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65. Email 30/07/2020 12:58

From: [Redacted text]@shepwedd.com>

Sent: 30 July 2020 12:58

To: [Redacted text]@harpermacleod.co.uk>; [Redacted text]@shepwedd.com>

Cc: [Redacted text]@harpermacleod.co.uk>

Subject: RE: SASA - Garden District Development - Section 75 Agreement [HM-HUB.FID4462480] [S+W-LegalDiv.FID5463752]

[Redacted text]

I hope that you are well. I am assisting [Redacted text] with the section 75 agreement for Garden District. I attach the draft section 75 agreement for your review.

This is largely based on the Council's template section 75 agreement, with a few bespoke elements thrown in. I have sought to ensure that the SASA obligations are treated separately in the section 75 agreement, and therefore do not fall under the same umbrella as the ordinary planning obligations (education contributions etc.). That being the case, SASA and the relevant Murray companies are separately designed so as not to be included in the "Proprietors" designation.

In terms of the relevant obligations, please see clauses 2.9 – 2.11. The terms of these clauses are, I think, self-explanatory. You will notice my drafting note in terms of the timing of the tree buffer matter. This, I think, feeds into your email below, on which we'll take instructions.

Please note that this is being circulated subject to review by Murray Estates. Murray Estates has confirmed, however, that it can be sent round the parties. I should also point out that the Council has not seen it.

Should you wish to discuss then please give me or [Redacted text] a call.

Regards,

[Redacted text]

Associate | Planning and Environment Group

Shepherd and Wedderburn LLP

[REDACTED TEXT]

From: [Redacted text]@harpermacleod.co.uk>

Sent: 30 July 2020 11:41

To: [Redacted text]@shepwedd.com>

Cc: [Redacted text]@shepwedd.com>; [Redacted text]@harpermacleod.co.uk>

Subject: [EXTERNAL] RE: SASA - Garden District Development - Section 75 Agreement [S+W-LegalDiv.FID5463752] [HM-HUB.FID4462480]

[Redacted text]

Further to the last paragraph of my e-mail below, SRUC estimated the costs of establishment of the woodland on the Buffer Strip at £16,500 in year 1. In addition, SASA anticipates a requirement for temporary fencing costs for approximately 800m at £6.90/metre based on SRUC costs. This comes to a total of £22,020. This was all at 2016-17 standard costs and there would undoubtedly be ancillary costs and contingencies. Allowing for all this plus inflation, the cost to SASA of establishing the Buffer Strip is estimated at £25,000. Please advise whether MELL is willing to bring forward payment of £25,000 of the MELL Contribution (Mitigation Works) to cover planting the Buffer Strip in the forthcoming planting season.

Thanks for providing a note of the crops recently planted and intended to be planted on the Calyx field. SASA has asked that no further brassica crops (to my surprise, oil seed rape is a brassica) be grown as this apparently creates a risk of club root infestation. This will not be an issue if SASA takes title and possession by 2023 and for the period up to then the field is planted as per the intended schedule.

I look forward to receiving the draft of the proposed S75 agreement.

Regards

[Redacted text]

Partner

[Redacted text]

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From: [Redacted text]

Sent: 23 July 2020 12:26

To: [Redacted text]

Cc: [Redacted text]

Subject: RE: SASA - Garden District Development - Section 75 Agreement [S+W-LegalDiv.FID5463752]

Thanks [Redacted text]

When sending the draft S75, please copy in my colleague [Redacted text] (who will deal with matters when I am on holiday next week and will be involved thereafter.)

If permission were to be issued by, say, the end of August, are you able to give an indication when development would likely commence? I appreciate that the developer may choose to wait out the 3 month JR window (and that if there were to be a JR challenge that would likely push the commencement date back.)

As I mentioned when we spoke, SASA would like to commence tree planting the Buffer Strip as soon as possible such that this becomes established by the time the first houses come to be occupied. The cost of such planting is however earmarked to come from the MELL Contribution (Mitigation Works) which only becomes payable on implantation of the permission. If there was a danger of missing the tree planting season (which I understand is October to March) as a consequence of the date of commencement of development, would MELL be willing to bring forward payment of part of the MELL

Contribution (Mitigation Works) to cover planting the Buffer Strip in advance of the date of commencement? I have asked SASA to provide an estimate of the costs and will forward that to you shortly.

Regards

[Redacted text]

From: [Redacted text]@shepwedd.com]

Sent: 15 July 2020 14:26

To: [Redacted text]

Cc: [Redacted text]

Subject: RE: SASA - Garden District Development - Section 75 Agreement [S+W-
LegalDiv.FID5463752]

Hi [Redacted text]

Good to catch up with you yesterday. As mentioned, progress has been slower than it would normally be because of lockdown and also due to the need to involve in the drafting process a major housebuilder who is contracting with Murray Estates to develop the bulk of the site. We have a first draft in circulation at our end and would hope to be able to send it to you in the next week or so for you to review on behalf of SASA. The drafting currently mirrors our agreed heads of terms and includes SASA as a party to the S75. I, or my colleague [Redacted text], will be in touch as soon as we can on that but in the meantime here is a list of the crops recently planted and intended to be planted on the Calyx field.

2017 - Wheat

2018 - Wheat

2019 - Winter barley

2020 - Oil seed rape

2021 - Wheat

2022 - Wheat

2023 - Winter barley

Regards

[Redacted text]

[Redacted text]

Partner, Planning & Environment Group

For and on behalf of Shepherd and Wedderburn LLP

DL: 0131 473 5111

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From: [Redacted text]@harpermacleod.co.uk>

Sent: 13 July 2020 14:44

To: [Redacted text]@shepwedd.com>

Subject: [EXTERNAL] SASA - Garden District Development - Section 75 Agreement

[Redacted text]

I hope you are well.

In late April I received copies of the Reporter's report/recommendation and the Notice of Intention by the Scottish Ministers. Both refer to a requirement for a planning obligation to formalise the arrangements agreed contractually between SASA and Murray Estates for mitigation and related matters.

Where do things stand with the proposed S75 agreement? I note that para 27 of the Notice of Intention allowed an initial period of 4 months for completion of the S75.

I have already briefed SASA on the requirement for a S75 agreement. I anticipate that the mitigation etc. provisions of the S75 will largely mirror the arrangements already set out in the agreement between SASA and Murray Estates.

In terms of the existing agreement, the trigger for payment of the MELL Contribution (Mitigation Works) and transfer to SASA of the Calyx land is commencement of development. To enable SASA to do some forward planning, are you able to provide an indication of the anticipated commencement date?

It would also be helpful to SASA if your clients could confirm what has been grown in the Calyx Land during the last 3 years, what is currently being grown, and what is scheduled to be grown between now and commencement of works on the development.

Regards

[Redacted text]

[Redacted text]

Partner

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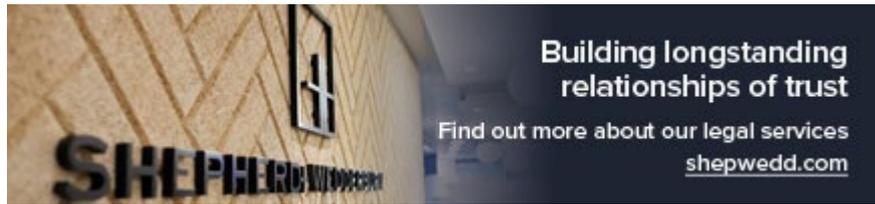
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70. Email 14/12/2020 17:23

From: [Redacted text]@shepwedd.com>

Sent: 14 December 2020 17:23

To: [Redacted text]@harpermacleod.co.uk>

Cc: [Redacted text]@shepwedd.com>; [Redacted text]@harpermacleod.co.uk>

Subject: Re: [EXTERNAL] FW: Garden District s75 Agreement - Murray Estates [S+W-LegalDiv.FID5463752] [HM-HUB.FID4462480]

Hi [Redacted text]

I left a voicemail for [REDACTED TEXT] about this earlier this afternoon but will give you a call shortly to discuss.

Regards

[Redacted text]

Partner, Planning and Environment Group

Shepherd and Wedderburn LLP

[Redacted text]

Sent from my iPhone

On 14 Dec 2020, at 4:59 pm, [Redacted text]@harpermacleod.co.uk> wrote:

Good afternoon, [Redacted text]

I wonder whether there has been any progress in relation to the garden district s75 since our latest exchange of correspondence below?

Many thanks,

[Redacted text]

Senior Solicitor

[Redacted text]

[Twitter] [LinkedIn]

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From: [Redacted text]@harpermacleod.co.uk]
Sent: 01 October 2020 08:18
To: [Redacted text]
Subject: RE: Garden District s75 Agreement - Murray Estates [S+W-LegalDiv.FID5463752] [HM-HUB.FID4462480]

Many thanks for the update, [Redacted text]

Kind regards,

[Redacted text]

[Redacted text]
Senior Solicitor
[Redacted text]

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From: [Redacted text]@shepwedd.com]
Sent: 30 September 2020 22:21
To: [Redacted text]
Cc: [Redacted text]
Subject: RE: Garden District s75 Agreement - Murray Estates [HM-HUB.FID4462480] [S+W-LegalDiv.FID5463752]

[Redacted text]

Apologies for the short delay to reply. I spoke with [Redacted text] today in respect of a number of matters, Garden District being one of them. He is still trying to pin down the relevant folk at the Council to give him feedback on the terms that are proposed, but he hopes to be in a position to come back to us very soon.

[Redacted text]

From: [Redacted text]@harpermacleod.co.uk>
Sent: 29 September 2020 16:42
To: [Redacted text]@shepwedd.com>; [Redacted text]@shepwedd.com>
Cc: [Redacted text]@harpermacleod.co.uk>

Subject: [EXTERNAL] RE: Garden District s75 Agreement - Murray Estates [S+W-LegalDiv.FID5463752] [HM-HUB.FID4462480]

Good afternoon, [Redacted text]

I wonder whether you have any update on the Garden District s75 agreement?

Kind regards,

[Redacted text]

[Redacted text]
Senior Solicitor
[Redacted text]

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From: [Redacted text]@shepwedd.com]

Sent: 25 August 2020 16:02

To: [Redacted text]

Cc: [Redacted text]

Subject: RE: Garden District s75 Agreement - Murray Estates [HM-HUB.FID4462480] [S+W-LegalDiv.FID5463752]

Thanks [Redacted text]

We'll review and get back to you.

Regards

[Redacted text]

[Redacted text]
Partner, Planning & Environment Group
For and on behalf of Shepherd and Wedderburn LLP
[REDACTED TEXT]
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From: [Redacted text] [Redacted text]@harpermacleod.co.uk<mailto:[Redacted text]@harpermacleod.co.uk>>
Sent: 25 August 2020 15:35
To: [Redacted text] <[Redacted text]@shepwedd.com<mailto:[Redacted text]@shepwedd.com>>
Cc: [Redacted text] <[Redacted text]@shepwedd.com<mailto:[Redacted text]@shepwedd.com>>; [Redacted text]@harpermacleod.co.uk<mailto:[Redacted text]@harpermacleod.co.uk>>
Subject: [EXTERNAL] Garden District s75 Agreement - Murray Estates [HM-HUB.FID4462480]

Good afternoon, [Redacted text]

I now attach the draft s75 agreement with proposed revisions on behalf of SASA. I have added a few comments onto the draft, but thought it would be useful to set out separately the reason for some of these proposed changes.

I have introduced a new definition to distinguish between the development subjects, i.e. the application site, and the agreement subjects which should also include the "SASA Land" and the "SASA Buffer Tree Land".

Similarly, I have introduced a new definition of developers to distinguish between those provisions which should apply to the owners/occupiers of the development site and those which should apply to all owners of the Agreement Subjects.

My clients wish to propose that in relation to the mitigation measures as set out in Clause 2.9, that these be as detailed in the SAC report, or equivalent measures, to provide a degree of flexibility. I would be grateful if you would confirm whether this is acceptable in principle, and if so whether there are any measures which from your client's perspective should be carried out exactly as detailed in the SAC report.

I have removed the wording at Clause 2.11 providing that the Calyx land transfer would be on the same terms as the school land transfer, because the terms of the SASA land transfer have already been agreed. I think the most straightforward approach would be to set out the SASA land transfer terms in a separate schedule. The alternative would be for the school land transfer terms to be reviewed and compared against the SASA land transfer terms, any differences provided for and the definitions to be properly set out.

There have been some other changes, which I trust will be self-explanatory, but please let me know if you have any queries regarding the proposed revisions.

Kind regards,

[Redacted text]

[Redacted text]
Senior Solicitor
[Redacted text]

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74. Email 07/01/2021 17:36

From: [Redacted text]@harpermacleod.co.uk>
Sent: 07 January 2021 17:36
To: [Redacted text]@shepwedd.com>
Cc: [Redacted text]@shepwedd.com>; [Redacted text] [Redacted text]@harpermacleod.co.uk>
Subject: RE: [EXTERNAL] Garden District s75 agreement [S+W-LegalDiv.FID5463752] [HM-HUB.FID4462480]

Thanks, [Redacted text]

All the best for the New Year. Before considering any alternative to the tripartite s75 agreement which was the agreed approach, we ask to see an explanation from the Council as to why the Council doesn't consider that the SASA obligations shouldn't be included in the s75 agreement. The main reason for this is that if the Council has legitimate concerns as to why these obligations cannot be enforced as a planning obligation, those same concerns would equally apply to any unilateral obligation entered into. Understanding fully why the Council considers that these obligations cannot or should not be enforced as planning obligations is necessary as it may mean that an alternative mechanism needs to be looked at.

I have concerns around the limitations on enforceability of planning obligations in this context based on the wording of s75 itself. S75(5) makes clear that registered planning obligations are enforceable at the instance of the planning authority against the owner or tenant of the land and against other persons having use of the land in certain circumstances. I am not convinced, given the wording of s75(5), if an attempt by SASA to enforce the agreement were disputed, that a court would find that SASA had the necessary interest to enforce the agreement in terms of the legislation. Interest to enforce would be particularly difficult to establish if SASA required to enforce the agreement against a third party which had taken title to the subjects covered by the obligation and was not one of the original signatories to the obligation. In such a case SASA would be relying on the fact that the agreement had been registered to enforce against successors in title, however in terms of s75 that right to enforce is granted to the planning authority only and SASA would have no direct contractual rights against such a third party.

It may be that the Council does stand firm about not including the SASA obligations in the s75 agreement but it would nevertheless be very useful to understand fully their reasoning for doing so.

Kind regards,

[Redacted text]
Senior Solicitor
[Redacted text]



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From: [Redacted text]@shepwedd.com]
Sent: 07 January 2021 12:32
To: [Redacted text]
Cc: [Redacted text]
Subject: RE: [EXTERNAL] Garden District s75 agreement [HM-HUB.FID4462480] [S+W-LegalDiv.FID5463752]

Hi [Redacted text]

Happy New Year. I just wanted to pick up with you on the Section 75 position and where things are at the moment. I don't know whether you've yet had a discussion with SASA about my suggested approach (unilateral undertaking including specific acknowledgement that SASA can enforce the obligations as well as the planning authority)? We can continue to press the Council for the SASA obligations to be included within a bilateral (or trilateral) Section 75 Agreement but I do get the impression that they are going to dig their heels in and refuse to sign an Agreement that contains those obligations. The unilateral with specific provisions allowing enforcement by SASA seems to me to be a workable solution that delivers for everyone.

If it would be helpful to chat this through, then I would be very happy to do so.

I look forward to hearing from you.

Regards

[Redacted text]

Partner, Planning & Environment Group
For and on behalf of Shepherd and Wedderburn LLP
[REDACTED TEXT]
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From: [Redacted text]@shepwedd.com>
Sent: 16 December 2020 20:51
To: [Redacted text]@harpermacleod.co.uk>
Cc: [Redacted text]@shepwedd.com>; [Redacted text]@harpermacleod.co.uk>
Subject: RE: [EXTERNAL] Garden District s75 agreement [HM-HUB.FID4462480] [S+W-LegalDiv.FID5463752]

Thanks [Redacted text]

We can do that but could we address your concerns by including drafting in a Unilateral Undertaking that the obligations were being given by Murray Estates (and their successors) to the Council and to SASA as well as an explicit acknowledgement that SASA had the right to enforce the obligations against Murray Estates and their successors?

Regards

[Redacted text]

[Redacted text]
Partner, Planning & Environment Group
For and on behalf of Shepherd and Wedderburn LLP
[REDACTED TEXT]
www.shepwedd.co.uk

Please register at The S+W Hub for Shepherd and Wedderburn news alerts, articles and events.

From: [Redacted text]@harpermacleod.co.uk>
Sent: 16 December 2020 19:53
To: [Redacted text]@shepwedd.com>
Cc: [Redacted text]@shepwedd.com>; [Redacted text]@harpermacleod.co.uk>
Subject: RE: [EXTERNAL] Garden District s75 agreement [HM-HUB.FID4462480]

[Redacted text]

Thanks for your feedback in relation to the prospects of addressing the SASA obligation at this stage.

In relation to the suggestion of entering into a unilateral obligation, the concern which I would have in that regard is the issue of enforceability. I recognise that a unilateral obligation might be a means of effectively registering the agreement against the title and perhaps also addressing the requirements of the Ministerial decision, however I'm conscious that the purpose of planning obligations is at least primarily to allow enforcement by the planning authority and we know that in this case the planning authority has expressed reservations in enforcing the agreement. My concern would be that, particularly if the site were to be transferred to another developer before the obligations fell due and the obligation needed to be enforced against a successor developer, that it would be difficult for SASA to enforce the unilateral obligation given the terms of s75 itself and what it permits in terms of enforcement.

My preference would still be for the SASA obligations to be included in the s75 agreement. I wonder whether you would perhaps request that, given the Ministerial decision anticipated SASA being a party to the s75 agreement, the Council or their representatives express in writing why they believe that the SASA obligations ought not to be included in the s75 agreement so that we can perhaps consider more fully and address any concerns they have.

Kind regards,

[Redacted text]
Senior Solicitor
[Redacted text]



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From: [Redacted text]@shepwedd.com]
Sent: 15 December 2020 19:59
To: [Redacted text]
Cc: [Redacted text]
Subject: Re: [EXTERNAL] Garden District s75 agreement [HM-HUB.FID4462480]

Thanks [Redacted text]

I don't think that will work. I can almost guarantee the clients won't want to part with the land and cash before the permission is granted. We would need to contract on the basis that the transfers would need to be undone if the permission was

challenged etc and I can see it being a pretty complicated exercise (even if it was agreeable in principle). Could I suggest you check with your clients on the unilateral undertaking suggestion and see what they say to that. If that isn't going to work for them (although I don't see any reason it shouldn't) then we will need to think of an alternative option.

Regards

[Redacted text]
Partner, Planning and Environment Group
Shepherd and Wedderburn LLP
[Redacted text]

Sent from my iPhone

On 15 Dec 2020, at 7:25 pm, [Redacted text]@harpermacleod.co.uk> wrote:

[Redacted text]

Further to our conversation earlier, I wanted to check with you whether your client is yet in a position to address the principal SASA-related obligations of the agreement, i.e. the payment of the SASA contribution and the transfer of the SASA land, and if so whether there might be any possibility of these obligations being addressed prior to the issue of the planning permission and potentially removing the need for SASA to be a party to the s75 agreement. I appreciate that your client may not yet be in a position to address these obligations, and it isn't something which has been discussed with our client but I wonder whether it is an option worth considering? I thought it would be worth confirming before responding on the unilateral obligation proposal.

Kind regards,

[Redacted text]
Senior Solicitor
[Redacted text]

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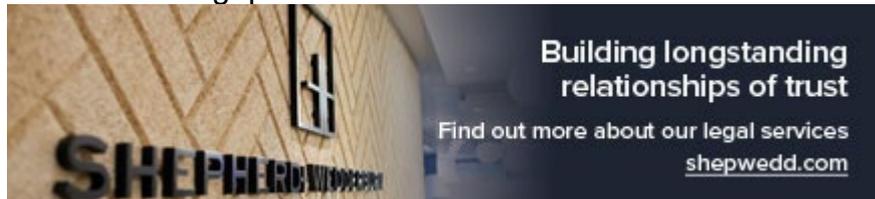
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