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18 October 2012

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By fax: 4323 1623

Dear Sirs

**RE: WADE AND GOSFORD CITY COUNCIL
UNLAWFUL CONSTRUCTION AND USE OF LAND FOR MEDICAL
PRACTICE
40-60 NICLINS ROAD, MANGROVE MOUNTAIN**

We refer to and thank you for the time taken yesterday to discuss the matter with ourselves, Dr Wade and Mr Hancock.

We confirm our request that Council refrain from taking any action as previously foreshadowed for a period of 8 weeks or in other words until the 14 December 2012 by which date our client will have submitted a Planning Proposal with respect to her operation of Mountain Medicine from the premises. We have set out below some background information. It is our view, and the view of our consultant John Hancock that the Planning Proposal is likely to be well received by the Department of Planning and Infrastructure and has realistic prospects of being adequately justified.

Background

1. Mountain Medicine is a health care practice which provides a comprehensive range of services and has approximately 2,500 people on its data base. The practice is owned by Dr Wade and has operated as Mountain Medicine at Mangrove Mountain since 2004. The medical practice services patients from the Mountain and wider surrounds stretching as far as Laguna/Paxton/Wollombi. Dr Wade is passionate about her profession and the ongoing provision of medical services to her patients.
2. In general terms GP services such as those provided by Dr Wade follow a model of care that is designed by the Government and medical organisations. That model envisages GPs setting up clinics which are multi-disciplinary chronic care teams supported by allied professionals; Practice Nurses,

Physiotherapists, Pathology services. On our instructions the traditional concept of a GP operating alone is rare.

3. Dr Wade is provided with a location specific provider number. That provider number is applicable to a particular practice/GP. If the GP ceases to operate under that particular medical practice the provider number lapses.
4. Dr Wade provides medical services to a variety of patients including those that are chronically ill. Some attend weekly/fortnightly, they are seen by Dr Wade as well as her support professionals. On occasion patients are seen up to three times a week, for example if they have suffered wounds or ulcers in which case they are seen by Dr Wade and the Practice Nurse.
5. The general zone applying the rural and farming areas in the Somersby/Mangrove Mountain/Central Mangrove/Peats Ridge areas is presently 1A Rural with a proposal to become RU1. That zoning allows without development consent, extensive agriculture; home occupations; horticulture; viticulture. There are a number of uses permitted with development consent including bed and breakfast accommodation; extractive industries; mining; stock and sale yards; veterinary hospitals. Medical services (health consulting rooms) are not permitted within the RU1 zone.

Medical services (health consulting rooms) have of course existed on the plateau for many years. It is an essential adjunct to farming or country life that medical services be available. Although non permissible, Council has in the past provided consent to the operation of health care facilities. For example:-

- a) The Community Health Centre, Nurses Road, Mangrove Mountain has operated with approval for many years.
- b) Gosford Local Environmental Plan Number 324 provided consent to a Medical Centre at Lot 2/DP613712. Those premises were in effect residential type premises from which General Practitioners operated.
- c) A development consent was given to the conduct of a Medical Practice from Shops 2 & 3, 1 Waratah Road, Mangrove Mountain being Lot 1/DP613712 in or around 2003.

The above are examples of the operation of health care facilities being permitted notwithstanding the zoning prohibition against that use.

6. Dr Wade conducted her practice at Shops 2 & 3, 1 Waratah Road, Mangrove Mountain until around October 2011. She ceased practicing from those premises as at that date because she received a Notice of Quit dated 30 August 2011 from the Landlord (attached). Suffice to say, the relationship between Dr Wade and the Landlord has soured and it appears quite obvious that those

premises are no longer available to Dr Wade from which to conduct a medical practice.

As a result of Dr Wade's eviction, Dr Wade relocated to an existing building previously used as a video store at Mangrove Mountain. In turn, the Landlord of those premises sought and obtained development consent for alterations and additions as a dwelling house and in turn served notice on Dr Wade to vacate.

Since being evicted from the Waratah Road premises in October 2011, Dr Wade has attempted to find an appropriate address from which to conduct her medical practice as follows:-

- a) Relocating to the Video Store at Mangrove Mountain (see above).
- b) Seeking/enquiring about various alternate locations including:-
 - i. Purchase of the Mangrove Mountain Memorial Club – offer accepted but deal collapsed due to the existence of a restrictive covenant which would not be removed.
 - ii. 2754 Wisemans Ferry Road, Mangrove Mountain (old School House) property sold via auction; consultant's advice that not suitable.
 - iii. 2252 Wisemans Ferry Road, Mangrove Mountain (old Trading Post) bid made; accepted by "handshake" subsequently gazumped.
 - iv. George Downes Drive, Kulnura – Catholic Church, discounted – too far out, traffic plus bush fire risk.
 - v. Old Peats Ridge Service Station site. Offer made, however, on further inquiry it transpired that the site was contaminated as a result of the previous placement of petroleum products (bowzers, tanks, etc) meaning that, particularly for a medical surgery, the site was not viable.

Planning Proposal

1. Medical facilities have previously been permitted on the Plateau, notwithstanding their preclusion due to the zoning. The present situation is that Clause 2.5 of the Standard Instrument Order (SIO) allows Councils to permit additional uses for particular land. Those permitted uses are to be inserted in Schedule 1 of the LEP. In considering whether or not to list in the LEP Schedule 1 it is noted the Practice Note requires that listings should be minimized (and should only proceed where Council can demonstrate that there is no other acceptable solution to progress the matter).

Although the Planning Proposal is yet to be formally compiled, it is our submission that at this stage there is sufficient information to show that there is no other acceptable solution to progress the matter. In particular:-

- a) The previous premises Dr Wade occupied are not available to her due to an eviction by the Landlord.
- b) The alternate sourced by Dr Wade (the old video store) is no longer available.
- c) Despite negotiations with various parties Dr Wade has been unable to secure appropriate alternate premises. We do note that at this stage even if alternate premises were available, at present the zoning would not permit those premises to be used as a medical practice.
- d) There is a Community Health Centre operated by the Central Coast Area Health in Nurses Road, Central Mangrove (Mangrove Mountain Community Health Centre) however there is no ability to accommodate Dr Wade at that facility.
- e) Dr Wade's practice cannot be accommodated as a home occupation. Although we are aware that home occupations are from time to time carried out in a manner which "stretches the rules", Dr Wade's practice cannot be categorized as a home occupation. In that regard we refer you to our comments in relation to the nature and conduct of medical practices generally including those of Dr Wade. Her practice cannot effectively operate without the provision of the support services.

In considering a Planning Proposal, the Council/Dr Wade's Town Planner will need to liaise with the Department of Planning and Infrastructure. We are advised that our Town Planner has made some preliminary enquiries with the Department and from those preliminary enquiries has reasonable cause to believe that the Planning Proposal will be recognised by the Department. Of course there is plenty of information that still needs to be gathered, prepared and submitted in order for there to be a final view but the early signs from the Department are favourable.

Although the Practice Note addressing Schedule 1 specifically refers to the requirement to demonstrate that "there is no other acceptable solution to progress the matter", the Practice note contains a heading that states "Schedule 1 should only be used in exceptional circumstances". Although our view is that the criteria within the Practice Note that needs to be observed is that contained within the body of the Practice Note as opposed to the heading (ie, "no other acceptable solution"), if regard is to be had to "exceptional circumstances" we observe the following:-

- a. Dr Wade is committed to providing medical services to the residents of the plateau. Given the chronic shortage of GP's in country areas and the inability to attract rural practitioners, it would be devastating to the community if her services were lost.

- b. As indicated above, her Provider Number is location based. Therefore if Dr Wade is not permitted to practice on the plateau that Provider Number will simply cease. Dr Wade could obtain employment as a locum/consultant at another medical practice but this would not be on the Plateau. Dr Wade would then operate under a different practice's provider number.
- c. The prospects of replacing Dr Wade would in our submission be remote. At present she provides a service to the plateau residents including those of herself as a GP, Practice Nurses, Physiotherapists, Pathology services. None of those other services could be provided (lawfully) on the mountain. If Mangrove Medical closes there cannot at present under the zoning be a replacement. An alternate medical practitioner if found (according to the AMA there will be a shortage of 3,000 doctors by the middle of the next decade). They would have to operate as a GP under a home occupation or face the same planning issues Dr Wade now faces. The simple facts are the Plateau will lose a valuable medical service.
- d. The granting of consent to the operation of medical practices previously by Council notwithstanding the exclusion of that use from the zone reflects in our view a desire on the part of Council to ensure that medical services are available to the plateau population.
- e. Given the general shortage of Doctors, it will likely be difficult for 2,500 patients to find an alternate medical practitioner. There is a propensity for medical practitioners to advise that either "the books are closed" or if services are to be provided, they are provided on a no booking arrangement meaning lengthy delays. We are told that when the second doctor, Dr Mooreland, recently left Mangrove Medicine many of her patients were unable to find alternate GPs ("books were closed") and are therefore now being serviced by Dr Wade. There is a real chance that many of Dr Wade's patients will be unable or unwilling to source alternate medical care and will be left without medical attention.
- f. The only alternate GP on the Mountain, Dr Anand operates as a home occupation and Dr Anand would not be able to cater for an additional 2,500 patients let alone provide them with the multi-disciplinary care provided by Dr Wade's practice.
- g. Dr Wade herself uses the balance of her land for agricultural purposes. The agricultural operation of the property will not change.
- h. It would be a completely incongruous situation if the zoning of the area can accommodate mining, extractive industries and veterinary hospitals yet not allow (by a Planning Proposal) a medical practice. In other words it is a necessary ancillary activity to allow our stock and pets to be cared for but not our residents.

Whilst recognising that Dr Wade created issues in relation to compliance we would ask that any decision in relation to further action be delayed until on or after 14 December 2012, to enable the Proposal to be formally submitted.

Summary

1. In summary Dr Wade is a highly committed medical practitioner, passionate about providing medical services to her patients on the Plateau.
2. Exhaustive efforts have been made to find an alternate acceptable solution.
3. Although the present zoning precludes medical facilities, permission has in the past been given to the operation of medical services on the Mountain.
4. There is reasonable cause to believe that Dr Wade's present use will be permitted by Clause 2.5 of the SIO.
5. An indulgence is sought to enable Dr Wade to pursue the application pursuant to Clause 2.5 of the SIO (Planning Proposal).
6. The consequences to the Plateau Community would be severely disruptive if medical services could not be provided by Dr Wade whilst the Planning Proposal is pursued.

We look forward to hearing from you.

Yours faithfully
C B D LAW

GILES FINNEY

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