



Our Ref PLW:JH:SERP:47304
Your Ref

26 May 2021

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*By email: Craig.Wallace@lavan.com.au
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Dear Craig and Alex

DR 27 OF 2021 - COURT GRAMMAR SCHOOL V SHIRE OF SERPENTINE-JARRAHDAL

Introduction

1. I refer to your letter dated 25 May 2021.

Proposed SAT orders

2. Dealing first with the urgent matter of SAT directions, we propose the following orders by consent:
 - (1) Pursuant to section 31 of the *State Administrative Tribunal Act 2004*, the respondent is invited to reconsider its decision, not later than 19 July 2021.
 - (2) The matter is adjourned to a further directions hearing on 23 July 2021.
 - (3) Orders 3 and 4 of 30 April 2021 requiring Statements of Issues, Facts and Contentions, are suspended until further order.

Timing for Council meeting

3. With regard to proposed order (1), although it makes provision for a reconsideration at the Council's July meeting, it may be possible, though quite challenging, to bring that forward to the 21 June 2021 meeting.
4. The closing date for reports to go to the 21 June meeting, is 28 May 2021.

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5. I have prevailed on the Shire's relevant Executives to extend this to Monday 31 May 2021.
6. By that time, in order to make the June 2021 meeting, what is required is full agreement to the terms on which the parties agree to progress good faith negotiations for a period of 12 months towards a Shared Use agreement. Agreement is not needed on the terms of the actual Shared Use – that is the very thing to be negotiated – but agreement is needed on the process by which that negotiation is to be progressed.
7. It seems to me that the only feasible way that we can achieve agreement on this by Monday 31 May 2021, is via an exchange of correspondence. The key purpose of this letter, therefore, is to propose the terms of the subject matter underlined above, and to invite a reply. If the parties are in agreement through that exchange of correspondence, then that represents a sufficiently-agreed position for Shire officers to compile a report to take to the 21 June meeting, whereby they would recommend Council:
 - (a) endorse the terms of the agreement to progress negotiations; and
 - (b) resolve to modify Condition 2 from the development approval to read as follows:
 - “2. The applicant is to abide by the requirements of the Agreement to Progress Negotiations as to provision of Community Access to services and facilities on the subject land. The Agreement to Progress Negotiations being the agreement the terms of which are contained in the correspondence between McLeods Barristers and Solicitors and Lavan Legal dated 26 May and [31 May?] 2021 and as endorsed by resolution of Council of [21 June 2021?].”

Building permit

8. On this basis, assuming that your client has a building permit application standing by, then subject only to the processing of the building permit application, your client could commence construction very shortly after 21 June 2021.

Terms for negotiating Community Access over next 12 months

9. The terms which the Shire's officers propose (subject to Council endorsement) as to the manner in which the parties are to progress good faith negotiations over a period of up to 12 months, are as follows:
 - (1) The parties are to have regard to the 2008 Deed as setting the context for the current negotiations.
 - (2) The specific purpose of the negotiation is to attempt to achieve agreement on the detail of the content of the requirement under clause 20 of the 2008 Deed,

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that the School provide conditional community access to services and facilities located on Lot 1 at times when these services and facilities are not required by the School (**Community Access**).

- (3) As such, negotiations need to focus on identifying, among other things:
 - (a) what services and facilities can be the subject of Community Access;
 - (b) what times the services and facilities are and are not required by the School – which may not be uniform across each service or facility;
 - (c) the terms of sharing of the services or facilities to include the consideration of the projected timing of the establishment of any services or facilities under discussion to the extent that they are not already *in-situ*;
 - (d) the terms and conditions of the Community Access agreement; and
 - (e) the establishment of a booking system and a regime for advertising the availability of the system.
- (4) Child safety in the design and implementation of any Community Access agreement is to be an uppermost consideration.
- (5) The parties acknowledge that the 2008 Deed provides that if agreement can be achieved on Community Access, then the School will be relieved of any obligation to pay developer contributions under any future-operative Developer Contribution Plan.
- (6) The parties also acknowledge that if agreement cannot be achieved on Community Access, then the School would become liable to developer contributions to the extent envisaged by Clause 23 of the 2008 Deed.
- (7) The parties acknowledge that under the 2008 Deed, the concession referred to in (5) is subject to Community Access being to a level that the Shire deems to be sufficient to discharge any obligation that the School may otherwise have to make developer contributions.
- (8) The nature of the concession just referred to is different from, and from the Shire's perspective more generous than, a concession whereby merely a lower rate of developer contribution is payable. The Shire would expect the level of Community Access to be commensurate in the Shire's assessment, with that concession. The Shire will of course be reasonable and negotiate in good faith, in this regard.

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- (9) The parties agree to meet at least monthly to progress negotiations as to Community Access. Attendees are to be at an appropriate level of seniority. It is encouraged that Board Members at the School attend, and in any event, the School agrees that at least one Board Member will attend meetings on at least a quarterly basis.
- (10) The parties commit to progressing their negotiations in good faith at all times.
10. As mentioned above, your positive written reply by close of business on Monday 31 May 2021 will enable this matter to be placed on the agenda for the 21 June Council meeting.

I look forward to hearing from you.

Yours sincerely



Peter Wittkuhn
Partner

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