

From: Mullum Creek info@mullumcreek.com.au
Subject: [Test] An important message from the Mathews family
Date: 8 November 2018 at 3:45 pm
To: raphie@haarchitecture.com.au

MC



Dear Mullum Creek Lot Owner

It is terrific to see that construction has started on so many homes at Mullum Creek and many more will soon be on the way, with Stage 2 settlements likely to take place shortly. We have been greatly heartened by the continued support we receive from lot owners, both by communiqué and in person. We are equally pleased with the ongoing words of encouragement and support provided to Paul Haar and his team as they strive to maintain the Mullum Creek vision to provide sustainable and thermally efficient homes into the future.

We have become aware that there have been concerns (circulated by Facebook, group emails and word of mouth) regarding the Mullum Creek Design Guidelines (MCDG), the role and activity of the Design Review Committee (DRC), and the authority of the DRC to implement the Guidelines. We very much appreciate the numerous messages of support that we have received from other lot owners in response to the intensity with which some have been expressing their opinions, and we feel that it is appropriate to clarify for everyone the governance process that enables Mullum Creek to stay true to its contractual ecological and sustainable design aspirations. This is particularly timely given that Stage 2 has achieved Statement of Compliance and settlement of these lots is imminent.

The main purpose of this communicate is to address recent concerns or complaints, relating to:

- The version of the Guidelines that apply to purchasers at Mullum Creek.
- Variations to Requirements granted by the DRC (often referred to as 'dispensations').
- More generally, the validity of the governance system overseeing development in the Mullum Creek Estate, including the authority of the DRC.

Firstly, here is some background.

Section 173 Agreement and Guideline system. The Mullum Creek team spent a great deal of time identifying and developing what we believed was the most appropriate governance system for the estate. We wanted to ensure that everyone had a high degree of flexibility in shaping their own designs, consistent with the project's goals of achieving ecological/environmental sustainability and a harmonious relationship between built form and the surrounding landscape. We opted for a system whereby owners develop their own designs, consistent with guidelines governing a range of environmental, aesthetic and amenity parameters, overseen by a design review committee, empowered through a Section 173 Agreement and the contract of sale. This differs from some other environmental residential developments, where individual design choice is much more limited, and requirements more prescriptive.

Purchasers were made aware of their responsibilities. Original purchasers were made aware of the requirement for all Mullum Creek lot owners to abide by the Section 173 Agreement and the Guidelines as administered by the DRC. This was done via the Contract of Sale and the provision of documentation both within the Contract and the Section 32 statement accompanying the sale documents. This requirement was also included in our marketing materials (website, documents available at sale) and provided in various ways by staff at the time of sale. To avoid any misunderstanding, we included copies of the Guidelines in all appropriate legal documentation. Our aim was to unambiguously point out purchasers' responsibilities and our mutual obligations. If somehow buyers had missed the significance of the requirement to comply with the Guidelines, then certainly their lawyers or conveyancers should have alerted them to their existence, their legality, and their importance. For secondary purchasers, it is again the responsibility of buyers to make themselves aware of their legal responsibilities, and of the lawyers/conveyancers of both vendors and purchasers to alert buyers to these requirements.

Our legal advice (attached [here](#)) confirms that:

- All lot owners are bound to develop their lots in accordance with the Section 173 Agreement which is part of the statutory planning regulation applying to all lots at Mullum Creek.
- The Contract of Sale also contains clauses relevant to the acceptance of responsibility for abiding by the S173 Agreement and Guidelines
- The S173 Agreement clearly states that the Guidelines that apply are the most recent sent to the City of Manningham and loaded onto the Mullum Creek website. Currently this is Version 8.1, active from 1st June 2016.

A number of related issues are further clarified in this advice, so please read through it when you are able. As well, we would like to address some other queries that have been raised.

Planning permit process: The heart of the S173 agreement is the obligation on landowners to obtain DRC approval from the Mullum Creek Design Review Committee and submit that DRC approval to Council as part of its planning permit application.

The DRC: The Design Review Committee is the Mathews family's representative as per the S173 Agreement, and has the authority to ensure that development at Mullum Creek is consistent with the Guidelines. We are confident that the DRC is acting professionally, knowledgeably, and with integrity in its administration of the Mullum Creek Design Guidelines. While many lot owners (and their architects/builders) have embraced the concept and worked cooperatively with the DRC, this has not been universally the case. Obviously, we expect that lot owners be respectful in their dealings with the DRC as they would be with any other professionals involved in their project. It is disappointing that we feel we must point out that aggressive and disparaging behaviour towards the DRC is not acceptable, either in face-to-face contact, phone calls, via social media or email correspondence.

Lot-specific variations to the Guidelines: All versions of the Guidelines published to date include a specific clause (on page 13 in Version 8.1) stating that any variation (previously referred to as a 'dispensation') granted by the DRC *"is specific to the homesite and design proposal for which it has been approved, and will neither set a precedent nor imply that the variation will be repeated"*. Variations granted by the DRC are the result of site-specific research, consultation and consideration, focussed on best meeting the objectives underlying the Requirements in the Guidelines. They are particular to each case, and do NOT serve as precedents available to other lot owners.

Offer of offset payments where non-approved materials have been used: Where construction has occurred with non-approved materials, the DRC has on occasion offered the owner / builder the option of paying an offset donation to an environmental charity agreed to by both parties, **in lieu** of removing and replacing the non-approved material already used in construction. Once again, the simplest solution would be to simply require that the owner rip up the non-compliant materials and start again, but Mullum Creek has tried to provide an easier alternative. In attempting to provide a practical and effective solution to such "one-off" situations, it has been misconstrued by a few as imposing a fine. The choice is made by the owner / builder to participate or not, and as such it is clearly not a fine. To merely allow the non-compliance to go unaddressed would clearly be contrary to the spirit of the Mullum Creek vision and an affront to other lot owners who have complied.

Notice of completion and access to lots for final sign-off: Please also remember that under the S173 Agreement, lot owners are bound to give notice to the DRC within 10 days of completion of their build, and to give the DRC access to properties to verify that construction is consistent with the Mullum Creek approvals that have been granted. Receiving a completion certificate from the DRC is a part of the regulatory process. The Guidelines note the importance of meeting your responsibilities in relation to these matters.

Finally, please remember that having the DRC rigorously review proposals with respect to the Guidelines will help to avoid problems arising with any other lot owner within the estate: anyone who is a signatory to the S173 Agreement (everyone at Mullum Creek) has a stake in ensuring compliance with the Guidelines and is able to take action where these are breached.

We would like to express our thanks to the majority of lot owners who continue to uphold the values of the project, and who have supported the work of the DRC in breathing life into the Mullum Creek vision, and we warmly welcome new owners as they begin their projects in this increasingly beautiful estate.

Yours sincerely,

Sue, Steve and Danny Mathews

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