Development and Building Applications in NSW: An Overview of Local Council Process

Development Applications (D.A.) are made pursuant to section 77 of the *Environmental Planning and Assessment Act,* 1979 (*EPA Act).* Schedule 5 Form 1 of the EPA Regulations sets out the criteria for making an application of this kind.

A B.A. is made pursuant to the provisions of the *Local Government Act*, 1993 and is required to comply with the Building Code of Australia (BCA).

Applications in respect of a subdivision may be made pursuant to the provisions of either *Act* but will be dependent upon the requirements of local planning instruments.

Individual Councils have their own planning instruments and codes. Prior to the submission of a development or subdivisional application, it is imperative that relevant controls are checked and the zoning and permissible uses ascertained. it will also be necessary to consider other regulations which may apply such as car parking or residential development codes, heritage controls, and section 94 requirements, although this list is not meant to be exhaustive. Further, Councils have their own development application forms and check lists. It is prudent to address each item on a check list so as to minimise delay in assessment.

Under section 94(1)(a) of the *EPA Act,* an Applicant is entitled to assume deemed refusal if the application has not been determined within 40 days and may lodge an appeal to the Land & Environment Court. Some Councils, of course, take much longer to process applications although it has been found that Councils which delegate decision making responsibility to appropriate staff, process applications far quicker than those that do not.

If the application seeks to vary any of the statutory controls, it will be necessary to annex a State Environmental Planning Policy (Sepp) 1 objection, which must be specific in outlining the control to be varied, the purpose of the control, an explanation as to the reason the variation is sought and an indication that a precedent will not be created.

In the case of a subdivision, many local environmental plans (LEPs) require a development application for subdivision. Town Planners usually assess subdivision applications, but some Councils may use engineers. To ensure that all requirements are satisfied, a discussion of the application with the appropriate staff member or members before its submission is a worthwhile practice. All subdivision applications should contain a survey plan, prepared by a registered surveyor.

Another essential requirement is that the owner's consent be attached to the D.A. For example, if a property is in the process of being sold, notwithstanding that the Purchaser may hold an equitable interest, it will still be necessary for the Vendor as owner to sign the D.A.

Most Councils have a policy of notifying the relevant persons of applications received. Adjoining owners or residents are those usually notified. A notification period of 14 days is the minimum, but this may be extended.

Objections to the application by interested parties should be considered as part of the assessment process. Some Councils have staff who have delegated authority to determine any application which has an objection, but subject to the proviso that the matter can be called to Council. Other Local Councils require objections specifically to be called to Council.

Section 90(1) of the *EPA Act* sets out the considerations for assessment of an application. An application should address all relevant considerations, including impacts both adverse and favourable.

If an application is refused, the reasons for the refusal must be stated in the notice of refusal and these may then form the basis of any proposed appeal. If the application is approved, conditions will be attached. These conditions should be checked for acceptability. If the conditions cause concern the applicant may apply to vary the consent by virtue of a section 102 modification or by appealing to the Land & Environment Court.

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