Precise Planning

Planning | Development | Management

23 October 2017
Our Ref: 1372

The General Manager
Wollondilly Council
PO Box 21
PICTON NSW 2571

Dear Sir

Planning Proposal – 11 Westminster Place Razorback

I refer to the above matter, which has been submitted to Council recently for consideration.

The preparation and submission of the Planning Proposal was in response to a resolution of Council at its meeting on 21 August 2017, as follows:

1. *That Council not prepare a planning proposal to permit the subdivision of the property known as 11 Westminster Place Razorback (Lot 6 DP 1128635) into five (5) lots.*
2. *That Council support the submission of an owner-initiated planning proposal to amend the Original Holdings Map or Schedule 1 of Wollondilly LEP 2011 to create the potential for a subdivision of the land into five (5) lots, subject to the proponent meeting all costs related to the LEP amendment. The planning proposal should outline how the amendment would avoid creating an undesirable precedent.*

The purpose of this letter is to reiterate how the proposed amendment would avoid creating an undesirable precedent.

Potential precedent 1

Other landowners relying on Council's support for this LEP amendment to justify allowing their E4 zoned land to be either excluded from the *original holdings map* or listed in Schedule 1 as an *additional permitted use*, because Amendment 21 effectively prevents these lots from being eligible for subdivision.

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Response

The subject site is distinguishable from any other in Wollondilly because it was subject to a unique circumstance. The development application lodged with Council on 19 October 2015 (DA 10.2015.775.1) was compliant with the controls in force at the time. However, the subsequent making of Amendment 21 to WLEP 2011 ultimately prevented Council from approving the application. The process of assessing Amendment 21 did not take into account the existence of the undetermined DA 10.2015.775.1. The effect of the judgment in the *De Angelis* case meant that DA 10.2015.775.1 was not preserved by the savings provision.

DA 10.2015.775.1 was the only development application relating to proposed subdivision that was lodged but not determined at the time of the making of Amendment 21, which had the subdivision permissibility removed by the Amendment 21. Due to this unique circumstance, this planning proposal will not create a precedent or create or change the expectations of other landowners.

Council could respond to any landowner seeking to use this matter as a precedent by clarifying that its support for the planning proposal was because there had been a previous development application on the site at the time of the making of the plan amendment that prevent subdivision of the land and that this did not apply to any other landowner.

Potential precedent 2

Other landowners relying on Council's support for an LEP amendment to effectively permit a subdivision to occur, because there were significant delays in assessing the original development application.

Response

The circumstance applying to this land was unique and is unlikely to be repeated. It was not the timeframe for the determination of the development application that resulted in LEP Amendment 21 preventing the lot from being subdivisible. Rather, it was the peculiar interaction of the *De Angelis* case with a newly made LEP amendment.

It is assumed that both Council and the NSW Department of Planning and Environment will not repeat the sequence of events that occurred in this case. The relevant staff in both organisations and in the NSW Parliamentary Counsel's office are now aware of the Court's approach to savings provisions in standard instrument LEPs and will be able to ensure LEP amendments are prepared with considerations to their effects of existing DAs.

I trust this satisfactorily addresses Council's resolution.

Yours faithfully
PRECISE PLANNING

Jeff Bulfin