

CS.103 DA 1995.19715
APPLICATION TO REMOVE SECTION 88E INSTRUMENT ON LOT 285
DP 714926, 23 THE CITADEL UMINA
PROGRAM: LEGAL SERVICES

Background

Council, at its meeting held on 26 June 2001, resolved that this matter be deferred to a Resumption of the Review Committee meeting for inspection and consideration.

At its meeting on 5 June 2001, Council resolved that the matter be deferred to allow Council Officers to provide further information.

Development Consent 1995.19715 for a dwelling house was approved by Council at its meeting on 2 May 1995. The report included:

Bushfire Hazard

The proposed dwelling will comprise a two (2) storey brick and weathertex clad residence in the central section of the lot.

The site is located near an escarpment which adjoins a 100m wide bushland public reserve which has a potential bushfire risk. The proposed development will be at risk from bushfires driven across the reserve by northerly winds and may be subject to radiant heat and ember attack.

A bushfire hazard assessment carried out in accordance with the Planning for Bushfire Protection Manual indicated a requirement for a 60 metre fire protection zone comprised of a 30 metre fuel free zone and a 30 metre fuel reduced zone. Given the aspect of the site and the proximity of the existing fire hydrants, these measures are considered excessive. The lot in question is adjacent to two (2) fire hydrant mains and has satisfactory access and egress, however it would be desirable that the area to the rear of the lot be maintained in a fuel reduced state. **(Refer Condition 12)**

It is also recommended that the proposed dwelling-house be built in accordance with Australian Standard 3959 – “Construction of Buildings in Bushfire Prone Areas”. **(Refer Condition 13)**

Conditions

The relevant conditions were as follows:

Condition 12: The creation of a fuel reduced zone between the proposed dwelling and the eastern boundary. This area is to be maintained with a maximum fuel load of 6 tonnes/ha at all times. The applicant is to enter into a Deed of Agreement as an instrument under Section 88E of the Conveyancing Act with Council regarding this fuel reduced zone prior to the release of the Building Application.

Condition 13: The building is to be constructed to a standard required under AS 3959-1991 – “Construction of Buildings in Bushfire Prone Area”.

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The combination of the first two sentences of Condition 12 and Condition 13 will provide adequate protection similar to adjacent dwellings on battle axe shape allotments.

Other Dwellings

Approval for dwelling houses on Lots 284, 288, 289 and 292 included conditions similar to Condition 12 and 13 but did not require the creation of an 88E Restriction as to User. The dwelling on Lot 285 was approved by Council on 9 May 2000.

It is considered adequate protection is provided without the Restriction as to User as detailed by Mr Miller of the NSW Fire Service in the previous report to Council.

RECOMMENDATION

- A Council agree to the removal of the Deed of Agreement and Section 88E instrument attached to Lot 285 DP 714926, 23 The Citadel, Umina.
- B The legal cost of removing the instrument and deed be borne by the owners' of the subject lot.
- C Council require consideration of \$275.00 including GST.
- D The common seal be affixed to the document.
- E A notation be placed on the section 149 certificate informing the owner that the property is subject to fuel reduction maintenance within the relevant zone.

ATTACHMENT TO CS.103

COPY OF REPORT CS.103 TO ORDINARY COUNCIL MEETING ON 5.6.01

DA 1995.19715

**APPLICATION TO REMOVE SECTION 88E INSTRUMENT ON LOT 285
DP 714926, 23 THE CITADEL UMINA**

PROGRAM: LEGAL SERVICES

Background

Mr and Mrs Sullivan, the owners, of Lot 285 DP 714926, 23 The Citadel, Umina requested Council remove the section 88E instrument attached to their property. The instrument was part of development consent number 19715 condition 12 as follows:

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12. *The creation of a fuel reduced zone between the proposed dwelling and the eastern boundary. This area is to be maintained with a maximum fuel load of 6 tonnes/ha at all times. The applicant is to enter into a Deed of Agreement as an instrument under Section 88E of the Conveyancing Act with Council regarding this fuel reduced zone prior to the release of the Building Application.*

The owners' claimed that significant work had been done on the property to ensure the fuel-reduced zone was in place and suggested the instrument was no longer required.

Council's officer made an assessment of the owners' claims with some consultation with Mr Bob Miller of the NSW Rural Fire Service. Mr Miller's advice with respect to the appropriate notation for fuel reduction zones and ongoing maintenance is the notification should be on the section 149 certificate. Mr Miller stated that he considered a caveat unnecessary because of its inflexibility particularly where areas change and the fire risk is diminished.

Although in some circumstances the S88 instrument might be appropriate, the owners of the subject property have done significant work to reduce the fire risk and the only residual issue is the maintenance of the fuel reduction zone. The other relevant issue is none of the other developments in the area as the subject property have the same restriction on their property.

Council's officer concurred with Mr Miller's assessment and raised no objection to the deletion of the Deed of Agreement and section 88E instrument. The officer recommended a section 149-certificate notation informing the owner of the importance of on-going maintenance of fuel reduction zones.

Financial Impact Statement

The recommendation does not impact upon Council's financial position.

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