

Obtained by Jonathan
on pressing Camels
Feb on Joffi SA
re his appeal.

21/3/95

Jonathan has other papers
he discussed which he will
send me. eg Laffer tonight
Of their 2nd report for ~~new~~
objections which council refused
to ~~give~~ him but made his plans
available to the objections.!



LOCAL GOVERNMENT ASSOCIATION OF N.S.W.

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Your ref: PD/s/p2
Our ref: 5556:ez

Further contact: Paul Burton

16 May 1990

Mr. P. Muldoon
Town Clerk
Lismore City Council
DX 7761
LISMORE

Attention: Mr. P. Denniston

Dear Mr. Muldoon

Re: Photocopies of Development Applications

I refer to your letter of 28th March 1990 requesting advice as to Council's power to provide photocopies of DA documents and plans to members of the public. As you point out in your letter Section 86 of the Environmental Planning and Assessment Act authorises the copying of development applications and accompanying documents in respect of designated development notified pursuant to Section 84 (1). However I would refer you to Section 30 (4) of the Act which provides as follows:

"Without limiting the generality of Section 26 (b), an environmental planning instrument may, subject to the regulations, provide that the provisions of Section 84, 85, 86, 87 (1), and 90 apply to and in respect of development (not being designated development) specified in the instrument in the same way as those provisions apply to and in respect of designated development".

For present purposes, therefore, where development, not being designated development, is so required by the planning instrument to be treated as such then Section 86 would apply and the making of available copies would be authorised by the Act. It should be noted that Section 30 (4) does not limit s.26 (b) and there may be instruments in which notice is dealt with otherwise than treating it as designated development. Refer to clause 26 (3) of the regulations.

.../2

LISMORE CITY COUNCIL RECEIVED	
25 MAY 1990	
FILE NO. S/P2	
LETTER NO. 90-3399	ALLOC. EDS

*per
Section "A"
19/6/90*

sent 28/3/90

90-3399

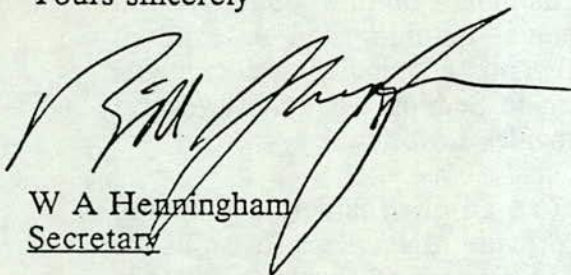
However where there is no provision made for the public to have access to development applications in the planning instrument the question may arise as to whether Council is empowered to display the development application and plans to adjoining owners and other interested members of the public. In Porter v Hornsby Shire Council Chief Justice Cripps considering Section 313 (o) of the Local Government Act which provides that Council take into consideration in determining a building application "the likely effect of the building on adjoining lands and buildings" that it was incumbent upon the council to take into consideration the objections of neighbours. While there is no provision with identical wording in Section 90 of the EP & A Act, I consider that even if it is not incumbent upon councils to notify neighbours in order to obtain their comments on the development application it is within the power of council in determining the application to so notify and obtain comments and objections thereon. I believe such a procedure would be "in connection with the administration or execution of this Act" in the terms of Section 148 of the Act. However in this case there is no express provision for councils to provide extracts or copies of the development application documents.

Section 77 (9) of the EP & A Act provides as follows:

"Upon an application being made under this section the applicant, not being entitled to copyright, shall be deemed to have indemnified all persons using the application and documents in accordance with this Act, against any claim or action in respect of breach of copyright".

The question is: would the giving of copies of the Development Application documents to members of the public be done "in accordance with this Act"? As there is no provision in the Act expressly providing that such copies be given I believe that Council may be in breach of copyright if it were to allow such extracts or copies to be taken.

Yours sincerely



W A Henningham
Secretary

Mr. P. Muldoon
Town Clerk
Lismore City Council
DX 7761
LISMORE

LOCAL GOVERNMENT
& SHIRES ASSOCIATIONS
OF NSW