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Our Ref: JBH:PC:20180

23 November 2021

Kempsey Shire Council
PO Box 3078
WEST KEMPSEY NSW 2440

By Email: ksc@kempsey.nsw.gov.au

Attention: General Manager

Dear Sir/Madam

Application to further modify development consent no. DA T6-02-109
Ppty: Lot 1 in DP 1191860, Nevertire Road and Illa-Langhi Road, Crescent Head

We act for the Goolawah Co-operative. Our instructions concern the conditions of consent associated with development consent reference no. DA T6-02-109 (**Consent**), modified most recently in 2019.

Given the nature of the Consent and in light of the cost of the works required by condition 4 of the Consent (**Condition 4**), it respectfully seems to us that Condition 4 is disproportionate and unreasonable. Assuming that our view is accepted, a modified version of Condition 4 could be imposed which requires a reduced financial impost and more closely aligns with the nature of the development approved pursuant to the Consent.

In essence, Condition 4 could be amended so as to require our client to carry out specific road safety and maintenance measures in respect of both Illa-Langhi and Nevertire Roads, Crescent Head (**Roads**) that our client (as an entity providing low cost, affordable and alternative housing to its members) is able to reasonably and realistically afford.

To that end, and so as to understand the amendments to Condition 4 that are proposed, our client has engaged McLaren Traffic Engineering to prepare a Traffic Impact Assessment (**TIA**) on the Roads. The TIA recommends a standard to which the Roads should be maintained, together with a number of road safety measures that should be implemented in respect of both Roads, both independently of and in conjunction with Council. The TIA has been lodged with Council along with the current modification application and this letter, in addition to a

Hones Lawyers Pty Ltd | ABN 56 605 835 041

Level 4, 66 Berry Street, North Sydney NSW 2060 | PO Box 1989, North Sydney NSW 2059

T +61 2 9929 3031 | F +61 2 9929 7071 | E reception@honeslawyers.com.au

W www.honeslawyers.com.au

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planning report addressing specific town planning issues and proposing an amended version of Condition 4 (**Planning Report**).

Council will note that the TIA concludes that the Roads can remain as unsealed 2WD all-weather roads, with select safety and sight-line improvement works proposed. This is a far more preferable and reasonable alternative than requiring our client to seal both Roads to a standard far above what would be required for a development creating a maximum of only 100 vehicle trips per day.

We note at this point that Council continues to maintain, as part of an unsealed road system of an approximate total of 578km, a number of other unsealed roads within its local government area at a similar standard that service a similar number of dwelling houses (approximately 75), for example Beranghi Road, Collombatti Road, Dungay Creek Road, Mungay Creek/Mine Roads and Ryans Road (amongst others).

Further, we observe that in Council's 2013 Asset Management Plan (adopted on 18 February 2014, herein **Plan**), it is stated (in section 5a.1.2 subsection 3 – see p 43 of the Plan) that "Generally, roads with lower traffic volumes will achieve lowest lifecycle cost if unsealed. As traffic volumes increase, sealed roads will generally have lowest lifecycle cost. Council's prioritisation model identifies roads with traffic volumes exceeding 300 vehicles per day as roads to be sealed."

The traffic counts carried out in the course of preparing the TIA (see specifically section 3 and Annexures A and B) show that each of the Roads has approximately 60 vehicle trips per day. This is one-fifth of the figure that Council considers in the prioritisation modelling in the Plan. In light of this, the extent of civil road engineering currently required by Condition 4 is disproportionate to both the traffic volumes on each of the Roads and the nature of our client's development, and represents a significant financial burden on our client.

Furthermore, Condition 4 does not appear to us to be imposed to require the reasonable carrying out of works arising from, and related to, the development permitted by the Consent.

For these reasons, we are of the opinion that the recommendations in the TIA and the amended form of Condition 4 as set out in the Planning Report should be capable of being approved by Council.

Yours faithfully
HONES LAWYERS



Jason Hones
Managing Partner
jhones@honeslawyers.com.au