

## Attachment 8: Copy of the Applicant's Legal Advice

The following is a copy of the applicant's legal advice with regard to the existing right of carriageways on the subject site.

Our reference      Philippa Collins 35605272  
Direct line        +61 2 9931 4955  
Email               philippa.collins@gadens.com  
Partner responsible   John Grimble

**gadens**

Gadens Lawyers  
Sydney Pty Limited  
ABN 69 100 963 308

77 Castlereagh Street  
Sydney NSW 2000  
Australia

DX 364 Sydney

T +61 2 9931 4999  
F +61 2 9931 4888

[Web]

24 June 2015

General Manager  
Blacktown City Council  
PO Box 63  
Blacktown NSW 2148  
**Attention: Rebecca Gordon**

Dear Sir/Madam

**1 Zoe Place, Mount Druitt (Folio Identifier 1/883859) - Development application / Blacktown Council**

We confirm that we act on behalf of Ausunion First Group Pty Ltd in connection with the development of the above property and in relation to our client's pending development application for residential development of the property.

We instructed that Council has concerns in relation to a right of carriageway (**ROW**) which burdens the Property and benefits the neighbouring lot 11 in deposited plan 829697 and that, as part of its determination of our client's development application, seeks:

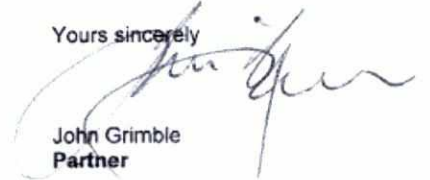
1. a statement concerning advice that we have provided to our client to the effect that the ROW can be built over but only above 4.5m above the existing ROW in accordance with the approved development application; and
2. confirmation from us on behalf of our client that during the works period uninterrupted access from the neighbouring lot 11/829697 to Zoe Place will be maintained.

We confirm that our client is entitled to build over the ROW but not so as to obstruct the use of it. The owners of 11/829697 will not be prevented from passing and re-passing over the ROW in vehicles or otherwise by the structure proposed in the development application. As such, on our instructions and as is evident from our client's development application, the structure will not cause interference with reasonable and proper use of the ROW and in accordance with the standing legal authorities is not an actionable breach of the ROW.

We are instructed that our client will provide the owners of 11/829697 with temporary alternative access over our client's land for the entirety of the period that construction prevents the owners of 11/829697 from use of the ROW and will provide any necessary undertakings in this regard as may be reasonably required. In this regard, we note that the owners of 11/829697 are entitled to deviate onto private land should the ROW be obstructed by our client (we refer to *Selby v Nettlefold* (1873) LR 9 Ch App 111 and more recently *Hemmes Hermitage Pty Ltd v Abdurahman* (1991) 22 NSWLR 343 in this regard).

Should you have any questions or concerns, please do not hesitate to contact our office.

Yours sincerely

  
John Grimble  
Partner

Our reference      Mike Steell 35605272  
Direct line        +61 2 9035 7436  
Email               mike.steell@gadens.com  
Partner responsible   John Grimble

gadens

Gadens Lawyers  
Sydney Pty Limited  
ABN 69 100 963 308

77 Castlereagh Street  
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24 July 2015

General Manager  
Blacktown City Council  
PO Box 63  
Blacktown NSW 2148

Dear Sir/Madam

**1 Zoe Place, Mount Druitt - Development application/Blacktown Council  
Property: Folio Identifier 1/883859**

We refer to our previous letter dated 24 June 2015 and are instructed that Council seeks further confirmation in relation to the legality of our client building a structure which is 4.5 metres above the right of carriageway (**ROW**) which burdens the property and benefits lot 11 in deposited plan 829697.

The applicable law prevents 'substantial interference' with the use of the ROW, taking into account the terms and purpose of the ROW. It is our view that a structure which is 4.5 metres above the ROW would not present a substantial interference and would therefore not infringe upon the rights granted under the ROW. The ROW will be able to be used by individuals on foot and in vehicles.

We note that the dimensions of heavy vehicles in NSW are governed by national regulations and cannot exceed 4.3 metres in height, with the exception of vehicles intended to carry large livestock or automobiles. Even with a structure restricting the height of vehicles to under 4.5 metres, the ROW will continue to be able to be used by vehicles and ultimately for all purposes for which the ROW was granted.

Should you have any questions or concerns, please do not hesitate to contact our office.

Yours sincerely



Mike Steell  
Senior Associate