

Our Ref: Z18070
Your Ref: DA/57/2017
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1 April 2019

The Chief Executive Officer
Gladstone Regional Council
PO Box 29
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via email: info@gladstone.qld.gov.au

Dear Helen

**FURTHER WRITTEN REPRESENTATIONS REGARDING A DECISION NOTICE PURSUANT TO SECTION 361 (1) OF THE *SUSTAINABLE PLANNING ACT 2009*
DEVELOPMENT APPLICATION FOR A DEVELOPMENT PERMIT FOR RECONFIGURING A LOT (1 INTO 2)
AT LOT 214 ROUND HILL ROAD, AGNES WATER – LOT 214 SP262272**

Reference is made to our written representations submitted to Council on 2018 and the subsequent further discussions with Council Officers in the interim. We also refer to the further representations made to Council with respect to the decision notices issued for DA/18/2017 and DA/2017 which also relate to part of the subject site.

This development approval is for the following aspects of development:

- Development Permit for Reconfiguring a Lot (1 into 2 lots)

As Officers are aware, Stockwell have contracted to purchase Lot 214 from the applicant, Captain Cook Holdings Pty Ltd. A signed letter dated 28 November 2018 from Captain Cook Holdings authorising Stockwell to act on their behalf was submitted with the November 2018 representations relating to DA/18/2017.

Council's Decision Notice was received by Zone Planning Group on 19 December 2017. On 12 January 2018 we suspended the applicant's appeal period to allow time for preparation of written representations and time to facilitate a meeting with Council.

Prior to lodging the initial representations, Zone Planning Group and Pinnacle Engineering Group (on behalf of the applicant) attended a meeting with Council Officers on 17 January 2018. The representations made herein are reflective of the discussions at this meeting.

Pursuant to Section 361(1)(a) of the *Sustainable Planning Act 2009*, we herein provide further written representations regarding the Decision Notice and we request that Council review these representations and issue a Negotiated Decision Notice to amend the items as detailed below.

1 CONDITION REPRESENTATIONS

1.1 Condition 1(a) – Approved Plans

Condition 1(a) currently states:

Prior to the lodgement of a request for Survey Plan Endorsement, an amended Plan of Subdivision is to be provided to Council for approval. The Plan of Subdivision is to include a 40 metre wide strip of land along the entire Western boundary of the site for the purpose of the Agnes Water Second Arterial Route.

ORIGINAL POSITION

It is understood that the intent for condition 1 (a) is to facilitate the dedication of land for the purpose of the 'future Agnes Water Second Arterial Route'.

Condition 1(a) in its current form is considered to be an unreasonable burden on the development and is inconsistent with the requirements for a 'reasonable and relevant' condition under section 345 of the Sustainable Planning Act 2009, as confirmed in the legal advice provided by Wilson Ryan Groce (refer to Attachment 1).

It is acknowledged that Council Officers have raised the application of section 315 and 317 of the Sustainable Planning Act 2009 (SPA) in terms of Council's ability to apply the interim Local Government Infrastructure Plan (LGIP) which references the proposed future 'Second Agnes Water Arterial Route'.

For clarity, Section 315 of SPA states:

315 Code and impact assessment—superseded planning scheme

- (1) If the application is a development application (superseded planning scheme), the assessment manager must assess and decide the application as if—
 - (a) the application were an application to which the superseded planning scheme applied; and
 - (b) the existing planning scheme was not in force; and
 - (c) for chapter 8, parts 2 and 3, the infrastructure provisions of the existing planning scheme applied; and**
 - (d) for section 848, the existing planning scheme policy applied. This section applies despite sections 81, 120 and 121.

Section 317 of SPA states:

317 Assessment manager may give weight to later planning instrument, code, law or policy

- (1) In assessing the application, the assessment manager may give the weight it is satisfied is appropriate to a planning instrument, code, law or policy that came into effect after the application was made, but—
 - (a) before the day the decision stage for the application started; or
 - (b) if the decision stage is stopped—before the day the decision stage is restarted.
- (2) However, for a development application (superseded planning scheme), subsection (1) does not apply to an existing local planning instrument, **other than any infrastructure provisions or planning scheme policy applied in relation to the assessment of the application under section 315(1)(c) and (d).**

*emphasis added.

It is noted that if Council were to give weight to the current infrastructure provisions under the current Gladstone Regional Council Planning Scheme, which fall under the interim LGIP, with respect to the proposed future Agnes Water Second Arterial Route, the imposition of conditions of approval on the subject development would be inconsistent with the policy position adopted in the interim LGIP.

In reviewing the interim LGIP, we note that Schedule 3.2 contains a schedule of works in which Table SC3.2.3 details planned upgrades to the Transport Network. Table SC3.2.3 makes reference to drawings R-AGW-001 and R-AGW-002 relating to the Agnes Water Second Arterial Route (see Figure 1 below). As illustrated in the figure below, the route for the future arterial route is partly located on the proposed development site (proposed Lot 2 only).

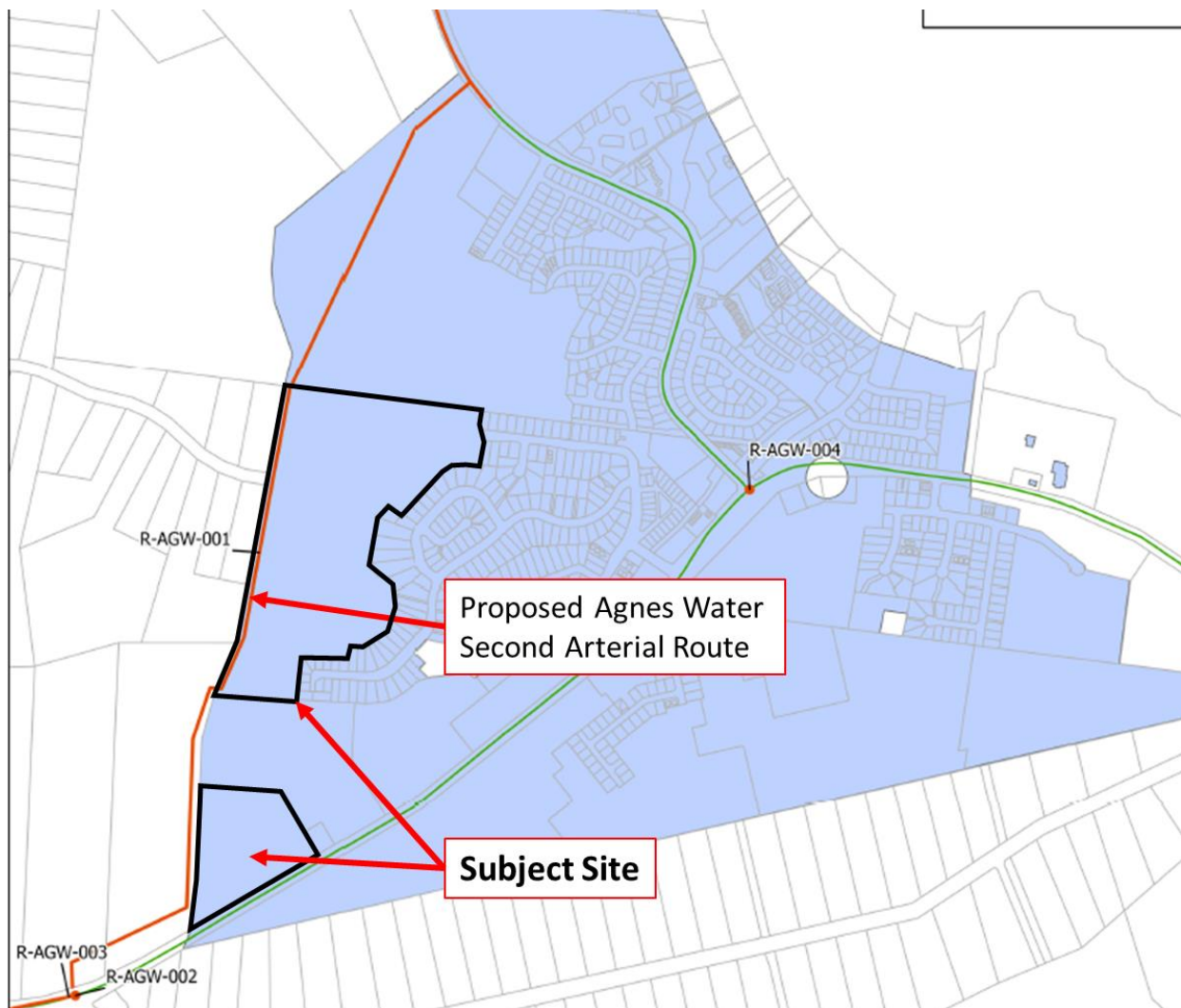


Figure 1: Extract from Map 19 – PFTI – Transport showing planned route for Agnes Water Second Arterial Route

As outlined in the letter prepared by Pinnacle Engineering Group in Attachment 2 of this submission, the interim LGIP identifies the proposed Agnes Water Second Arterial Route as a 'collector street'. In accordance with the Gladstone Regional Council's Policy No. P-2014/31 – Road Hierarchy a 'collector street' is required to have a 25m wide road reserve. Therefore, Council's requirement for a 40m wide road reserve along the entire western boundary of the subject site is inconsistent with their adopted infrastructure planning policy.

Additionally, we note that the route for the second arterial does not cross the southern portion of the subject site (proposed Lot 1), instead it is contained within the adjoining Council owned, land to the west (described as Lot 8 on RP616792).

Therefore, it is requested that Condition 1(a) be deleted.

If Council continue to seek some form of road reserve corridor on proposed Lot 2 (eg. a 25m corridor as per interim LGIP requirement), the applicant requests that Council agree to enter into an infrastructure agreement to offset the cost of the corridor given its recognition as trunk infrastructure.

CURRENT POSITION

Similar to the further representations made in regard to DA/17/2017 and DA/18/2017, the applicant's position has not changed with respect to the above representations and the applicant will seek to enter into an Infrastructure Agreement with Council for a development offset for trunk infrastructure for the land required to be dedicated.

1.2 Condition 2 – Special Conditions

Condition 2 currently states:

As part of the lodgement of a request for Survey Plan Endorsement, the Applicant is to dedicate at no cost to Council a 40 metre wide road reserve located along the entire Western boundary of the site for the purpose of the Agnes Water Second Arterial Route.

ORIGINAL POSITION

Further to the representations against condition 1(a) contained herein, as the future Agnes Water Second Arterial Route is identified as trunk road infrastructure under Council's interim LGIP and Adopted Infrastructure Charges Register (AICR). Therefore, the dedication of the corridor for said infrastructure 'at no cost to Council' as per the current wording of Condition 2 is inconsistent with the Councils' current infrastructure policy position.

Reflecting the representation made against Condition 1(a), it is requested that Condition 2 be deleted.

If Council continue to seek some form of road corridor over proposed Lot 2 (eg. a 25m wide corridor as currently suggested under the interim LGIP), the applicant requests Council agree to enter into an infrastructure agreement to offset the cost of the corridor given its recognition as trunk infrastructure.

CURRENT POSITION

No change to the position conveyed above.

2 SUMMARY

These further representations have been made in regard to the application previously approved over 2873 Round Hill Road, Agnes Water with respect to the Negotiated Decision Notice request previously lodged on 9 February 2018.

We trust this information is sufficient for your purposes; however, should you require any further details or clarification, please do not hesitate to contact the undersigned by telephone on (07) 4972 3831.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Enders', written in a cursive style.

STEPHEN ENDERS | DIRECTOR
ZONE PLANNING GROUP