BRIAN MATTHEWS
PRIVATE TOWN PLANNER

BCC DS
RECEIVED
16/11/2026
APPLICATION REF
A007151292

2 November 2026

Planning Services
Brisbane City Council

By Email: dalodgement@brisbane.qld.gov.au

Re: Application to Change a Development Approval (Minor Change)
28 Harrier Place, Upper Kedron

The Applicant seeks Council approval for a minor change to the existing subdivision approval. This request is made in accordance with section 78 of the *Planning Act 2016.*

1. Introduction

The applicant proposes minor changes to the conditions of approval to permit works outside of the building limitation envelope (BLE) and in the covenant area. The proposed changes relate to the construction of rock retaining walls and associated landscape improvements.

2. Site History

Council issued a development permit for **subdivision of land** for 81 lots with reference A001629577.

On 29 April 2026 the Council compliance officers conducted a site inspection of the land to assess potential issues associated with works outside of the BLE and in the covenant area. Following the inspection, Council issued correspondence dated 6 May 2026 advising that Officers believed that works had been undertaken in the covenant area and that these works are contrary to condition 11 of the original subdivision approve. A copy of Council's compliance correspondence is contained in **Appendix A** and includes **photos** of the existing works.

3. The Proposed Change

The following changes are proposed:

- **Conditions:** Amend condition 11 to permit works outside of the BLE for Lot 127
- **Covenant:** Amend the covenant to permit works outside of the BLE

<u>Covenant Area</u>

As detailed in the legal correspondence from Davidson Ryan Lawyers (**Appendix B)** the necessity, intent, and nature of the works are established by the following site conditions and context:

- The covenant area features a very steep slope extending away from the Building Location Envelope (BLE).

- The area has experienced significant erosion, causing native vegetation to be damaged or destroyed by landslides during and following heavy rain.

- Deep erosion grooves had formed in the covenant area, accelerating overland water flow which caused further erosion, uprooted native vegetation, and washed debris into neighbouring properties.

- The ongoing erosion posed a potential threat to the integrity of the BLE, the structures built upon it, and the safety of the residents.

- These erosion issues are well known within the area, affecting neighbouring lands and having been observed and documented by Council inspectors across all 81 properties in the estate.

- The applicants proactively contacted Council on two occasions regarding the covenant area to discuss the accumulation of dead vegetation, fallen trees, and debris resulting from erosion, as well as the associated fire safety risks.

- The applicants carried out the works with the understanding that addressing these significant erosion problems fulfilled their obligations under the development approval and covenant to maintain and protect the area.

- The retaining works do not restrict the free flow of water, impede native fauna access, harm wildlife, or introduce unreasonable alterations such as buildings, pools, paving, or utilities.

- The structures serve to protect the covenant area from further erosion and vegetation loss, are constructed almost exclusively from natural materials consistent with the surrounding environment and incorporate significant planting of native vegetation.

- The works are accessible only to people and native fauna. There is no access for vehicles. The works and associated access allow the applicants to easily manage noxious weeds within the covenant area.

- The applicants incurred considerable expense to carefully design and execute these works, to meet what they understood to be their obligations to preserve the covenant area.

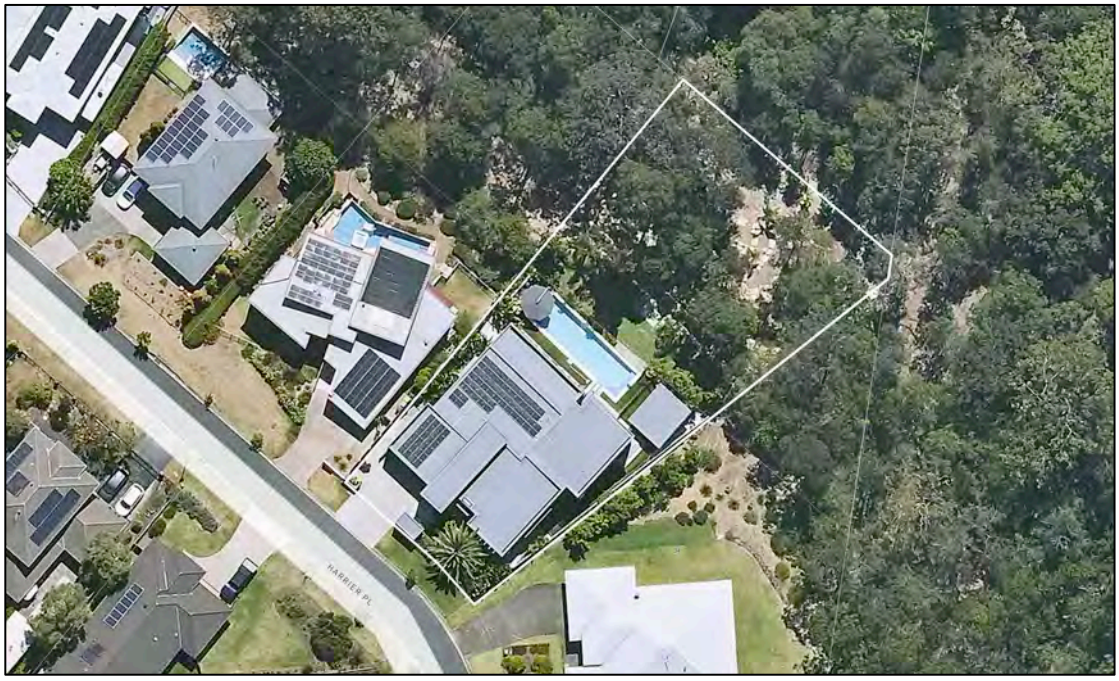


Photo 1: Aerial photo of the subject site and adjoining houses. The covenant area is at the rear of the dwelling.



Photo 2: Photo showing the steep slope and unstable nature of the covenant area. This photo is from a neighbouring property and is representative of the covenant area that was rectified.



Photo 3: Photo showing the steep slope and unstable nature of the covenant area.



Photo 4: Photo looking down into the covenant area.

4. Section 78 of the Planning Act

Schedule 2 of the Planning Act defines what constitutes a 'minor change' in relation to a development approval. The proposed change satisfies the minor change test in that it would not result in substantially different development.

Schedule 1 of the Development Assessment Rules sets out what is considered substantially different development. This is addressed below.

The proposed change:

(a) involves a new use; or

- The use remains a land subdivision.

(b) results in the application applying to a new parcel of land; or

- Does not apply to a new parcel of land.

(c) dramatically changes the built form in terms of scale, bulk and appearance; or

- The original subdivision of land application did not include built form.

(d) changes the ability of the proposed development to operate as intended; or

- The development remains a dwelling house and covenant lot. The retaining works carried out in the covenant area provides slope stability and reduce the impact of erosion. Native vegetation is retained where practical. Native animals have free roam of the covenant area.

(e) removes a component that is integral to the operation of the development; or

- The change does not remove a significant component that is integral to the development.

(f) significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or

- There is no impact on traffic flow or transport networks.

(g) introduces new impacts or increase the severity of known impacts; or

- The change will not create any new impacts or increase the severity of known impacts.

(h) removes an incentive or offset component that would have balanced a negative impact of the development; or

- Does not remove an offset component.

(i) impacts on infrastructure provisions.

- Does not impact on infrastructure provisions.

5. Section 81

The process to change an approval is to lodge a change application with the responsible entity, which is the Council in this case. Section 81 of the Planning Act 2016 sets the requirements to assess and decide a change application.

When assessing this change application, section 81 of the Planning Act prescribes what the Council must consider. This includes the following:

Matters for Assessment	Discussion
The information the applicant has provided.	The information provided for this application: • Proposal plans • Planning report • Form 5
Any properly made submissions.	The original application was code assessable.
Any pre-request response notice or response notice given in relation to the change application.	A pre-request has not been made for this application.
All matters the responsible entity would or may assess against or have regard to, if the change application were a development application.	The land use remains a residential subdivision and the proposed change is generally in accordance with the approved plans. Relevant assessable elements are limited to works in the covenant area.
Another matter that the responsible entity considers relevant.	If Council identifies any other matters that needs to be considered, please advise and it will be considered.
The matters that applied when the development application was made.	The Brisbane City Plan 2000 was the planning scheme in effect at the time of the decision.
The matters that applied when the change application was made.	The City Plan 2014 version 37 is the current planning scheme.

6. City Plan Codes

The proposed changes are assessable against the following City plan codes.

Subdivision Code

As the existing development was approved with both a building envelope and a covenant, AO1.2 and PO1 are the relevant provision applicable to the change.

> *PO1*
> *Development results in lots and an arrangement of lots that:*
> - *a. enable the relevant outcomes and standards required by the planning scheme to be complied with for the intended use;*
> - *b. are consistent with the zones, zone precincts, neighbourhood plans and overlays that apply to the site;*
> - *c. feature a useable shape able to accommodate the minimum rectangle dimension in Table 9.4.10.3.B and anticipated future development;*
> - *d. complement the streetscape, local context and character for the locality;*
> - *e. address development constraints.*

The proposed change to permit retaining walls in part of the covenant area complies with PO1. This is achieved by:

a. The covenant is maintained as per the approved plans. The works within the covenant area ensures the for the long term retention of bushland, native vegetation and wildlife.

b. The subject property is contained within he Low Density Residential Zone. The use of the land for covenant and the works undertaken within the covenant are broadly consistent with the intent for land within this zone.

c. There are no changes proposed to the shape and dimensions of the existing lot.

d. The proposed change has no detrimental impact on the streetscape or character of the locality. The covenant area continues to provide for the protection of vegetation and wildlife.

e. The development continues to address known development constraints using retaining walls to protect and stabilise the covenant area. This leads to the long term protection of the covenant area and reduces the risk of erosion and stability that may impact the existing house and pool.

7. Changes to the Approved Plans

There are no changes to the approved plans.

8. Changes to Conditions

The following conditions of approval will require minor amendment to reflect the proposed plan numbers and dates. The conditions below are extracts only of the relevant section of the condition.

Current Condition	Revised Condition
11) BLE Contain land-disturbing site works, as indicated, within the designated Building Location Envelopes (BLEs). No part of any building, associated outbuildings and other structures (including swimming pools, tennis courts, retaining walls, excavation, filling, car parking, on-site waste disposal areas or the like) other than a fence or an access way for motor vehicles directly from the access/street to the dwelling, is to be located on any part of the site outside of the approved Building Location Envelope (BLE); GUIDELINE This condition is intended to ensure that the potential environmental impacts of development are adequately controlled. For any enquiries about this condition, please contact the Ecologist, Development Assessment. 11(a) BLE Any fences erected at the perimeter of the site outside the BLE are to be constructed to allow the free movement of native fauna;	11) BLE Contain land-disturbing site works, as indicated, within the designated Building Location Envelopes (BLEs). 11(a) No part of any building, associated outbuildings and other structures (including swimming pools, tennis courts, retaining walls, excavation, filling, car parking, on-site waste disposal areas or the like) other than a fence or an access way for motor vehicles directly from the access/street to the dwelling, is to be located on any part of the site outside of the approved Building Location Envelope (BLE), **except where permitted by 11(b) below.** **11(b) Retaining** **Earthworks and retaining are permitted in the covenant area of Lot 127 SP 230311 subject to approval from development services.** GUIDELINE This condition is intended to ensure that the potential environmental impacts of development are adequately controlled. For any enquiries about this condition, please contact the Ecologist, Development Assessment. 11(c) BLE Any fences erected at the perimeter of the site outside the BLE are to be constructed to allow the free movement of native fauna;

9. Conclusion

The proposed change is considered minor when assessed against the requirements of the Planning Act 2016.

The proposed change allows the existing retaining walls and works to be kept in place. The intended purpose of the covenant area is maintained and the risks associated with the steep slope and erosion are substantially reduced.

10. Appendices

A. Current approval A001629577
B. Proposed plans
C. Urban Utilities approval and plan

Please call the undersigned on 1300 616 200 for all enquiries.

Yours faithfully

Brian Matthews
Director | Principal Planner

Appendix A:

Council compliance correspondence

6 May 2026

Dedicated to a better Brisbane

Mr Leigh Albert Debono & Mrs Leyla Debono
28 Harrier Place
Upper Kedron 4055

Compliance with requirements of development approval and environmental covenant

I am writing with an update following the inspection by Council on 29 April 2026. Firstly, thank you for allowing us to make an assessment of the potential issues.

As mentioned in my letter dated 20 April 2026, following the reconfiguration of your premises from the parent lot, an approval package was produced which contains a number of requirements and conditions. Development approval reference A001629577 relates.

Pursuant to section 73 of the *Planning Act 2016*, a development approval, once in effect, binds the owner of the premises, any successors in title, and any occupier.

Specifically relevant to this matter is requirement 11) under the approval, which reads:

> ***11) BLE***
> *Contain land-disturbing site works, as indicated, within the designated Building Location Envelopes (BLEs).*
>
> *No part of any building, associated outbuildings and other structures (including swimming pools, tennis courts, retaining walls, excavation, filling, car parking, on-site waste disposal areas or the like) other than a fence or an access way for motor vehicles directly from the access/street to the dwelling, is to be located on any part of the site outside of the approved Building Location Envelope (BLE); GUIDELINE This condition is intended to ensure that the potential environmental impacts of development are adequately controlled. For any enquiries about this condition, please contact the Ecologist, Development Assessment.*
>
> ***11(a) BLE***
>
> *Any fences erected at the perimeter of the site outside the BLE are to be constructed to allow the free movement of native fauna;*

The key considerations are (1) that any buildings or ‘other structures’ must not be located outside of the building land envelope at the premises. That means that no buildings or ‘other structures’ maybe within the covenant area.

(2) Any fences erected on the perimeter outside the BLE must be constructed to allow the free movement of native fauna.

'Other structure'

'Structure' is defined in the *Building Act 1975* to include '*a wall or fence and anything fixed to or projecting from a building, wall, fence or other structure*'.

'Other structure' is not defined in legislation but has been considered by the Court, which has assessed the term is to be constructed broadly.

Macquarie dictionary defines structure as '*something built or constructed, a building, bridge, dam, framework etc' and 'anything composed of parts arranged together in some way.'*

'Free movement of native fauna'

I have attached a copy of the wildlife movement fencing guidelines; these provide an outline of what is considered fauna friendly fencing and allows for the movement of native wildlife.

Covenant requirements

The standard condition 3.4(k) of the covenant on the property also stipulates that the covenantor must not build anything on the covenant area.

Contraventions identified

Please see the attached document which summarise the alleged contraventions of the requirements of the development approval identified during the inspection on 29 April 2026.

These structures would also be considered contraventions of the covenant.

Actions required

Council believe that the structures identified in the attached summary represent contraventions of requirement 11 of the development approval.

Council believe that these structures cannot be located within the covenant area and, unless an approval is obtained, should be removed. Following the removal the covenant area should be maintained to ensure the preservation of the native fauna and flora.

Dedicated to a better Brisbane

Council is seeking voluntary compliance and may provide sixty (60) days for you to assess the situation and make any arrangements to obtain the relevant approvals, remove or remediate the structures identified so that compliance is achieved.

I would encourage you to seek legal or planning advice in relation to potentially obtaining approvals for the structures to remain should you wish to do so.

Council provides some planning advice that can be accessed https://www.brisbane.qld.gov.au/building-and-planning/getting-started-on-your-project/request-planning-advice

I ask that you email cars-enforcement@brisbane.qld.gov.au to confirm receipt of this letter, and advise when compliance has been achieved.

Please reference your address in the subject line.

Should compliance not be achieved, Council may take further action including, but not limited to, the issuance of show cause and enforcement notices under the *Planning Act 2016*.

If you require any further information or to discuss the matter, please do not hesitate to contact me.

Regards

Mike Metcalf
Principal Investigator | Enforcement Team | Compliance and Regulatory Services
Customer Services | **BRISBANE CITY COUNCIL**
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Green Square | Level 3, 505 St Paul's Terrace, Fortitude Valley, QLD 4006
Phone: +61 7 3178 2686
Email: mike.metcalf@brisbane.qld.gov.au
.....

Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron

Retaining, fill and outdoor structures





Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron





Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron





Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron



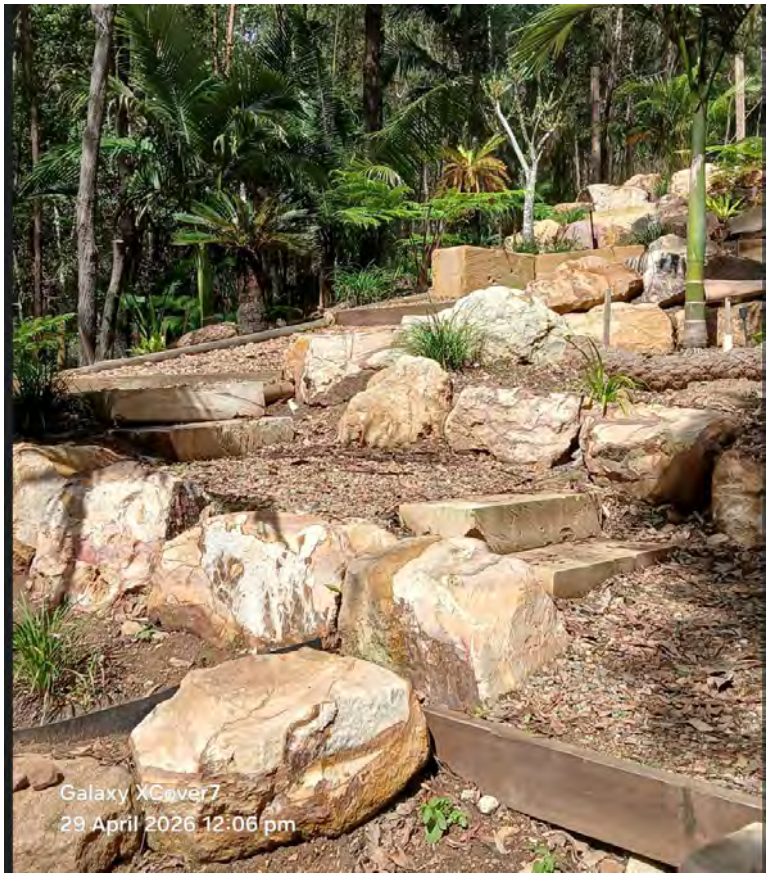


Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron





Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron





Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron



Summary

Inspection conducted on 29 April 2025 identified significant outdoor landscaping structures built within the covenant area. These consisted of retaining, edging, stairs and other outdoor features constructed with sandstone blocks and landscaping rocks.

These are throughout the covenant area and indicated by the images.

Alleged contravention

Development approval A001629577 restricts buildings and ‘other structures’ to within the building land envelope (BLE) and specifically identifies that retaining walls and fill must not be located outside of the building envelope.

The sandstone and rock structures, including retaining, walls, stairs and other aspects are ‘other structures’, and should not be located within the covenant area under the conditions of the development approval.

Recommendation

Unless an approval is obtained the structures including all sandstone retaining, concrete and rock retaining, walls, stairs and other structure, and any associated fill, should be removed from the covenant area.

Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron

Fencing erected on the perimeter of the covenant area



Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron



Alleged contraventions identified during inspection
28 Harrier Place Upper Kedron



Summary

Inspection conducted on 29 April 2025 revealed ‘hurricane’ or ‘chicken’ wire type fence that has been constructed on the perimeter of the property and potentially also within the covenant area.

Alleged contravention

A fence on the perimeter of the covenant area is allowable under the development approval, but it must be constructed to allow the free movement of native fauna. Development approval A001629577, requirement 11(a) states that “*Any fences erected at the perimeter of the site outside the BLE are to be constructed to allow the free movement of native fauna”*

The fence as constructed does not allow for the free movement of native fauna and is not compliant with the wildlife movement fencing guidelines. Specifically, the fence does not provide a sufficient gap underneath, or gaps between the wire to allow for the movement of wildlife

A fence is defined as a structure, and should not be located within the covenant area, with the exception of on the perimeter.

Recommendation

The fencing on the perimeter should either be removed or altered to comply with the wildlife movement fencing guidelines.

Any fences within the covenant area should be removed.

Appendix B:

Davidson Ryan Lawyers correspondence

Davidson Ryan
Lawyers

Your Ref:
Our Ref: KD:262330

25 May 2026

Mr Mike Metcalf
Principal Investigator – Enforcement Team
Compliance and Regulatory Services
Brisbane City Council
Green Square
Level 3, 505 St Paul's Terrace
FORTITUDE VALLEY QLD 4006

Dear Mr Metcalf **BY EMAIL**

RE: COMPLIANCE – DEVELOPMENT APPROVAL AND COVENANT CONDITIONS
PROPERTY: 28 HARRIER PLACE, UPPER KEDRON QLD ("PROPERTY")

We refer to previous correspondence in this matter a confirm that we act for Mr Leigh Debono and Mrs Leyla Debono.

The purpose of this letter is to address your letter to our clients dated 6 May 2026, under which you raised concerns about works carried out by our clients at the rear of the Property and outside the Building Location Envelope (i.e. the "**Covenant Area**"). Specifically, you alleged that:-

1. the Covenant Area contained retaining, fill, edging, stairs and other structures (the "**Retaining Works**"); and

2. fencing installed around the perimeter of the Covenant Area (the "**Fencing**") did not allow for the free movement of native fauna,

contrary to Development Approval A001629577 ("**DA**") and/or the applicable registered Covenant ("**Covenant**") terms.

Retaining Works

In relation to the Retaining Works, we are instructed that:-

1. the Covenant Area consists of a very steep slope away from the BLE, as evidenced in the images annexed to your letter of 6 May 2026;

2. the Covenant Area was subject to significant erosion which was of great concern to our clients in that:-

    a. much of the native vegetation on the Covenant Area was being damaged or destroyed by landslides during or following heavy rain;

    b. deep erosion grooves were presenting in the Covenant Area, leading to faster overland waterflow across the Covenant Area which was causing and would continue to cause:-

        i. further erosion to the Covenant Area;

        ii. debris to pass from the Covenant Area into neighbouring property; and

        iii. native vegetation being uprooted and destroyed; and

    c. such erosion and damage may impact the integrity of the BLE, the structures on it and ultimately, the safety to our clients and their young children;

3. the erosion issues mentioned above are well known among our clients' neighbours, with additional images **enclosed** of immediately neighbouring land which evidence such erosion and resulting damage to flora;

4. our clients understands that the erosion issue on our clients' property, and all 81 properties in the estate, has been observed and documented by Council's inspectors;

5. our clients also contacted Council on two occasions concerning the Covenant Area, including to discuss dead vegetation, fallen trees and debris caused by erosion and fire safety concerns arising from the accumulation of dead, dried materials in the Covenant Area;

6. our clients understood that they were complying with their obligations under the DA and Covenant to maintain and protect the Covenant Area by addressing the significant erosion problems;

7. the Retaining Works do not:-

    a. restrict the free flow of water;

    b. restrict access to the Covenant Area to native fauna;

    c. harm or cause harm to any native fauna;

    d. consist of buildings, pools, paving, utilities or similar infrastructure; or

    e. otherwise consist of any unreasonable alteration to the Covenant Area;

8. the Retaining Works:-

    a. protect the Covenant Area from erosion and loss of further vegetation;

    b. almost exclusively consist of natural materials consistent with the environment;

    c. include significant planting of native vegetation;

d. are intended for and accessible by persons and native fauna only, and not motorised vehicles or motor bikes; and

e. enable our clients to easily manage noxious weeds that may appear in the Covenant Area;

9. our clients incurred considerable expense in carefully designing and carrying out the Retaining Works to meet what they understood to be their obligations to preserve the Covenant Area.

Given the nature, location, benefit and value of the Retaining Works, in our respectful opinion, it would be wholly unreasonable to remove or otherwise demolish the Retaining Works. Further, given the restricted access and topography of the Covenant Area, demolition works on the site would clearly result in significant damage to the site, which would defeat the purpose of the works.

Our clients therefore request Brisbane City Council's approval to the Retaining Works.

Further, our clients would be agreeable to including conditions to the approval that additional native vegetation be planted to further support native fauna in the area.

Please confirm that Council approves the Retaining Works.

Fencing

As for the Fencing, we are instructed that the mesh chosen for the Fencing was an oversight by our clients.

We note that simple alterations to the Fencing by our clients would resolve this issue. However, in goodwill, our clients have fully removed all parts of the Fencing through which movement of native wildlife may be restricted.

We trust that this resolves the matter of the Fencing.

We look forward to receiving your response.

Regards,



Katherine Davidson
Legal Practitioner Director

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