES DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1

PA2020/0328 BUILDING SETBACK PLAN FOR A UNIT TITLE SCHEME DEVELOPMENT ON VACANT LAND

APPLICANT LOT 13726 (18) LEADWORT COURT, ZUCCOLI, TOWN OF PALMERSTON

Element Pty Ltd (Michael Davis)

Mr Michael Davis (Element Pty Ltd) and Mr Clement Williams (General Manager, Bellamack Pty Ltd) attended via teleconference.

RESOLVED 87/20

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application over Lot 13726 (18) Leadwort Court, Zuccoli, Town of Palmerston for the purpose of a building setback plan for a Unit Title Scheme development on vacant land.

REASONS FOR THE DECISION

1. Pursuant to section 46(1) of the *Planning Act 1999*, the owner of land, or a person authorised in writing by the owner, may to apply to the consent authority to carry out **development** on land. 'Development' is defined in section 3 of the *Planning Act 1999* and states:

development, in relation to land, means an activity that involves:

a) the establishment of, or a change in, the use of the land;

b) the subdivision or consolidation of the land; or

c) the carrying out of works on or in relation to the land, including:

i. excavation or land-filling;

ii. the clearing of native vegetation;

iii. the construction of a building;

iv. the construction or upgrading of roads and drains, other than:

A. By a statutory corporation, by a statutory authority or corporation incorporated under an Act of the Commonwealth or by a local authority; or

B. If the works are carried out in pursuance of a statutory responsibility;

v. the construction or upgrading of hardstand car parking or landscaping; and

vi. any other operation that affects the physical character of the land.

On 19 March 2020, Development Permit DP20/0087 was issued in respect of Lot 13726 for the purposes of a Unit Title Scheme (UTS) subdivision to create 6 units and common property over vacant land.

The consent authority considers that the present application for a building setback plan to apply to the UTS approved through DP20/0087 for Lot 13726 does not constitute a development, as defined by section

3 of the *Planning Act 1999* and therefore there is no application under Section 46(1).

2. Further, and in the alternative, should the proposal be considered a development application for the purposes of Section 46(1), the consent authority resolves to refuse the proposal for the following reasons:

a) Pursuant to section 51(1)(a) of the *Planning Act 1999*, the consent authority must take into account any planning scheme that applies to the land to which the application relates.

As the proposed setback plan relates to an approved UTS comprising of six units and common property on vacant land (DP20/0087), the future development of the site will be defined as a dwelling-group under the Northern Territory Planning Scheme 2020 (NTPS2020). A dwelling-group development of three or more units is merit assessable, and therefore, the proposed setback plan seeking to vary the setback requirements for the future dwelling-group must be assessed as though it is a merit assessable application.

Clause 5.4.3 deals with Building Setbacks for Residential Buildings and requires, inter alia, a 6m setback for primary street frontages and 2.5 m for a secondary frontage. The proposal seeks a 2.5m setback to the primary street frontage (Leadwort Court) and a 1.5m setback from the secondary street frontage (Myrtlewood Crescent) which conflicts the requirements provided for by Clause 5.4.3. The purpose of Clause 5.4.3 is to:

Ensure that residential buildings and ancillary structures are located in a manner that:

- a) is compatible with the streetscape and surrounding development including residential buildings on the same site;*
- b) minimises adverse effects of building massing when viewed from adjoining land and the street;*
- c) avoids undue overlooking of adjoining properties; and*
- d) facilitates breeze penetration through and between buildings.*

Administratively, the consent authority may consent to reduce setback requirements if it is satisfied that the proposal is consistent with the purpose of Clause 5.4.3, and the zone purpose and outcomes. The authority is asked to approve a reduction in building setbacks for units 1 and 6 in the UTS consented to in DP20/0087 in the absence of any firm details of such buildings that would enable it to exercise its discretion in relation the matters required for consideration by Clause 5.4.3, including compatibility with streetscape and other building on the site, building massing and undue overlooking. Indicative drawings provided by the applicant are theoretical only. The authority considers that it does not have the detail before it that would allow a proper exercise of its discretion as required by the NTPS2020. Further, as each unit in the UTS is developed with a

residential building, it will be the subject of a development application, and a decision made on the present application for a setback plan to reduce setback requirements could amount to an improper fetter on the exercise of discretion by a future authority.

Given the nature of the proposal, the consent authority cannot ensure that an approval of the setback plan will satisfy the purpose of Clause 5.4.3.

A further instance of the difficulty in relation to the proposed setback plan is found in the provisions of Sub-clause 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height). Sub-clause 5.4.3.1 provides for additional setback requirements in addition to those in Clause 5.4.3, where a building is longer than 18m or over 4 storeys in height. Whilst it is unlikely that any future development would seek to exceed the two storey height limit, it is possible for a future residential building constructed on the site to be longer than 18m.

It cannot be determined whether any additional setback requirements might apply to the future development of the site, given that the proposal is seeking an approval of a setback plan only. It is possible that an approval of a setback plan may result in future development conflicting with the requirements provided for in Sub-clause 5.4.3.1.

The purpose of Sub-clause 5.4.3.1 seeks to ensure that residential buildings respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street. Given the proposal is for a setback plan, and that there is no certainty on the design or layout of the future development of the site, the consent authority cannot ensure that the development satisfies the purpose of Sub-clause 5.4.3.1.

In addition to the assessment against Clause 5.4.3 and Sub-clause 5.4.3.1, the proposal is required to satisfy the purpose and the outcomes sought for the zone. In this instance, the proposal does not provide sufficient information to assess compliance against the purpose sought for Zone LMR (Low-medium Density Residential). Specifically, the purpose of Zone LMR seeks to ensure that housing contributes to the streetscape and residential amenity. No certainty can be granted in relation to the impact on the streetscape and residential amenity through the proposed changes to the setback requirements of Clause 5.4.3. Whilst indicative plans have been submitted, these do not form part of the request for approval. The layout and design of any future development on the site would be subject to a separate assessment. Due to the nature of the proposal, the impact on the streetscape and residential amenity of the area cannot be determined.

This same issue arises when trying to assess the outcomes sought for the zone, such as outcome 5 which seeks to ensure building design and site layout provides a sympathetic interface to the adjoining public spaces and between neighbours. A reduced setback can have a direct impact on the achievement of this outcome, however without a site plan or elevations to confirm any future development's impact on the surrounding area, this outcome cannot be assessed.

- b) Pursuant to section 51(1)(h) of the *Planning Act 1999*, the consent authority must take into account the merits of the proposed development as demonstrated in the application.

Conceptual plans were submitted to show that future development of the site with reduced setback requirements could result in a satisfactory design outcome. The conceptual plans were not submitted for approval and are indicative only. These conceptual plans show indicative dwellings on the two UTS units which have street frontages. The conceptual plan for the UTS unit which fronts to Leadwort Court (described by the applicant as Lot 1) shows a dwelling with a setback of 2.8m from Leadwort Court. The conceptual plan for the UTS unit which fronts to Myrtlewood Crescent (described by the applicant as Lot 6) shows a dwelling with a setback in excess of the required 2.5m.

These conceptual plans indicate that a reduced setback is not required for the UTS unit which adjoins Myrtlewood Crescent, and also indicates that a reduced setback of 2.5m for the UTS unit which fronts to Leadwort Court may be greater than is necessary. In light of this, it is considered that there is insufficient merit to support the application.

- c) Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into account the potential impact on the existing and future amenity of the area in which the land is situated.

The proposal cannot provide sufficient information to determine whether future development will have an adverse impact on the amenity of the locality. Although the reduced setback requirements proposed for each street frontage may be an acceptable outcome for future development, the impact on the amenity of the streetscape cannot be determined without having regard to the design of any structures on the site.

- d) Pursuant to section 51(1)(t) of the *Planning Act 1999*, the consent authority can take into account any other matters it thinks fits.

The approval of the UTS on vacant land through DP20/0087 was on the basis that each UTS unit created could facilitate a development which could satisfy the requirements of the Northern Territory Planning Scheme 2007 (NTPS2007). The requirements between the NTPS2007 and the NTPS2020 are relatively unchanged, and the applicant now seeks approval to

vary these requirements which is in contrast with the reasons for the approval of DP20/0087.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Refusal

RATIFIED AS A RECORD OF ATTENDANCE AND DETERMINATIONS MADE AT THE MEETING

SUZANNE PHILIP

Chair

10 December 2020