

YOUR REF: J000049:NQL:KLG
OUR REF: SEDA MCUI1599/2016 (D#797416) SC

14 December 2016

NQL Properties Pty Ltd
C/- Gilvear Planning Pty Ltd
PO Box 228
BABINDA QLD 4861

Attention: Ms Kristy Gilvear

kristy@gilvearplanning.com.au

Dear Madam

**DEVELOPMENT APPLICATION FOR A PRELIMINARY APPROVAL FOR
AN UNDEFINED USE (EDUCATION, SPORT AND ENTERTAINMENT
FACILITY) AT ANDREASSEN ROAD CRAIGLIE
NOT PROPERLY MADE ISSUE REGARDING OWNER'S CONSENT**

Reference is made to the following correspondence in respect of this matter:

1. Council's letter dated 23 August 2016, notifying you that the subject development application was Not Properly Made;
2. your response advice to Council dated 24 August 2016;
3. the Department of Infrastructure, Local Government and Planning's (**the Department**) pre-lodgement advice dated 4 November 2016; and
4. your "without prejudice" correspondence addressed to Councillor Carey dated 18 November 2016.

Council has given consideration to the matters raised in your recent correspondence, and provides the following response.

Applicant's position

1. Council's understands the Applicant's position is that the land in the two areas of road (which is presently unconstructed) does not form part of the land the subject of the application, because the only way in which the two areas of road is intended to be used for the proposed development, is for access between the parcels of land which presently form part of the development application, with no development to occur in these areas.
2. In support of this position, reliance has been placed upon a statement in the pre-lodgement advice provided by the Department to the effect that, *"The Department of Natural Resources and Mines is of the opinion that the roads do not need to be included in the application as you have indicated that there will be no development over these areas"*.

Council's position

3. In Council's opinion, the advice from the Department cannot be read in isolation from the paragraphs which immediately follow it in the pre-lodgement advice, which relevantly state as follows:

"If Douglas Shire Council requires the roads to be included in order to lodge a properly made development application, owner's consent for the preliminary approval will be required from the Department of Natural Resources and Mines. Information on how to apply for owner's consent is included in Attachment 1(Section 1).

Prior to issuing owner's consent, the Department of Natural Resources and Mines would assess the proposed use of the road to ensure consistency with road tenure. If the intended use is not consistent with road tenure purposes, the applicant would need to surrender their road licences and apply for the road to be permanently closed..." (emphasis added)

Requirement for owner's consent

4. Evidence of owner's consent must be provided for all of the *"land the subject of the application"*¹.
5. This is a pre-requisite which must be satisfied before the development application may be accepted by Council as properly made.
6. Council, as the assessment manager for the development application, is the entity which must be satisfied that there has been compliance with the mandatory requirements for a properly made application². Accordingly, whilst Council has had regard to the views of the Department expressed in its pre-lodgement advice dated 4 November 2016, it is ultimately a matter for the Council to be satisfied that the requirement for evidence of owner's consent for all of the land the subject of the application has been complied with.
7. This has been acknowledged by the Department in its pre-lodgement advice, as emphasised in the extract above.

Land the subject of the application

8. The extent of the *"land the subject of the application"*, in the context of an application for a material change of use, is to be determined by the nature and extent of the use proposed. It is not limited to areas where construction of buildings, structures or physical construction is required to take place, and may include any land affected by the application, or to which the development relates.
9. The development proposed is a single, integrated *"undefined use (education, sport and entertainment facility)"* for *"Mowbray Adventure Park"*.
10. A Smartmap (**attached**) identifies the areas of road reserve, across which access will be required to facilitate the movement of visitors and staff between Lot 4 on C2254 (Lot 4) and Lot 87 on SR370 (Lot 87), and between Lots 4 to 6 on C2254 (Lots 4 to 6) and Lot 90 on SR678 (Lot 90).
11. Council has provided below some further comments following its review of the development plans submitted with the development application materials.

¹ Sustainable Planning Act 2009, sections 260(1)(e), 261(1)(a)(i) and 261(1)(a)(ii)(A).

² Sustainable Planning Act 2009, section 261(1)(a)(ii)(A).

General Arrangement Plan (Drawing No. SKETCH 1023-1 Rev A)

12. The General Arrangement Plan prepared by Trinity Engineering and consulting dated 31 May 2016 (Drawing No. SKETCH 1023-1 Rev A), which accompanied the Development Application, reveals:
- (a) the following areas are included within the "Site Boundary":
 - (i) the area of Andreasson Road immediately adjoining Lot 4 and Lot 87;
 - (ii) an area of unnamed road immediately adjoining Lots 4 to 6 and Lot 90;
 - (iii) further areas of unnamed road immediately adjoining:
 - (A) the northern boundary of Lot 1 on C2254 and Lot 6 on C2254; and
 - (B) the western boundary of Lots 1 to 3 on C2254;
 - (b) site "circulation tracks" will be constructed within the area of unnamed road adjoining Lots 4 to 6 and Lot 90 in approximately 4 locations;
 - (c) site "circulation tracks" will be constructed up to, and immediately adjoining the boundary between Andreasson Road and Lots 4 and 87, such that the path within Lot 4 will run to the boundary with Andreasson Road and then cease, before recommencing in a similar location at the boundary of Lot 87;
 - (d) buildings for amenities and kitchen facilities, are proposed within Lots 87 and 90, whilst the existing water main connection is located within the boundaries of Lot 3, raising the possibility that internal plumbing / drainage between Lots 1 to 6 and Lots 87 and 90 will be required.

Landscaping Site Concept Plans

13. The Landscaping Site Concept Plans prepared by GGI Landscape Architects identify that the area of Andreasson Road immediately adjoining Lot 4 and Lot 87, and the area of unnamed road immediately adjoining Lots 4 to 6 and Lot 90, has been greyed out in the plans, so that no concept is shown for the land within the road reserve. Despite this:
- (a) on Sheet 1:
 - (i) site access to the road network is to be provided via Andreasson Road, to the south western corner of Lot 3 where carparking and reception facilities will be located;
 - (ii) accommodation facilities will be location within Lots 1 and 2;
 - (iii) internal "boardwalks" and "circulation paths" extend from the buildings within Lots 1 to 3, to the balance of the land;
 - (b) on Sheet 2:
 - (i) access to outdoor recreation facilities on Lots 5 and 6 will be provided via boardwalks and internal circulation paths extending from Lots 1 to 3;
 - (ii) further facilities will be located within Lot 87, including a "proposed bush kitchen", an "agronomy education" area, and a "river education and rehabilitation area";

- (iii) proposed areas of “parkland” and “re-vegetation zone” are identified as extending, in defined corridors, to the north and south of Andreasson Road though Lots 4 and 87;
 - (iv) a “boardwalk” is identified as extending, in approximately the same location, to the north and south of Andreasson Road towards the eastern boundary of Lots 4 and 87;
 - (v) an “internal site circulation” path is identified as extending to the boundary of Lot 4 and ceasing at Andreasson Road in one location;
 - (vi) an “internal site circulation” is identified as extending from the boundary of Lot 87 and Andreasson Road through Lot 87, before terminating in another location at Andreasson Road;
- (c) on Sheets 3 and 4:
- (i) areas of “seasonal wetland” and “re-vegetation corridor” are identified as extending, in defined corridors, to the east and west of the area of unnamed road;
 - (ii) “internal site circulation” paths are identified as extending to the boundary of Lots 5 and 6, and passing through the unnamed road into Lot 90 in two locations;
 - (iii) a proposed “Mountain Madness Zone – Proposed Bike Skills and Jump Zone” is identified as extending, in two defined locations, to the east and west of the area of unnamed road, with a possible linkage via an “internal site circulation” path through the area of unnamed road; and
 - (iv) a central amenities building will be location within Lot 90, which will be accessed by “internal site circulation” paths.

Planning Report by Gilvear Planning

14. Section 5.1.6 of the Planning Report further states:

“Road reserves through the site remain unchanged.

Subject to approvals for the land use being obtained, it may be appropriate to engage with the State and Council regarding longer-term closure of road, if considered appropriate at a later date”. (emphasis added)

Tenure issues

15. Further, it is noted that:

- (a) a substantial part of the area of road between Lot 4 and Lot 87 is presently subject to other tenure arrangements, namely:
 - (i) Lot 1 on RL4536, being subject to a Road Licence; and
 - (ii) Lot D on AP19681, being subject to a Permit to Occupy;
- (b) all of the area of road between Lots 4 to 6 and Lot 90 is presently subject to Road Licence, namely Lot 1 on RL4535.

16. Given the location and extent of land in the road which is presently subject to other tenure arrangements, it is presently unclear whether the proposal to use such areas for the purposes of access associated with the proposed development is lawful, given the current tenure of those areas.
17. Council notes that the Department's pre-lodgement advice specifically discusses this issue under the headings "Owner's Consent" and "Surrender of Road Licences".
18. Council also notes the advice of the Gilvear Planning, received on 15 November 2016, that applications for the surrender of Road Licences RL4535 and RL4536 have been lodged with the Department of Natural Resources and Mines. The present status of these surrender applications is unclear.
19. For completeness, Council is not suggesting that Mackay Sugar as the holder of the Permit to Occupy is required to provide owner's consent to the development application. Mackay Sugar is not an "owner" for the purposes of the SPA, in relation to Lot D on AP19681. Rather, consistent with the Department's pre-lodgement advice, Council accepts that the Department of Natural Resources and Mines is the entity responsible for providing owner's consent in respect of the 2 areas of road, including the area of land the subject of the Permit to Occupy, and any continuing Road Licences.

Summary

20. The plans included in the development application, including those identified above, identify the two areas of road as being within the site boundary.
21. The proposed use will be conducted across all of the freehold parcels **and** the two areas of road, which will be used by staff and guests for access between the various facilities.
22. The use of the two areas of road reserve for internal site access is integral to the proposed development, and necessary for its proper functioning as a single, integrated use, because there is no other available means by which access between the freehold parcels forming part of the overall use may be gained.
23. Further, the site layout and landscaping concept plans identify that the development, including internal access paths and landscaping, will envelope the areas of road reserve, and will, in practice, internalise the areas of road within the development.
24. As foreshadowed in the Department's pre-lodgement advice dated 4 November 2016, this may necessitate consideration of the appropriateness of the tenure of the two areas remaining as road, should the proposed development proceed. These matters warrant consideration as part of the current development application, rather than being deferred for later consideration, given that use of the road is necessary for the development as presently configured.

Required action

25. In the circumstances, Council reiterates the advice contained in its letter dated 23 August 2016, namely that you are to take the following actions in order to make the application properly made:
 - (a) all land over which the use is proposed to be carried out must be included in the application with description, either by title reference or, where part of a lot / road / waterway, by a surveyed metes and bounds description; and
 - (b) provide owner's consent for all lands / roads / waterways to which the application applies.

26. The assessment period for the application will not commence until such time as the above issues have been addressed. Council will take no further action until the application is properly made.
27. Please gain the owner's consent for the affected road areas. Council understands this is a simple process.
28. Should you require any further information in relation to this matter, please contact Jenny Elphinstone of Development Assessment and Coordination on telephone number (07) 4099 9482 or by email jenny.elphinstone@douglas.qld.gov.au.

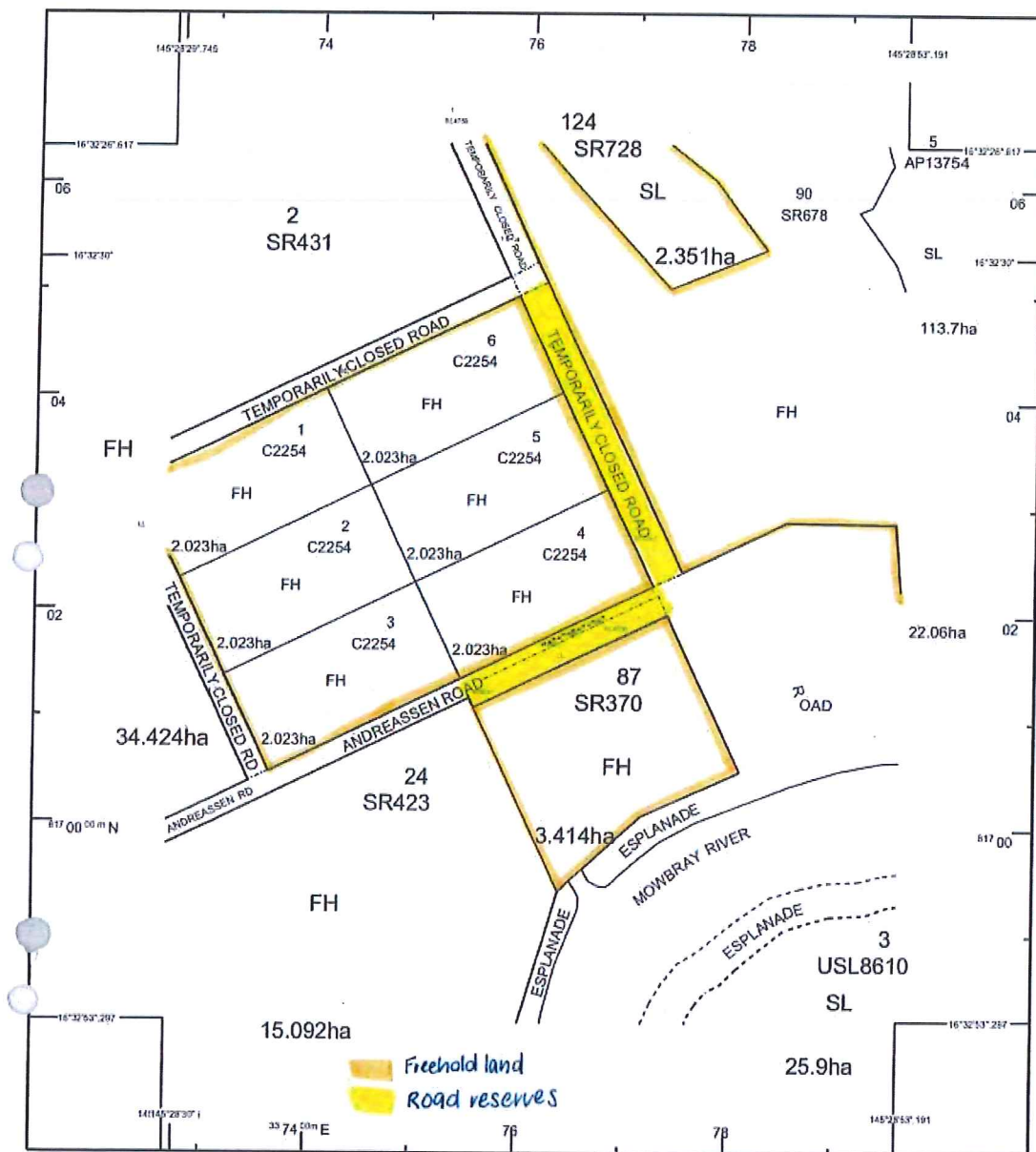
Yours faithfully

Paul Hoyer
Manager Sustainable Communities

A handwritten signature in blue ink, appearing to be 'P. Hoyer', is written over the printed name and title.

Attch – Smart Map

Attachment



STANDARD MAP NUMBER
7964-11124

MAP WINDOW POSITION &
NEAREST LOCATION



SUBJECT PARCEL DESCRIPTION

DCDB
Lot/Plan
Area/Volume
Tenure
Local Government
Locality
Segment/Parcel

4/C2254
2.023ha
FREEHOLD
DOUGLAS SHIRE
CRAGGIE
806914

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