

Our Ref: Z17091  
Your Ref: DA/57/2017



9 February 2018

GLADSTONE | GOLD COAST

Chief Executive Officer  
Gladstone Regional Council  
PO Box 29  
GLADSTONE QLD 4680

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info@zoneplanning.com.au  
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ABN 36 607 362 238

Via email: [info@gladstonerc.qld.gov.au](mailto:info@gladstonerc.qld.gov.au)

**Attention:** Helen McLaren-Greiss

Dear Helen

**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**

We act on behalf of Captain Cook Holdings Pty Ltd (the applicant) regarding a development approval for the abovementioned land, granted by Gladstone Regional Council (Council) on 19 December 2017 (GRC ref: DA/57/2017). This development approval is for the following aspects of development:

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

The 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 these 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 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.

**CONDITION 1(a) – 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.*

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).

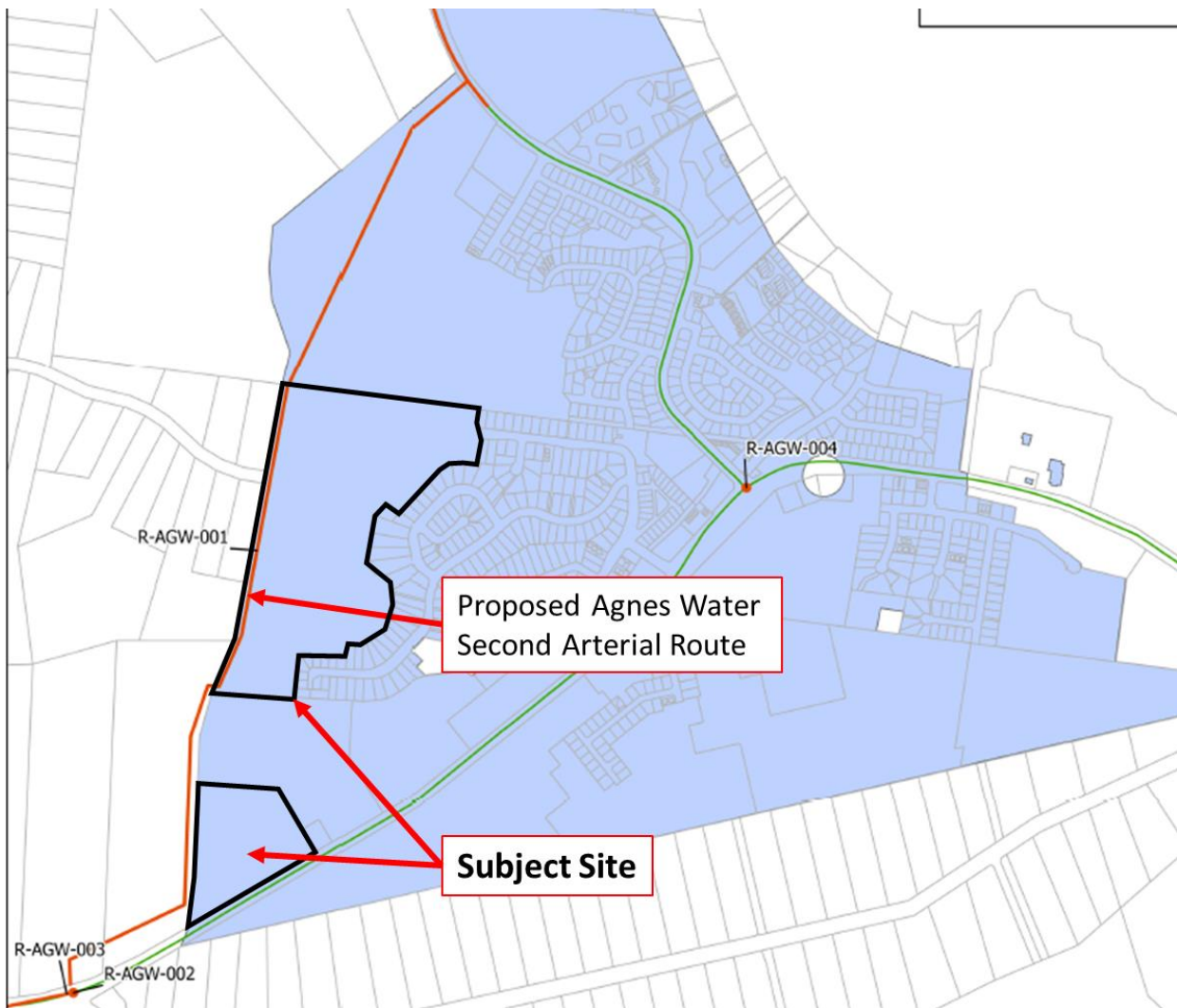


Figure 1: Extract from Map 19 – PFTI – Transport showing planned route for Agnes Water Second Arterial Route

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.

## 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.*

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.

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

Yours sincerely,



**STEPHEN ENDERS | DIRECTOR**  
**ZONE PLANNING GROUP**



# Attachment 1

LEGAL ADVICE PREPARED BY WILSON RYAN GROCE



Our Ref DJM 151527

Your Ref

Date 5 February 2018

## EMAIL TRANSMISSION

Stephen Enders  
Zone Planning Group

Email Address: [stephen@zoneplanning.com.au](mailto:stephen@zoneplanning.com.au)

### AGNES WATER SHOPPING CENTRE

We refer to our telephone conversation with you on 1 February 2018 and acknowledge receipt of the Decision Notice for Development Application DA:18:2017 decided by Gladstone Regional Council on 18 December 2017.

We note that you have expressed concerns relating to the following Development Conditions:

- Development Condition 2
- Development Condition 3
- Development Condition 9
- Development Condition 18
- Development Condition 19
- Development Condition 41
- Development Condition 47
- Development Condition 49
- Development Condition 60

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<b>Townsville</b> Level One, 15 Sturt Street, PO Box 1113 Townsville QLD 4810 Telephone (07) 4760 0100 Facsimile (07) 4772 6017 Email <a href="mailto:wrg@wrg.com.au">wrg@wrg.com.au</a>	<b>Sunshine Coast</b> Suite Two, 63 The Esplanade, PO Box 775 Maroochydore QLD 4558 Telephone (07) 5443 7897 Facsimile (07) 5443 7059 Web <a href="http://www.wrg.com.au">www.wrg.com.au</a>
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- Development Condition 61
- Similar Development Conditions in other related development approvals

We confirm our preliminary view that we can support a successful legal challenge against the majority of the Conditions you have identified. We understand our client's primary concern relates to road infrastructure and related impacts. In essence, those Development Conditions do not satisfy the legal requirements of a lawful development condition in the circumstances of this Development Application.

We have not attempted to deal with each individual Development Condition at this stage as we understand you intend to make further representations to the Gladstone Regional Council.

### **Statutory Framework**

The Development Approval which has been issued by the Council was issued under the *Sustainable Planning Act* and any legal proceedings which result from an appeal being filed with respect to the Development Approval will be determined under the *Sustainable Planning Act* despite the fact that the *Planning Act* commenced in July 2017.

### **Reasonable and Relevant Requirement**

Pursuant to Section 345 conditions must be reasonable and relevant. For the purposes of convenience we have set out condition 345 of the *Sustainable Planning Act*:

#### ***345 Conditions must be relevant and reasonable***

(1) *A condition must –*

- (a) *be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development; or*
- (b) *be reasonably required in relation to the development or use of premises as a consequence of the development.*

(2) *Subsection (1) applies despite the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, an assessment manager or concurrence agency.*

As you would expect, there have been a number of decisions in the Planning and Environment Court which have considered the development conditions which are imposed by local authorities. From time-to-time a Judge of the Planning and Environment Court takes the time to identify these well established principles (see *Waverley Road Developments Pty Ltd v Gold Coast City Council [2011] QPELR 649*), we have reproduced a brief summary as follows:

- The power to impose conditions on the approval of an application is expressed in general terms.

- The power to impose conditions is subject to statutory tests.
- Whether conditions are reasonably required involves a consideration of the proposal and what changes may result from its completion.
- The condition must be a reasonable response to the change in the existing state of things.
- A condition which is not required as a specific result of proposed development may nevertheless be relevant where it is required to be reasonably imposed in the interest of rational development of the area.
- The mere fact that a condition is relevant to the proposed development will not necessarily be sufficient to justify its position.
- Even if a condition is relevant, it must not be an unreasonable decision on the development.
- The assessment of what constitutes “unreasonable imposition” focuses attention on the development itself and the consequences of that development.
- There remains a relatively broad discretion in relation to the conditions which may be properly imposed upon approval. Mere agreement of the parties does not make a condition which is “manifestly unreasonable” lawful.
- There are obvious difficulties with a condition which calls for works to be carried out on land which is neither part of the subject land or owned by its proprietor.

### **Road Works Conditions**

The role development conditions play with respect to road infrastructure was the subject of specific comment in *Mackay Resource Developments Pty Ltd v Mackay Regional Council & Ors* [2015] QPEC32.

In that case Judge Dorney QC summarised the issue in the following terms:

*[31] The role that conditions play under the various planning provisions was examined recently in the Court of Appeal in Peet Flagstone City Pty Ltd & Anor v Logan City Council & Ors* [2014] QCA 2010. *Giving judgment for the Court, Gotterson JA (with whom Muir JA and Atkinson J agreed), referencing Atkinson J’s reasoning in Hymix Industries Pty Ltd v Alberton Investments Pty Ltd* [2001] QCA 334 (at [23]), held that the character of a condition of a development approval is the “community price” a developer must pay for a development approval and is a “vehicle for minimising adverse effects” of permitted development: at [28]

*[32] Also, traffic safety is an important matter which the Court does not disregard lightly; and, as remarked by Quirk DCJ, an experienced Judge in this field, in Heilbronn & Partners Pty Ltd v Brisbane City Council* [1997] QPELR 368, in dealing



*with matters of traffic safety, it may well be that a conservative approach is warranted: at 370.*

[33] *Finally, in dealing with the issue of financial cost, it has long been held that the economics of any development are immaterial, a principle exemplified by Brown v Morton Shire Council (1972) 26 LGRA 310 at 313 [referring, in particular, to the High Court's decision of Lloyd v Robinson (1962) 107 CLR 142 (at 155, per Kitto, Menzies and Owen JJ)].*

As all our client's consultants are of the unanimous view that the Development Conditions are not required as a result of the development, do not address the impacts of the development, are not required to address road safety and fall short of providing community infrastructure not currently planned for we believe it will be difficult for Council to justify the imposition of such Development Conditions.

We are instructed that Council officers have identified Sections 315 and 317 of the *Sustainable Planning Act* as the basis for imposing the current Development Conditions.

We are also instructed that the interim LGIP identifies a proposed arterial route adjacent to but not located on the current development site. Ordinarily, development conditions which require the construction of trunk infrastructure enable the developer to obtain infrastructure off-sets for the work undertaken. The adoption of an infrastructure charges resolution is the statutory mechanism by which local Government levies monetary contributions from developers. However, when an LGIP includes the subject works on adjacent lands as the basis for collection of infrastructure levies across the whole of the local Government area and another developer is required to carry out those works, the overall outcome is commonly referred to in the development industry as "double dipping".

## Summary

At this stage we consider it sufficient to deal with these matters in general terms as we understand the preferred course of our client is to make further representations to the Council with respect to the offending Development Conditions.

In the event that the Development Conditions which are the subject of any subsequent negotiated decision notice are not satisfactory to our mutual client we will have the right to appeal to the Planning and Environment Court.

If you have any further queries or clarifications please do not hesitate to contact Dan Morton of this office.

Yours faithfully



Dan Morton

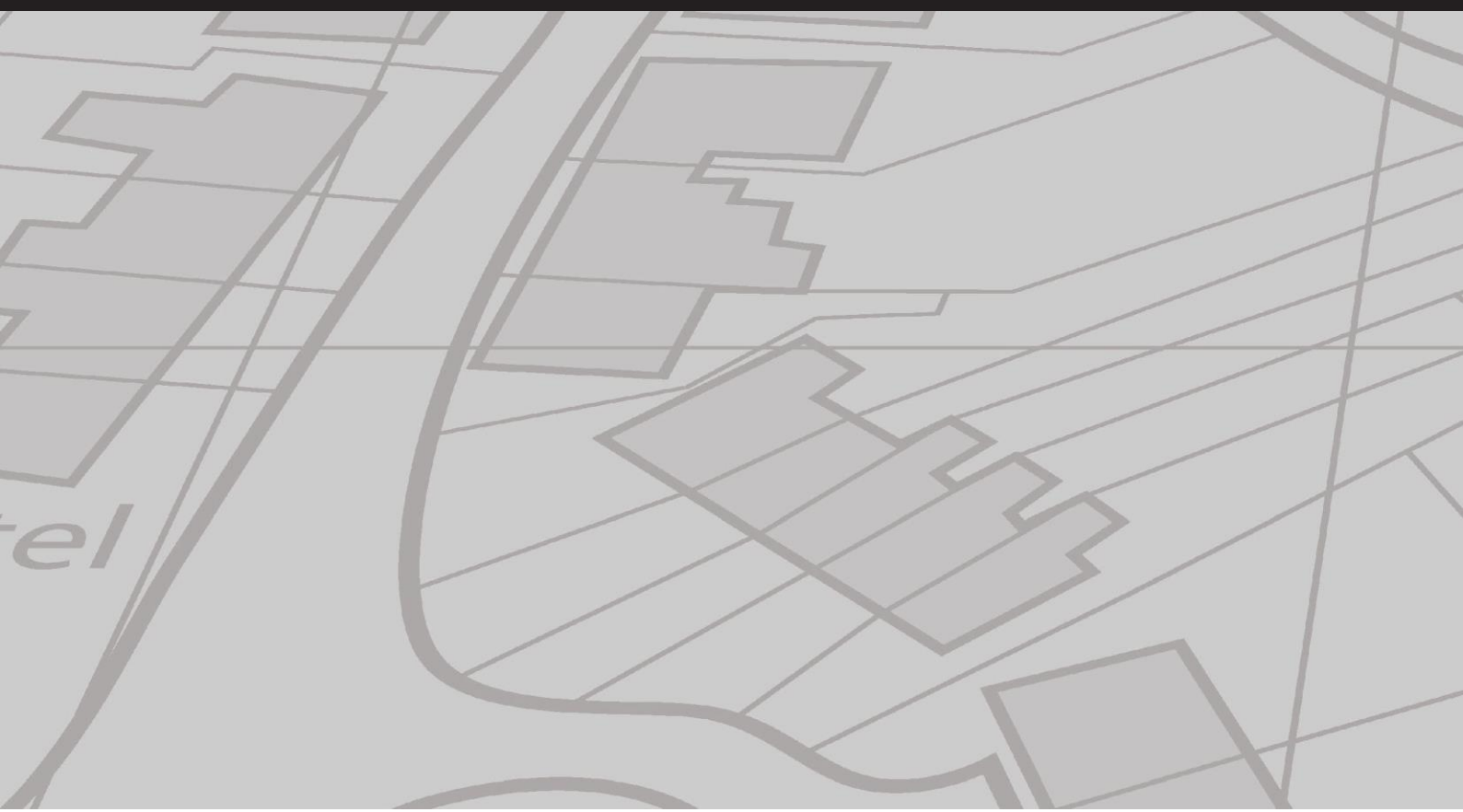
**Partner**

Direct email: dmorton@wrg.com.au



# Attachment 2

ENGINEERING ADVICE PREPARED BY PINNACLE  
ENGINEERING GROUP



Your Ref: DA/18/2017  
 Our Ref: PEG0074\_L001

09 February 2018

**Chief Executive Officer**  
 Gladstone Regional Council  
 PO Box 29  
 Gladstone Queensland 4680

Dear Sir/Madam,

**AGNES WATER DISTRICT SHOPPING CENTRE – RESPONSE TO DECISION NOTICE  
 2873 ROUND HILL ROAD, AGNES WATER (LOT 214 ON SP262272) – APPLICATION DA/18/2017**

We act on behalf of Captain Cook Holdings Pty Ltd (the applicant) regarding the development approval for the abovementioned site, decided by Gladstone Regional Council on 19 December 2017.

The Decision Notice (DA/18/2017) was received by Zone Planning Group Pty Ltd (Zone Planning) on the 19<sup>th</sup> of December 2017. On the 12<sup>th</sup> of January 2018, Zone Planning 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 these representations, Zone Planning and Pinnacle Engineering Group (on behalf of the applicant) attended a meeting with Council Officers on 17 January 2018. The civil engineering representations made herein are reflective of the discussions at the aforementioned meeting and are presented in support of, and in addition to Zone Planning's letter for a request of a Negotiated Decision Notice.

Council Condition	Applicant's Response
<p><b>2(a).</b> To relocate the Child Care Centre within the development footprint so that it is not adjacent to Round Hill Road, the future Agnes Water Second Arterial Route or a Local Access Road, and is not within 50 metres of a service station.</p>	<p>Repositioning the Child Care Centre to the northeast corner of the site will introduce additional number of vehicle trips through the proposed development site during peak drop off/pick up periods. It is a more efficient outcome to limit the traffic generated by the child care centre to front of the site where is it currently documented.</p> <p>Any acoustic concerns generated by the road frontage can be mitigated by an acoustic barrier / fence along the boundary. It is typical for child care centres to be subject to further acoustic reporting in subsequent approvals.</p>
<p><b>2(b).</b> That demonstrate only one access onto the 'new road' which is to be Entry/Exit – A as detailed on the approved plans. This will require the removal of Entry/Exit – B on the approved plans and associated redesign of the area between the proposed Catering Premises and the proposed Supermarket.</p>	<p>From a safety perspective, it's not recommended to concentrate all traffic, including 19.0m Semi Articulated Vehicle delivering fuel and supermarket goods through a single access to the site. It is common for shopping centres to have multiple access to separate heavy vehicles from the day to day operational traffic of the supermarket and child care centre.</p> <p>Furthermore, it is typical of service stations to be located on the corner of two interesting roads for convenient access to and from the development. By relocating the access 250m</p>

	<p>away from the frontage of the subject site, this will not only remove all exposure, but is also inconvenient for the driver to utilise this service and ultimately detrimental to the success of the business.</p> <p>In accordance with the currently documented location of the service station, a dedicated right turn lane has been designed to keep the through traffic free from obstructions, and continue to the main entrance to the shopping centre. Furthermore, motorists queuing in the right turn lane will not have an adverse effect on the Round Hill Road intersection as outlined in the previously submitted Traffic Impact Assessment.</p>																																										
<p>2(c). That show the 'new road' on the approved plans intersecting with Round Hill Road at a 90 degree angle in compliance with the Planning Scheme Policy No 1. in the Miriam Vale Shire Planning Scheme 2009.</p>	<p>The Miriam Vale standard, Policy 1 from Feb 2009 does not reference angles of intersections. However, it does reference <i>Austrads – Part 5, Intersections at Grade</i> and <i>DMR RPDM, Chapter 13 – Intersections at Grade</i>.</p> <p>DMR Chapter 13 allows for 70 degree angle intersections. Pinnacle has previously designed and delivered such projects and note that DMR or <i>Austrads Rural Road Design Manual</i>, does not suggest any restrictions to the 70 degree intersection angle currently designed.</p> <p>At a meeting held between Gladstone Regional Council, Zone Planning and Pinnacle Engineering on the 17 January 2018, it was mentioned by Council's Engineering Officer Jacinta Giles that 70 degree intersections are only permitted for existing 'retro fit' intersections. We have not found anywhere in the abovementioned publications suggest this.</p> <p>Should this requirement be associated with a standard currently adopted by Council we request that Council provides evidence to this effect.</p>																																										
<p>9(a). A 40m metre wide strip of land along the entire Western boundary of the site for the purpose of the future Agnes Water Second Arterial Route.</p>	<p>In reviewing the interim LGIP it is noted that proposed second arterial route is termed as a 'Collector Street'. The required road reserve width for a collector street is 25m wide and further described below within Table 8 of the <i>Gladstone Regional Council's Policy No.P-2014/31 – Road Hierarchy</i>. Also shown below.</p> <p style="text-align: center;">GLADSTONE REGIONAL COUNCIL POLICY NO. P-2014/31 - ROAD HIERARCHY PAGE 15 of 18</p> <table border="1" data-bbox="845 1624 1492 1892"> <caption>Table 8 - Acceptable Solutions - Rural Areas (Road)</caption> <thead> <tr> <th rowspan="2">Criterion</th> <th rowspan="2">Units</th> <th colspan="2">Road</th> </tr> <tr> <th>Collector Road</th> <th>Local Road</th> </tr> </thead> <tbody> <tr> <td>1. Design Speed</td> <td>km/h</td> <td>110km/h (90km/h - Rural Residential)</td> <td>110km/h (70km/h - Rural Residential)</td> </tr> <tr> <td>2. Reserve Width<sup>1</sup></td> <td>m</td> <td>25m (min)</td> <td>25m (min)</td> </tr> <tr> <td>3. Carriageway Width<sup>2</sup></td> <td>Form</td> <td>2 lanes</td> <td>2 lanes</td> </tr> <tr> <td>4. Running Surface</td> <td>Type</td> <td>Sealed</td> <td>Formed (AADT&lt;10) Gravel (AADT&lt;100) Sealed (AADT &gt;= 100) (Sealed - Rural Residential)</td> </tr> <tr> <td>5. Minimum Curve Radius<sup>3</sup></td> <td>m</td> <td>1,100m</td> <td>1,100m</td> </tr> <tr> <td>6. Minimum Formation Width</td> <td>m</td> <td>12.0m</td> <td>11.0m</td> </tr> <tr> <td>7. Carriageway Width (cw)</td> <td>m</td> <td>8.0m</td> <td>7.0m</td> </tr> <tr> <td>8. Through Lane</td> <td>m</td> <td>3.0m</td> <td>3.0m</td> </tr> <tr> <td>9. Shoulder Width</td> <td>m</td> <td>1.0m (min)</td> <td>0.5m (min)</td> </tr> </tbody> </table> <p>In the event that Gladstone Regional Council seek a resumption along the western boundary of the subject site, a shared road reserve may be considered. For example, the new road centreline to be aligned with on western boundary,</p>	Criterion	Units	Road		Collector Road	Local Road	1. Design Speed	km/h	110km/h (90km/h - Rural Residential)	110km/h (70km/h - Rural Residential)	2. Reserve Width <sup>1</sup>	m	25m (min)	25m (min)	3. Carriageway Width <sup>2</sup>	Form	2 lanes	2 lanes	4. Running Surface	Type	Sealed	Formed (AADT<10) Gravel (AADT<100) Sealed (AADT >= 100) (Sealed - Rural Residential)	5. Minimum Curve Radius <sup>3</sup>	m	1,100m	1,100m	6. Minimum Formation Width	m	12.0m	11.0m	7. Carriageway Width (cw)	m	8.0m	7.0m	8. Through Lane	m	3.0m	3.0m	9. Shoulder Width	m	1.0m (min)	0.5m (min)
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	<p>resulting with a 12.5m road reserve on the subject site, and 12.5m on council owned land (Lot 8 on RP616792) to the west.</p>
<p>24. Prior to the commencement of the use for Stage 1, the Applicant must construct a Council-owned sewerage pumping station (including an access to the pumping station) and a gravity sewer main from the connection to the development site to this pumping station (SPS C).</p>	<p>We note that Council is currently proposing to construct a regional pump station (SPS D) to the north of the subject site as documented in the previously submitted and approved engineering documentation by Pinnacle.</p> <p>It is understood that Council intends to construct a rising main from SPS D past the proposed development site which will continue to a discharge location to the southeast of the subject site.</p> <p>As documented within the engineering reports submitted with the Development Application as in accordance with Council's Information Request for the Development Application, we propose to direct inject into Council's proposed rising main rather than construct a redundant Pump Station to service the proposed Shopping Centre site.</p> <p>It is not realistic or feasible to construct redundant infrastructure for a single development when there is a regional solution in place to service the proposed development.</p>

If you have any queries regarding any aspect of the above, please do not hesitate to contact the undersigned and we look forward to receiving your favourable approval.

Yours faithfully,



**Michael Binger**  
Director

P: 0433 266 457

E: [michael@pinnacleeng.com.au](mailto:michael@pinnacleeng.com.au)

W: [www.pinnacleeng.com.au](http://www.pinnacleeng.com.au)

Encl.

