

Our Ref: DGM:AH:210119
102767

14 March 2022

Mr Paul Smith
Upper Hunter Shire Council
PO Box 208
SCONE NSW 2337

By email: PSmith@upperhunter.nsw.gov.au
CC: mpringle@upperhunter.nsw.gov.au

Dear Sir/Madam

DA 163/2017 – Request for Further Information

We confirm that we act on behalf of Charles David Pty Ltd ACN 123 840 004 and refer to the Upper Hunter Shire Council's request for further information ("RFI") in relation to DA163/2017 along with our previous correspondence dated 21 February 2022.

We note that the RFI and the Planning Panel requested clarity on the legal mechanism for enforcing, and the specific terms of, the covenants, easements and restrictions as to user that will be implemented as part of the proposed development.

We provide the Applicant's preferred wording below for Council consideration:

- **Salinity: Restriction as to User – Lot 514**

We note that the lot layout for the Development has been amended to accommodate the recommendations of the Flood Assessment Report prepared by Torrent Consulting. We draw your attention to the fact that Lot 514 will now be used for Basin 3a and Basin 3b. Accordingly, no restriction of user is required as no residential development will occur on this land in the future.

- **Rural Vegetation Buffer**

Lot Burdened Lot 2 DP1169320

Benefited Lot 2 in DP1169320 and Upper Hunter Shire Council ("**Council**")

a) Easement for Vegetation Buffer: 6 Wide

Terms

Full and free right for Benefited parties or their authorised representatives over all areas on the plan marked "Vegetation Buffer" to install, plant, maintain, inspect, remove and replace all forms of vegetation, irrigation, soil, fencing, mulch or any other landscape element as required to install and maintain the Vegetation buffer in accordance with the Landscape Plan.

b) Positive Covenant

Terms

1. The Burdened party will, at its cost and in a good and workmanlike manner, in respect of the Easement for Vegetation Buffer 6 Wide:
 - a. maintain the Vegetation Buffer planting in accordance with the Landscape Plan such that it provides a buffer between the rural lands and residential lands as intended;
 - b. perform the lifecycle renewal and restoration works of plantings as required such that it continues to provide a buffer between the rural lands and the residential lands as intended;
 - c. permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time without notice in the case of an emergency) to enter and inspect the Vegetation Buffer for compliance with this covenant;
 - d. comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.
 - e. hold a \$10 million public liability insurance policy covering the area (H) on the plan.
2. This positive covenant will cease over any part, that is rezoned to a residential zoning under the LEP.
3. Pursuant to section 88f(3) of the *Conveyancing Act 1919*, as amended, the Council shall have the following additional power in the event that the Burdened party fails to comply with the terms of any written notice issued by the Council as set out above, the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its sole discretion considers reasonable to comply with the said notice referred to above and Council may recover from the Burdened party in a Court of competent jurisdiction any expense reasonably incurred.

- **Asset Protection Zone (APZ)**

Lot Burdened Lot 2 DP1169320

Benefited Lot 2 in in DP1169320 and Upper Hunter Shire Council ("Council")

a) Easement for APZ 10 Wide & 12 Wide

Terms

- 1.1 Full and free right for Benefited parties or their authorised representatives, from time to time, and at all times to enter onto the Lot Burdened within the site of the easement indicated on the plan ("Asset Protection Zone"), together with the right to manage the Asset Protection Zone by carrying out bushfire hazard reduction work in the Asset Protection Zone so as to or reduce the bushfire hazard to the improvements on the Lot Benefited and to do anything reasonably necessary for that purpose including but not limited to:
 - (a) the establishment or maintenance of fire breaks and access tracks within the Asset Protection Zone;

- (b) the controlled application of appropriate fire regimes or other means for the reduction or modification of available fuels in the Asset Protection Zone to mitigate against the spread of a bushfire;
- (c) entering upon and obtaining access to the Asset Protection Zone at any time with surveyors, workmen, vehicles, materials, machinery or implements or any other necessary things or persons; and
- (d) placing and leaving on while work is being undertaken, or removing from, the Asset Protection Zone all necessary materials, machinery, implements and other things.

1.2 In exercising its rights the Burdened parties or their authorised representatives must:

- (a) ensure that all work is done properly;
- (b) cause as little inconvenience as is practicable to the Burdened party and any other occupier of the Lot Burdened;
- (c) cause as little damage as is practicable to the Lot Burdened and any improvement on it;
- (d) make good within a reasonable time any damage it causes to the surface of the Lot Burdened and any improvement on it; and
- (e) restore the Lot Burdened as nearly as practicable to its former condition (subject to the Lot Burdened being maintained as an Asset Protection Zone) and make good any collateral damage.

1.3 The Burdened party must not:

- (a) do or neglect to do or permit or suffer anything to be done which may result in the Asset Protection Zone being interfered with or comprised in terms of its capacity to reduce the bushfire hazard to the improvements on the Lot Benefited.

1.4 The Benefited parties and the Burdened party covenant and agree that:

- (a) The cost of such maintenance and repair shall be carried out at no cost to the Council.
- (b) that routine maintenance and inspection of the Asset Protection Zone will be undertaken, and in particular prior to the start of each annual fire season.

1.5 The Easement for Asset Protection Zone is released over any part of the Lot Burdened once the land subject to the Easement for Asset Protection Zone is developed for any residential land purpose or the NSW Rural Fire Service and or Council give notice in writing to the

Burdened party that an Asset Protection Zone is no longer required on the Lot Burdened.

b) Positive Covenant

Terms

1. The Burdened party must maintain an Asset Protection Zone within the area designated (APZ) on the plan in accordance with:
 - a. Appendix 4 of "Planning for Bush Fire Protection 2019" and the NSW Rural Fire Service's document "Standards for Asset Protection Zones"; and
 - b. The requirements of Council and NSW Rural Fire Service applicable from time to time.
2. The Burdened party must:
 - a. permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time without notice in the case of an emergency) to enter and inspect the Vegetation Buffer for compliance with this covenant;
 - b. comply with the terms of any written notice issued by the Council or NSW Rural Fire Service in respect of the requirements of this covenant within the time stated in the notice.
 - c. hold a \$10 million public liability insurance policy covering the area (APZ) on the plan.
3. This Positive Covenant will cease over any part of the land, that is developed into residential land.
4. Pursuant to section 88f (3) of the Conveyancing Act 1919, as amended, the Council shall have the following additional power in the event that the Burdened party fails to comply with the terms of any written notice issued by the Council as set out above, the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its sole discretion considers reasonable to comply with the said notice referred to above and Council may recover from the Burdened party in a Court of competent jurisdiction any expenses reasonably incurred.

• Gundy Road Interface

Lots Burdened 101, 102, 103, 114, 201, 202, 203, 204, 205, 206, 301, 302, 303, 304, 305, 306, 307

Benefited Upper Hunter Shire Council ("Council")

a) Restriction on the Use of Land

Terms

- a) The Lot Burdened shall maintain at all times the landscape elements and fencing within the restriction area designated on the plan.
- b) The Lot Burdened shall not construct a pedestrian or vehicle access through the restriction area designated on the plan to the Gundy Road Reserve, no access to burdened lots from Gundy Road is permitted.
- c) Full and free right for Benefited parties or their authorised representatives, from time to time, and at all times to enter onto the area designated on the plan to carry out maintenance or landscape plantings.

- **Easement for Stormwater Discharge (South-West Corner)**

Lot Burdened Lot 2 DP1169320

Benefited Upper Hunter Shire Council ("Council")

Terms

1. Full and free right for Benefited parties or their authorised representatives , from time to time, and at all times to enter onto the Lot Burdened within the site of the easement indicated on the plan Easement for Stormwater Discharge to install and maintain earthworks and vegetation for the dissipation of stormwater flows and erosion prevention.
2. The Burdened party must not do or neglect to do or permit or suffer anything to be done which may result in the easement being interfered with or comprised in terms of its capacity to dissipate stormwater flows and prevent erosion.
3. In exercising its rights the Benefited Parties or their authorised representatives must:
 - a. ensure that all work is done properly;
 - b. cause as little inconvenience as is practicable to the Burdened Party and any other occupier of the Lot Burdened;
 - c. cause as little damage as is practicable to the Lot Burdened and any improvement on it;
 - d. make good within a reasonable time any damage it causes to the surface of the Lot Burdened and any improvement on it; and
 - e. restore the Lot Burdened as nearly as practicable to its former condition (subject to the area burdened being maintained as working stormwater an Asset Protection Zone) and make good any collateral damage.

We ask that you confirm that the abovementioned terms are acceptable to the Council, or, in the alternate, advise of any proposed changes Council may have.

Yours faithfully



Daniel Morgan

Partner

email: daniel@morganenglish.com.au