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The General Manager
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ATTENTION: TONI AVERAY – DIRECTOR PLANNING & GROWTH

DA333/2015 – 200 GOVERNOR MACQUARIE DRIVE, WARWICK FARM, PROPOSED INDUSTRIAL ESTATE – DRAFT CONDITIONS

Dear Toni,

Reference is made to the draft conditions of consent (DA333/2015) issued by Council on 10 December 2015 which relate to the proposed construction and operation of four (4) warehouse facilities at 200 Governor Macquarie Drive, Warwick Farm (Lot 42 DP 1201607).

Following review of the draft conditions, Willowtree Planning has prepared a condition matrix which itemises the particulars of the conditions that are requested to be amended on behalf of Stockland Development Pty Ltd. It is kindly requested that Council review the requested amendments and incorporate these into the final Notice of Determination.

Of particular relevance, is the Planning Agreement between Liverpool City Council and the Australian Turf Club (reference no. 65 35 4369) and draft conditions 5, 6, 7 and 122 issued in relation to the proposal. Legal advice has been sought from Norton Rose Fulbright dated 27 January 2016 regarding these conditions and it is contended that they should be deleted as it is inappropriate and unnecessary for obligations within the Planning Agreement to be replicated as conditions of consent.

The relevant conditions which relate to the Planning Agreement and are requested to be deleted are shown in **red** below:

- ~~5. All roadworks, traffic improvements, drainage works and dedications, required to effect the consented development shall be undertaken in accordance with the Voluntary Planning Agreement executed by Australian Turf Club Limited and Liverpool City Council. (Document No. 65-35-4369-JRT)~~
- ~~6. The development shall be undertaken in accordance with any applicable terms and conditions of the Voluntary Planning Agreement executed by Australian Turf Club Limited and Liverpool City Council. (Document No. 65-35-4369-JRT).~~
- ~~7. Any works undertaken pursuant to Schedule 3, Part 1 – Works, Item Nos. 2 and 3, as detailed within the Voluntary Planning Agreement executed by Australian Turf Club Limited and Liverpool City Council. (Document No. 65-35-4369-JRT), must be undertaken in accordance with the Vegetation~~

~~Management Plan, prepared by Travers Bushfire Ecology, reference A14149, dated October 2015.~~

~~122. Prior to the issue of an Occupation Certificate all works identified as part of the Voluntary Planning Agreement executed by Australian Turf Club Limited and Liverpool City Council. (Document No. 65 35 4369 JRT) must be completed.~~

The basis of the justification to delete the abovementioned conditions pertains to the existing legal mechanisms within the *Environmental Planning & Assessment Act 1979* (EP&A Act) to ensure the obligations of the Planning Agreement are complied with. In particular Section 123 which provides a right for any person to bring proceedings in the Land & Environment Court for an order to remedy or breach the EP&A Act. Furthermore, Clause 13 of the Planning Agreement provides security for performance obligations under the Planning Agreement, and Sections 109H(2) and 109J(1(c1)) restrict the issue of an Occupation Certificate or Subdivision Certificate unless the pre-conditions to the issue of that certificate have been met.

The detailed legal justification for deletion of these conditions is attached to this letter, along with the suggested wording for a number of other conditions within the condition matrix to ensure that there is no ambiguity in obtaining the necessary certificates subsequent to issue of the Notice of Determination for the development to proceed.

To date there has been conjecture regarding the responsibility to carry out the intersection works specified under the Planning Agreement. It is noted that these intersection works do not relate to Lot 42 DP 1201607 (as defined by Schedule 2 in the Planning Agreement) and therefore Stockland are not responsible to carry them out. It is kindly requested that Council prompt the Australian Turf Club to submit the Section 96 Application which captures the revised intersection design to ensure that the future operation of the proposed warehouse facilities is not impeded.

For information purposes, enclosed is a plan which delineates the property boundaries with respect to the intersection works that reinforces these works are not the responsibility of Stockland.

Having regard to the intersection works that are pending final sign off from RMS, Stockland requests that a new condition be inserted in the consent that reads as follows:

- *Prior to the issue of an Occupation Certificate, a revised Plan of Subdivision must be submitted that delineates the correct arrangement of property boundaries of LOT 42 DP 1201607 at the Governor Macquarie Drive frontage of the site. The plan is to take into account the intersection works undertaken along Governor Macquarie Drive to provide a signalised intersection and any adjustments required to the boundaries. Details demonstrating compliance are to be submitted to the Certifying Authority.*

This imposition of this condition will ensure that the boundaries of Lot 42 DP 1201607, are adjusted in line with the intersection works and the improvements are located external to the subject property. This condition will also prevent the submission of a future Section 96 Application to rectify the adjustment of the boundaries.

In response to Council's previous request, we enclose a revised set of architectural plans that provides an indicative layout of the intersection for inclusion within the approved documentation.

Based on the information provided within the attached condition matrix and legal advice, it is requested that Council review the proposed condition amendments in detail. We also welcome the opportunity to meet with Council to discuss the proposed amendments should it be necessary.

Should you require further information, please contact the undersigned.

Yours Faithfully,



Chris Wilson
Director
Willowtree Planning Pty Ltd
ACN 146 035 707

Enclosed:

- Condition Matrix
- Legal Advice - Norton Rose Fulbright dated 27 January 2016
- Plan delineating property boundaries in respect of intersection works
- Revised Architectural Plans