

Our Ref: JAC:1069818

20 October 2021

## To the Residents

Dear Resident

### **Georges River Council ats Landgrowth One Pty Ltd ATF Landgrowth 001 Unit Trust Land and Environment Court proceedings no. 2021/00199083 (Proceedings) Property: 80 Boronia Parade, Lugarno (Site)**

We refer to our previous correspondence in relation to the abovementioned matter in which we act for Georges River Council (**Council**).

As previously advised, the proceedings have been commenced by Landgrowth One Pty Ltd ATF Landgrowth 001 Unit Trust (**Applicant**) in the Class 1 jurisdiction of the Land and Environment Court (**Court**) against Council's deemed refusal of Development Application DA2021/0181 (**the Application**). Since then the Applicant has also commenced a second appeal against the Council's imposition of an Interim Heritage Order (**IHO**) on the site.

We are instructed that you made a submission to Council in relation to the Application.

We are writing to advise, for all of the reasons set out below, that the conciliation conference has been moved from 22 October 2021 to **1 February 2022**.

### **Conciliation conference**

We wrote to you on 5 October 2021 advising that the Proceedings have been listed for a conciliation conference before the Land and Environment Court under section 34 of the *Land and Environment Court Act 1979* (**Court Act**) on **22 October 2021**. The Court recently listed the IHO appeal s 34 conciliation conference on the same day.

As you may be aware, the Council resolved to place an IHO on the property to allow further investigation and recommendation regarding a Heritage Order. The Council has briefed a further independent heritage expert to report back on their investigations, the time for which is facilitated by the IHO. The result of this investigation provided for by the IHO may affect the conduct of the proceedings and its legal framework.

### **Circumstances giving rise to the vacation of the conciliation conference**

On 16 October 2021, the Applicant filed a notice of motion to vacate the conciliation conference for reasons including that:

1. Council's Statement of Facts and Contentions filed on 31 August 2021 (**SOFAC**) raise a number of matters that require a significant amount of assessment to be undertaken in order to prepare the necessary reports to address the contentions raised in the SOFAC;

Adelaide  
Brisbane  
Canberra  
Darwin  
Hobart  
Melbourne  
Norwest  
Perth  
Sydney

2. the abovementioned assessments cannot be undertaken in time to provide the necessary reports to Council for its review prior to the conciliation conference on 22 October and in these circumstances meaningful discussions cannot proceed on 22 October 2021; and
3. a site inspection is required at the commencement of the conciliation conference to enable the parties, their heritage and Aboriginal heritage consultants and the Court the opportunity to walk through the Site and discuss the existing structures and surrounds.

The Applicant's notice of motion was heard before Justice Duggan of the Land and Environment Court on 19 October 2021. Her Honour ordered that the conciliation conference be vacated and relisted.

**Accordingly, the conciliation conference will not proceed on 22 October 2021 and will instead proceed on 1 February 2022. This conciliation conference will commence onsite at 9.30am.**

#### **Resident involvement in conciliation conference**

As the conciliation conference is now listed to commence on site, residents who wish to make an oral submission may be able to do so at the site. There is some possibility, as with all COVID matters, that the judge's listing for it to commence on site could be affected and if so, you will of course be advised. However, given the current statute of relaxation of the COVID restrictions, it is hoped this will not eventuate.

We will provide you with more information regarding resident involvement in December 2021 and whether oral submissions will be given on the site or remotely via Microsoft Teams once we are better aware of those details.

If you have any questions in relation to the matters raised in this letter please email us at [80boronia@hwle.com.au](mailto:80boronia@hwle.com.au) and we will respond as quickly as possible.

We thank you for your ongoing interest and participation in these proceedings.

Yours sincerely



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## **Attachment A - requirements in providing oral submissions to the Court**

- Submissions are to be given in a truthful and helpful manner as they may subsequently become evidence if the matter proceeds to hearing and it will have the same effect as if it was given in a courtroom;
- If you have prepared written submissions to talk to, your on-site oral submissions should address only the main points of concern. The full text of the submission can be made available during the conciliation phase and subsequently tendered by the Council as part of any determination phase of the proceedings;
- Where your written submission has been prepared and submitted to the Council by a person on your behalf, such as an architect or town planner, that person may address the Court on the contents of the written submission. Such submissions are not expert evidence in the proceedings;
- If one specific issue has been addressed in detail by a submitter, it is not necessary for each subsequent submitter to address in full the same issue. It is sufficient if the subsequent submitters acknowledge that they hold similar views to any previous submitter who has spoken on that issue;
- When people are making their submissions, there should be no interruptions or interjections so that those attending the site inspection can fully understand the matters raised by the submitter;
- Your opportunity to speak is limited to your formal presentation and it is not appropriate that further comments be made during the site inspection unless requested by the Commissioner, agreed by the parties or as part of an explanation of their submission, for example, from their property if their submission was made elsewhere; and
- you may be questioned on your submission.