

NEW TOWN COMMUNITY ASSOCIATION INC.

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The Secretary
Joint Select Committee on Ethical Conduct
Parliament House
Hobart TAS 7000

Dear Sir

ETHICAL CONDUCT

Our Association has experienced first hand for many years the end result of a lack of ethical conduct by the Hobart City Council when acting in its role as a Planning Authority.

We believe that it is unethical for Aldermen and Council Officers to flout the principles of the Land use Planning and Approvals Act 1993 forcing citizens to spend their own money taking their valid concerns to the Resource Management and Appeals Tribunal. These actions become necessary because the Government array of legislation lacks the ability for it to police its own legislation. This is our experience as evidenced in our leaflet sent recently to all Members of Parliament and to all Alderman of the HCC. Wilfully abusing the scope and purpose of Schedule 1 of LUPAA in exercising their power as a Planning Authority in our opinion is a form of corruption. We trust you will find useful the references contained in our leaflet referred to above and copied hereunder.

For reasons given in the hereunder leaflet is our strong belief that there is an urgent need for the Select Committee to recommend adopting paragraph (b) in the Terms of reference because of weaknesses in the present Tasmanian Resource Management and Planning System.

Submitted by New Town Community Association Inc

Brian Sampson
Vice President

Leaflet circulated – Parliamentarians & Aldermen 31st March 2008

It is apparent to us that Calvary Health Care Tasmania Inc has been lobbying Government and the Hobart City Council to amend the Planning Scheme to bring about the demise of the

Calvary Hospital Master Plan. It is appropriate now that this be balanced by an account of the resident's argument against this, which is set out below.

During the 1980's, Calvary Health Care Tasmania Inc found development of its hospital at Lenah Valley had reached its limit according to the density controls in the Hobart City Planning Scheme as it existed then. Calvary argued that this was an inappropriate method of controlling the development and use of a hospital and that a master plan approach was more appropriate.

On 13 November 1992 the Commissioner for Town & Country Planning approved the Calvary Hospital Master Plan MP2. It arose out of a planning scheme amendment proposed by Calvary Hospital and supported by the Council. The Commissioner expressed some concerns about the accuracy of aspects of the original proposal in his interim decision, such as the extent of the car parking requirement, and Calvary addressed these concerns to the satisfaction of the Commissioner. The Master Plan can therefore accurately be described as a creation of Calvary Health Care Tasmania Inc and this can be confirmed by viewing the contents of the Commissioner's decision.

The Commissioner's decision rezoned the land bounded by Augusta Rd, Raluana Lane, Joynton Street and Honora Avenue from residential to Special Use Zone 7, Precinct 46. He inserted a new clause 5.22.1 into the Planning Scheme, which required further development and use of the hospital land contained within that zoning to be in accordance with the Calvary Hospital Master Plan MP2. There were two houses included in the zone that were privately owned at the time and were not a part of the Master Plan.

The Master Plan contains the plans and elevations of the buildings and car parking terraces. Levels and dimensions are included, and so are the landscaping provisions, building style and strategy, and development objectives. The uses or activities located in the various buildings are shown on the plans and the extent of their car parking requirement is determined. The plans show how the car parking requirement will be accommodated on the site. The appendices set maximum probable development in terms of the extent of uses or activities and their car parking requirement, with a reserve of 22 car parking spaces set aside to meet unforeseen changes. Changes in use are permitted provided they are contained within the building envelope and that a permit is obtained demonstrating that the car parking requirements have been met.

This straightforward document is now being demonised by Calvary and the Council as too complicated and provoking litigation. Calvary is also suggesting the Tribunal and the Courts have interpreted it more strictly than was intended. It is arguing for the abandonment of the Master Plan as evidenced in its letter to the Council on 3 December 2007.

An examination of the facts shows that Calvary has brought about changes in use that have exceeded the maximum set in the Master Plan and it does not have the space on the site to provide the required car parking. It has over developed the site. This has got nothing to do with litigation or complexity or the Court's interpretation; it is about Calvary systematically breaching the provisions of the Master Plan.

These changes commenced in 1994 when Calvary relocated the aged hostel patients located in Marian House to Mary's Grange, Taroona. The Master Plan set the car parking requirement for this use as 4 parking spaces. Calvary used the vacant building to relocate its administration, pharmacy and training functions from the Main Building, using the freed up space in the Main Building to increase its bed numbers. An Endoscopy Suite, Eye Clinic and Consultant Suites were also introduced onto the site and located in Marian House. These activities were vastly more car parking intensive than the Aged Persons Hostel they replaced. We estimated the differential to be approximately 30 spaces.

Shortly afterwards, the Chapel and residences at 18 and 20 Joynton Street, which had a zero parking requirement, were changed to consulting suites. This resulted in a requirement for 21 additional parking spaces.

In 1997, overnight bed numbers increased when a new 11-bed ward and more consulting suites were provided in the West Wing Stage 1 development. This area was set aside in the Master Plan for 'Information Services and Staff Development and Meetings', which was a low intensity use.

In 1998, an Obstetrics and Gynaecology Unit and Cardiac Unit was developed as part of the West Wing Stage 2 works. The Cardiac Unit was not in the original Master Plan on this scale, and this took over the area set aside for 'Day Surgery and Day Surgery Procedures'. The displaced 'Day Surgery and Day Surgery Procedures' was relocated in Marian House, as already mentioned and the East Wing of the Main Building in an area set aside for 'Theatre Support and Storage'. The net result was a large increase in the need for parking.

The overall effect of these changes has been an increase in on-street parking resulting in a reduction in the amenity of the residents through traffic congestion and reduced availability of residential parking.

Calvary has compounded the situation by not building the western terraces car parking set out in permit 981063 and approved by the Council on 14 December 1998. Also, the Council's consultant has identified 22 spaces that fail to meet the Australian Standard. In addition jockey parking is used on the site and this is notoriously inefficient. These problems mean little has been done to overcome the parking shortage and that the existing parking is either unusable or too troublesome for the public and staff to use, so they park on the streets.

At present there is a case before the Tribunal alleging that Calvary is in contravention of the parking provisions of the Master Plan to the extent of 140 spaces. This includes the 22 spaces that fail to meet the Australian Standard and 20 that can be regarded as technical breaches because they can be resolved by their inclusion in the Master Plan. The remainder is required for the level of uses existing on the site for which parking has not been provided. This means that the parking problem of 58 spaces identified by the Commissioner in 1992 has been made much worse.

As for litigation, apart from the case mentioned above, there have been two cases brought by the residents and one by the Council. They were initiated to prevent the reduction of residential amenity.

The first case arose out of Calvary building an extra floor in the West Wing Stage 2 building when the Master Plan did not provide for a floor at the offending level. This involved an area of approximately 380m² generating a requirement for an additional 13 car parking spaces. Apart from being concerned that the Master Plan was being ignored, the residents were concerned about the extra car parking that would occur on the streets. The Tribunal found the extra floor was a contravention and made an appropriate order with respect to its use. Calvary appealed to the Supreme Court and lost.

The second case involved Calvary developing and using an 18 space car park on an area freed up by the demolition of some buildings on a resident's southern boundary. The Master Plan provided for a car park in this location but 2 metres lower. There was a serious overlooking problem for the residents and they found it unpleasant to use their back yard in the circumstances. The Tribunal found there was a contravention and made a remedial order restoring the amenity of the affected residents.

The third case was caused by Calvary developing and using a 6 space car park on the eastern boundary of the same residents, which overlooked their living areas. The Master Plan set this area aside as the backyard of a residence and the Council brought an action to stop the use of the car park. The Tribunal ruled that the use was a contravention and ordered that the 2 spaces nearest the resident's boundary be closed to minimise the overlooking. Calvary appealed this to the Supreme Court, the Full Court and the High Court without success. All of the decisions were unanimous.

Throughout these appeals Calvary's underlying contention was that the Master Plan was not a prescriptive document and that it should be interpreted as a set of guidelines only. It upgraded this to arguing that because the hospital existed prior to the Land Use Planning and

Approvals Act 1993 coming into effect and prior to the commencement of the Master Plan that it was exempt from them. The Courts rejected these arguments.

To sum up on litigation, the residents legitimately brought two cases that addressed amenity and they won and the Council did the same in the case it brought. Calvary generated a storm of litigation by appealing these cases trying to get out of its contraventions and trying to have the master Plan it created set aside.

As to complexity, the Tribunal and the Courts have consistently ruled that the Master Plan is a legislative instrument as it is a part of the Planning Scheme, which is required by the Land Use Planning and Approvals Act 1993. The residents and their legal advisers have never had any difficulty in accurately interpreting the Master Plan as the Tribunal and the Courts have agreed with them on every occasion. The Tribunal and the Courts made no comment about the Master Plan being confusing and made comments to the contrary, such as the comment *'Nothing could be clearer than that.'* made by Justice Blow in para. 30 of *Calvary Health Care Tasmania Inc v Hobart City Council [2005] TASSC 49 (6 June 2005)*.

Calvary's contention that the jurisdictions have interpreted the Master Plan more strictly than was intended also has no basis.

Clause 5.22.1 of the Planning Scheme states in part:

"... Further development of the hospital and its associated uses shall only occur in accordance with the "Calvary Hospital Master Plan" Number MP2 as finally approved by the Commissioner for Town and Country Planning on 13 November 1992..."

The Master Plan contains the following words on page 12:

"What is critical in town planning terms for Calvary Hospital is ensuring that its operation does not impact adversely on the surrounding neighbourhood by managing and containing traffic, access, circulation and parking."

Page 43 contains the following words:

"... The balance of uses inside the envelope will change with time and so will the associated parking demand. The changes will require applications to the Council for development approval and would not be approved unless parking demands are complied with."

There are 14 plans showing the location of buildings and their elevations, the dimensions and levels of these buildings is shown, and the same is shown for the car parking terraces. The uses contained in the various buildings are indicated on the plans.

These are the words and plans proposed by Calvary to the Commissioner in 1992 and they were included in the Planning Scheme and the Master Plan unchanged. They clearly indicate that Calvary intended that the Master Plan was to control development and use and ensure that car parking requirements were met. It is hypocrisy for Calvary to now be suggesting otherwise.

The facts show that Calvary has over intensified the uses, generating a car parking requirement that it can not accommodate on the site, which has resulted in an on-street parking problem for the residents and the users of the hospital. It has used every avenue open to it in the Tribunal and the Courts to have the Master Plan made redundant and failed. It has been the originator of the Supreme Court and High Court appeals, not the residents. It has shown itself unwilling or unable to comply with its own creation, the Calvary Hospital Master Plan.

Calvary is now proposing the removal of clause 5.22.1 from the Planning Scheme, which will result in the abandonment of the Master Plan. It has the Council's support on this at Officer level. The facts demonstrate that the only reason Calvary has for pursuing this course of

action is to remove the control of use that the Master Plan provides. Calvary wishes to be made unaccountable for the intensification of uses and the associated parking consequences. The Master Plan does not treat car parking as merely ancillary to the hospital use, it is specific and regards it as a use of the land in its own right, and it requires that the plans demonstrate the quantum of parking that can be accommodated on the site and where it will be located. Calvary wishes to avoid this and the residents run the risk of unsightly multi-level car parking developments occurring, which will cause overlooking, noise, pollution, and loss of natural light and views to become problems.

Calvary's problems are of its own making. It is unacceptable that the residents should be made to sacrifice their amenity so that Calvary can firstly be rewarded for breaking the law, and secondly so Calvary can be given carte blanche to continue to behave as it has in the past.

The residents are entitled to receive better treatment from the planning system than this. The fundamental principles of town planning that residential areas are not diminished because of commercial development must be observed. Clause 5.1.2 of the Planning Scheme gives effect to this principle. The residents have asked the Council to explain how they will be better off without the Master Plan on no less than five occasions, and the question is still unanswered. The Council says it must wait for a proposal, yet it is on record as promoting the removal of the Master Plan from the Scheme.

When looked at objectively, there is no case for the abandonment of the Master Plan. It needs updating not abandoning, and that is what should occur.

We trust this has explained the true situation to you. It is vital that everyone who may be involved in this matter at some stage, either directly or indirectly, be properly informed, and that is our aim. If we can assist further in that purpose please do not hesitate to contact us.