

10 March 2020

Georges River Council
24 Macmahon St,
Hurstville NSW 2220
Attention: General Manager

Dear Sirs

DEVELOPMENT APPLICATION 2018/0366 (Development Application)

**33-35 TREACY STREET HURSTVILLE IN THE STATE OF NEW SOUTH WALES
(being made up of folio identifiers 5/11931 AND 6/11931)(Property)**

We confirm our instruction to act for Wolf Construction Group Pty Ltd ACN 630 899 900
ATF Wolf Construction Group Unit Trust and Prospa Developments Pty Ltd ACN 625
315 755 ATF Prospa Developments Trust with respect to the Property and Development
Application lodged with, and being assessed by, Georges River Council (**Council**).

This letter sets forth submissions with respect to paragraph 6.0 of Council's letter dated
25 February 2020.

History

Council will note that:

1. the Property enjoys the following easements over the property known as 23 –
31 Treacy Street Hurstville in the State of New South Wales (being the strata
subdivision of the properties previously identified as folio identifiers A/398056,
1/225695, 2/225695, 1/A/2752, 2/A/2752 , 3/A/2752 , 4/A/2752 and 5/A/2752
(**Neighbouring Property**):
 - a. DP1243437 – Easement for fire stairs and passages;
 - b. DP1243437 – Easement for support 1 metre wide (limited in stratum);
 - c. DP1243437 – Easement for access variable width (limited in stratum);

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Liability limited by a scheme approved under Professional Standards Legislation

- d. DP1243437 – Easement for access to and use of loading bay variable width (limited in stratum)
- e. DP1243437 – Easement for Wall Opening 1 metre wide (limited in stratum); and
- f. DP1243437 – Easement for construction 3 metres wide (limited in stratum)

(Easements);

- 2. the Easements themselves were granted by the developers of the Neighbouring Property as a condition to their consent for the redevelopment of land which included the Property and the Neighbouring Property (together with one other, being 21 Treacy Street Hurstville in the State of New South Wales being folio identifier 6/A/2732) being development consent DA2014/1066 (**Development Consent**) – notably Condition 78 of the Development Consent;
- 3. that the Development Consent envisaged, amongst other matters,:
 - a. a redevelopment of all of the properties known as 21-35 Treacy Street Hurstville in three (3) separate and distinct stages (each a **Stage**);
 - b. four (4) levels of basement to be enjoyed by each Stage;
 - c. a concept, configuration and location as to carspace allocation within each Stage;
 - d. the traffic flows through each Stage;and, generally, the scale of the development to be undertaken.

When considering the ambit of operation of an easement, it is clear that, at law,:

- 1. the intention of the parties the subject of the easement must be determined; and
- 2. the primary source in interpreting an easement or other registered document must be its own terms

to establish the operation thereof.

In the current factual circumstance, the Easements were granted for the purpose of undertaking, and enjoying rights associated with, a redevelopment of the Property in the manner contemplated and envisaged by the Development Application. The drafting of the terms of the Easements are clear on their face in this regard.

The Easements as granted, and the Development Consent itself, evidence Council's knowledge of, and consent to, a development in the order of, and in line with, the Development Application lodged with respect to the Property.

As to the knowledge of the owners of the subdivided lots in the Neighbouring Property, it is noted that:

1. the Development Consent, prior to its grant, was notified and advertised by Council;
2. the contract for sale of land pursuant to which the owners acquired their interests in the subdivided strata lots created via the strata subdivision of the Neighbouring Property would have disclosed the existence of the Easements and the purpose of same;
3. it is, of course, the case that the strata subdivision is accompanied by an instrument of title (section 88B instrument) which sets out the Easements.

It cannot be said that the owners of the subdivided lots in the Neighbouring Property were not on notice of the existence of the Easements and their intended purpose (being in line with the Development Application) prior to their acquisition of the relevant lots.

In all surrounding circumstances, the suggestion that the owners of lots in the Neighbouring Property "have raised concern regarding the utilisation of their driveway for access through to the new building" is ungrounded. The Neighbouring Property was the subject of approval on the basis of the grant of rights pursuant to the Easements, the development the subject of the Property in line with the Development Application and the Staging of the redevelopment in accordance with the Development Consent are all matters which were envisaged and the subject of consent.

It is clear, at law, that the rights set out in the Easement are in existence and legal and that no consent is required from the owners of the lots making up the Neighbouring Property for their enjoyment.

Yours Faithfully,

A handwritten signature in blue ink, appearing to read 'Harry Foteades', with a stylized flourish at the end.

Harry Foteades | Solicitor | Foteades Freeman Cohen