

MINUTES OF THE DEVELOPMENT & ENVIRONMENTAL SERVICES COMMITTEE OF UPPER HUNTER SHIRE COUNCIL HELD ON TUESDAY 10 NOVEMBER 2020 IN THE COUNCIL CHAMBERS COMMENCING AT 10.00am

PRESENT:

Cr Kiwa Fisher (Chair), Cr Sue Abbott, Cr Ron Campbell and Cr Lee Watts.

APOLOGIES:

Nil

IN ATTENDANCE:

Mathew Pringle (Director Environmental & Community Services), Christine Robinson (Manager Planning, Building & Regulatory Services), Priscilla Rowland (Administration), Stevie Hayne (Administration)

ADOPTION OF MINUTES:

The Committee adopted the minutes of the Development & Environmental Services Committee meeting held on 13 October 2020.

Moved: Cr Watts

Seconded: Cr Abbott

CARRIED

DISCLOSURES OF INTEREST:

Nil.

PUBLIC PARTICIPATION:

Nil.

SITE INSPECTIONS:

Nil.

BUSINESS ITEMS:

DESC.11.1 Development Application 72/2020 – Regularise secondary dwelling – 52 Mount Street, Aberdeen

The Director Environmental & Community Services, Mathew Pringle, provided a brief overview of the proposed development. The development application is being referred to the committee as two submissions were received following public exhibition and the development commenced without the prior consent of Council. The Director highlighted the main concerns being the number of dwellings, parking, condition of the property, construction after hours and the number of bins on the street on collection day.

The Director stated that the application is recommended for approval subject to conditions.

Cr Watts asked why the applicant thought they didn't require approval and questioned if it was because there is advertising from Granny flat companies? The Director advised that the applicant was advised by the manufacturer that Council approval wasn't required. Cr Watts suggested notifying the community that approval is required for Granny flats. Cr Fisher suggested a media release informing the community of the development application process for Granny flats.

Cr Abbott agreed with Cr Watts. Cr Abbott asked about time restrictions for construction works. The Director referred to Condition 6 – restricts hours of construction. Cr Watts asked if there would be no future construction and Cr Abbott asked if the building works were completed. Mr Pringle advised that the second kitchen and laundry in the main dwelling were to be removed and the granny flat was to be completed. Cr Abbott confirmed that the restriction on hours of construction needed to be complied with, the Director confirmed this.

Cr Campbell questioned the motor vehicles at the premises and his concern that vehicles would be on the footpath. The Director referred to Condition 17, and advised that a minimum of 3 car parking spaces shall be maintained within the property. There was no control over the number of vehicles that would park on the street, however no footpath parking was permitted. Cr Campbell hopes that this will address the untidiness from the footpath.

Cr Fisher stated that it appears the applicant was misinformed by the manufacturer and had no questions.

COUNCILLOR QUESTIONS:

Cr Campbell

- Are there any further updates on the proposed service station next to McDonalds, Scone? The Director advised that the application was refused at the last Council meeting and has since spoken to the applicant, who is currently looking at their options. Cr Campbell asked if the applicant has submitted any further submissions to which the Director advised not at this stage.

Cr Abbott

- Advised that the community had notified her of a proposed petrol station at Parkville. The Director confirmed that a development application had been submitted and had been placed on public exhibition. Cr Abbott asked when the submission period ends to which the Director advised he would need to confirm the dates.
- Cr Abbott asked about the Aberdeen Street Service Centre rezoning proposal. The Director advised that the applicant was proposing to submit an amended proposal in response to the issues raised by the community during public exhibition. Cr Abbott asked when the amended proposal would be received. The Director advised that he would follow this up with the applicant and let the committee know.

Cr Watts

- No questions.

Cr Fisher

- No questions.

Meeting closed at 10:18am.



Environmental & Community Services

Development & Environmental Services Committee Reports

DESC.11.1 ***DEVELOPMENT APPLICATION 72/2020 - REGULARISE
SECONDARY DWELLING - 52 MOUNT STREET ABERDEEN***

RESPONSIBLE OFFICER: Mathew Pringle - Director Environmental & Community Services

AUTHOR: Lachlan Melichar - Health & Building Surveyor

PURPOSE

On 22 June 2020, Council received Development Application No 72/2020 seeking development consent to regularise an existing building for use as a secondary dwelling at 52 Mount Street, Aberdeen.

The application is being reported to the Development and Environmental Services Committee as two submissions objecting to the development have been received, and the development commenced without the prior consent of Council.

RECOMMENDATION

That Council approve Development Application No. 72/2020 to regularise the use of the building as a secondary dwelling at 52 Mount Street, Aberdeen, subject to the conditions of consent in Attachment 1.

BACKGROUND

Application No: DA 72/2020
Applicant: Ms M A Johnson
Owner: Ms M A Johnson
Proposal: Regularise the use of the existing secondary dwelling
Location: Lot 8 DP 8378, 52 Mount Street ABERDEEN NSW 2336
Lodged: 22 June 2020
Zone: R1 – General Residential

The existing building comprises a pre-manufactured domicile that has been installed on-site without the prior consent of Council.

In making this application, the owner/applicant has verbally confirmed that the company from which they bought the building had advised them that Council approval was not required for the installation of a movable building. This was a key motivating factor for the owner in electing to move forward with the purchase of this building.

It was flagged to the owner by tradespeople organised to connect services to the building, that the Council should be consulted with respect to obtaining approval. Upon receiving this advice, the owner promptly contacted the Council and proceeded to lodge an application to regularise the use of the development.



Environmental & Community Services

As the building has been relocated and any ancillary building works have already occurred, this application only seeks to establish consent for the use of the building as a secondary dwelling, and to concurrently obtain approval pursuant to Section 68 of the *Local Government Act 1993* to connect to the existing sewer drainage.

Finally, in making this application it has become apparent that the existing dwelling on the site has been used as a dual occupancy for an extended period ranging from 30-40 years. As the installation of a "secondary dwelling" would constitute a third dwelling house on the property, any proposal to retain the existing dual occupancy would result in the development being defined as multi-dwelling housing.

Consequently, in addition to regularising the development, the applicant has also demonstrated that the existing dual occupancy will be only used as a single "principal dwelling" with which the secondary dwelling will be appurtenant in perpetuity of the development.

REPORT/PROPOSAL

As discussed above, the proponent has installed a pre-manufactured structure and is seeking the consent of Council to commence using it as a secondary dwelling.

The proposal has been referred to planning consultants *Monteath & Powys* to conduct an assessment of the proposal against the *Upper Hunter Local Environmental Plan 2013* and the Upper Hunter Development Control Plan 2015 (refer to attachment 2), which has revealed that the proposal is generally consistent with both instruments subject to the imposition of appropriate conditions of consent.

Prior to the installation of this building, the subject property was used for the purposes of a dual occupancy. This proposal seeks to modify the existing dual occupancy to be used as a single dwelling, so as to facilitate the permissibility of the development as a "secondary dwelling" and to reduce the intensity of the overall land use.

In this regard, the proposal will result in a reduction in demand for services, with the existing equivalent tenement dropping from 2 to 1.6 and 1.75 for sewer and water respectively. Additionally, there will be reduced demand for car parking, potential lowering of noise emission intensity and less risks of fire transfer between adjoining occupancies.

The proposal was publicly notified in accordance with DCP and two submissions were received in relation to the development, raising a number of concerns that have been outlined in the planning assessment report.

It is noted that a number of the issues raised are not necessarily contingent on the development, and are matters which are relevant to the application of the *Road Rules 2014* or the *Local Government Act 1993*.

This includes general untidiness, obstruction of the footpath and unregistered vehicles.

Furthermore, it is considered that the aforementioned reduction in intensity of the existing development, along with the imposition of appropriate conditions (refer to attachment 1) will act to mitigate some of these concerns.



Environmental & Community Services

This includes requiring a minimum degree of off-street car parking and regulating the hours within which construction activities may take place.

Instances of any individual act that contravenes the appropriate legislation that is not necessarily an explicit contravention of the terms of any consent that may be granted, should be referred to the appropriate enforcement agency for investigation accordingly.

Finally, it is noted that the development is largely completed, with the exception of some fitout works and the connection of services. In this regard, a Construction Certificate cannot be issued for the development and the remaining works must be regulated by the conditions of consent.

The connection of services including sewer drainage, stormwater drainage and water supply will be regulated by approval pursuant to section 68 of the *Local Government Act 1993*.

OPTIONS

1. Approve Development Application No 72/2020 seeking development consent to regularise an existing building for use as a secondary dwelling at 52 Mount Street, Aberdeen, subject to the conditions of consent in Attachment 1.
2. Defer Development Application No 72/2020, seeking development consent to regularise an existing building for use as a secondary dwelling, at 52 Mount Street, Aberdeen, subject to the submission of additional information.
3. Refuse Development Application No 72/2020, seeking development consent to regularise an existing building for use as a secondary dwelling, at 52 Mount Street, Aberdeen, and state the reasons for refusal.

CONSULTATION

Surrounding properties were notified of the proposed development between 26 June and 10 July 2020.

Two (2) submissions were received by Council with the issues raised in the submission being addressed in the attached report and by recommended conditions of consent.

Copies of these submissions are provided in Attachment 4 of this report.

STRATEGIC LINKS

a. Community Strategic Plan 2027

This report links to the Community Strategic Plan 2027 as follows:

Built and Natural Environment

Goal 4 - Plan for a sustainable future

Environmental & Community Services

- Implement and regularly review Strategic Land Use Plans, Environmental Planning Instruments and Development Controls, which reflect the needs and expectations of the broad Community.
- Provide efficient and effective advisory, assessment and regulatory services focused on being Customer 'friendly', responsive and environmentally responsible.
- Plan, facilitate and provide for a changing population for current and future generations.

We are working to achieve the following Community Priorities:



Rural lifestyle and Country feel are valued and protected and the Upper Hunter Shire remains quiet, safe, healthy and welcoming.

b. Delivery Program

Assessment of the application is in accordance with the Town Planning Community Strategies:

CS13 - Implement and regularly review Strategic Land Use Plans, Environmental Planning Instruments and Development Controls, which reflect the needs and expectations of the broad Community, and

CS14 – Provide efficient and effective advisory, assessment and regulatory services focused on being Customer 'friendly', responsive and environmentally responsible.

c. Other Plans

Nil

IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

Development application fees totaling \$727.00 have been paid by the applicant.

c. Legislative Implications

An assessment of the development application has been undertaken pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* (see attached report). The proposed development is permissible with consent within the R1 – General Residential land use zone.

Furthermore, pursuant to Section 6.8 of the Act, a construction certificate cannot be issued with respect to work to which such a certificate relates has been physically commenced on the land. As such, this consent only seeks to approve the land use and does not act to retrospectively certify the building in any way.



Environmental & Community Services

Finally, it is noted that Section 6.10 of the Act sets out that an occupation certificate cannot be issued for a development involving new building work where construction certificate has not been issued for such work. Additionally, as the application only seeks to establish a new land use and not to effect a change in building use, being a change from one class of building to another class of building as defined by the Building Code of Australia.

In this regard, the conditions of consent have been written with respect to occupation of the building pursuant to its new land use.

d. Risk Implications

Council determinations of development applications in relation to local development can be appealed by a third party in the Land and Environment Court in circumstances where incorrect legal process has been applied.

Furthermore, the applicant has the right under Part 8 of the *Environmental Planning and Assessment Act 1979* to appeal the decision of a consent authority to the Court.

In the case of this development application the relevant considerations under the *Environmental Planning and Assessment Act 1979* have been made.

e. Sustainability Implications

As the subject building has not been used as a dwelling previously (such as in the instance of a relocated home), the assessing officer has resolved that the proposal constitutes establishing a new initial use of the building as a dwelling.

It is in this regard, part of the proposal has been to require the proponent to provide a BASIX certificate for the development. Consequently, the development will be required to adhere to compliance with the sustainability and energy efficiency targets set forth by the NSW government.

f. Other Implications

Nil

CONCLUSION

The application has been assessed as satisfactory against Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *Upper Hunter Local Environmental Plan 2013* and the *Upper Hunter Development Control Plan 2015*.

The proposal is unlikely to adversely impact the surrounding locality, and is considered to be an appropriate form of development for the site and within the land use zone.

Accordingly, it is recommended that the application be approved subject to conditions of consent and for the following reasons:

1. The proposal has been assessed as satisfactory against Section 4.15 of the *Environmental Planning & Assessment Act 1979*.
2. The proposal is consistent with the provisions of the *Upper Hunter Local Environmental*



Environmental & Community Services

Plan 2013.

3. The proposal is consistent with the outcomes to be achieved as set out in the Upper Hunter Development Control Plan 2015.
4. The proposal is unlikely to have a significant adverse impact on the amenity of the neighbourhood.

RECOMMENDATION

That Council approve Development Application No. 72/2020 to regularise the use of the building as a secondary dwelling at 52 Mount Street, Aberdeen, subject to the conditions of consent in Attachment 1.

Moved: Cr Campbell

Seconded: Cr Abbott

CARRIED

The **DIVISION** was taken and the names of the Councillors voting FOR and AGAINST were as follows:

FOR	AGAINST
Councillor Campbell	
Councillor Fisher	
Councillor Watts	
Councillor Abbott	
Total (4)	Total (0)