

Your Ref: 8/13/1757 (4204752) MH
Our Ref: J000049:NQL:KLG (L4, 5 and 90 Ease)
Date: 14 January 2014

Chief Executive Officer
Douglas Shire Council
PO Box 723
MOSSMAN QLD 4873

**Attention: Manager Development & Environment
Ms Michelle Henderson, Town Planner**

DOUGLAS SHIRE COUNCIL Received	
File Name	
Document No	
17 JAN 2014	
Attention	
Information	

Dear Michelle,

RE: Application seeking Development Permit for Reconfiguration of a Lot (Access Easement) on land located at Andreasson Road, Mowbray more particularly described as Lots 4 and 5 on C2254 and Lot 90 on SR678

I refer to the above-described matter, and Council's Decision Notice confirming its approval subject to conditions, dated 2 December 2013, and received on that date via the SEDA system.

By letter dated 12 December 2013, the Applicant suspended its Appeal Period for this Application pursuant to Section 366(1) of the *Sustainable Planning Act 2009* ('SPA'), in order to make representations regarding conditions imposed on the Approval issued.

Pursuant to Section 361(1)(a) of the SPA, the Applicant hereby makes representations regarding the following conditions, and requests Council issue a Negotiated Decision Notice pursuant to Section 363(1) of the SPA.

Detailed representations regarding the conditions imposed are provided below. Conditions in question are identified, representations provided, and requested variations to conditions indicated via strikethrough (deletion) and / or underline (insertion).

It is noted that pursuant to the SPA, conditions must:

- Be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development (section 345(1));
- Be reasonably required in relation to the development or use of premises as a consequence of the development (section 345(1)(b));
- Comply with decision rules specified and confirmed within sections 346 and 347 of the SPA.

These requirements / provisions have been considered in preparation of the below representations.

Condition 3: Andreassen Road Upgrade

The condition in question provides:

- 3. Any unformed part of Andreassen Road must be upgraded to Access Road Standard to the junction of the subject easement with Andreassen Road prior to the issue of a Compliance Certificate for the Plan of Survey.**

Note the unformed parts of Andreassen Road may be either:

- a. The whole length of Andreassen Road if road upgrading has not proceeded under either of Development Approvals 8/13/1547 and 8/30/119; or***
- b. The balance of Andreassen Road after road upgrading has been completed under either of Development Approvals 8/13/1547 and 8/30/119.***

The Applicant makes the following representations with regard this condition:

- (i) The condition references Development Approvals' granted for sites outside those subject of the relevant approval, and beyond the ownership and / or control of the Applicant. This is not reasonable nor relevant; further, and / or in the alternative
- (ii) The condition, which appears to require upgrades to a substantial road extent beyond that directly associated with the site, has been imposed on an Application merely seeking approval for creation of an Access Easement to service existing allotments. Whilst the Applicant acknowledges that upgrades to road frontage directly associated with the establishment of this Easement, and providing access to the lot, is an appropriate requirement for it to bear, the requirement that road upgrades capable of servicing adjoining developments be undertaken by the Applicant with no reimbursement and / or credit applying to the subject site / Applicant is unreasonable and does not, on its face, appear relevant in the context of development proposed (that being an Access Easement); further, and / or in the alternative
- (iii) The condition fails to recognize the extent of works likely to be required, in the event development on adjoining properties does not proceed prior to the Applicant being required to comply with conditions within the relevant period for this Application. That is, drainage works associated with upgrades to Andreassen Road to achieve appropriate flood immunity, and provide a road to 'Access Road' standard, are substantial, and may not be able to be accommodated within the road reserve width currently available (estimated to be 20m). These drainage works are necessitated by alterations to drainage networks in the broader area by third parties, resulting in increased runoff down Andreassen Road. The Applicants should not, and will not, bear additional costs imposed on the development as a

result of impacts from this changed drainage system, in particular, impacts affecting construction requirements and / or standards for upgrade of Andreassen Road. Should development on adjoining lands not proceed, and the Applicant be required to complete external works on Andreassen Road from its intersection with the Highway, to its western intersection with Lot 3 on C2254 (i.e. the creek / discharge point for Andreassen Road drainage currently), the Applicant may not ultimately be able to comply with the requirement as currently imposed; that is, the Applicant is unable to widen the Andreassen Road reserve to accommodate necessary infrastructure, as it is not in control of land on either side of the road reserve to its intersection with Lot 3; further, and / or in the alternative

- (iv) The condition lacks certainty in that it refers to Development Approvals not directly related to or associated with the subject site. Furthermore, two development approvals are referred to, for different sites, and the Applicant has not been party to any discussions with Council and / or the State regarding requirements or standards to be complied with in accordance with those approvals. Determining the extent of the Applicant's obligations, therefore, is likely to be difficult and / or not possible without interaction with parties external to the subject Application; further, and / or in the alternative
- (v) The condition lacks certainty, in that it does not specify that intersection works are not, and cannot be, part of the upgrades required under any condition imposed by Council, given Council is not responsible for the intersection in question (that is, the intersection is with a State Controlled Road); further, and / or in the alternative
- (vi) Pursuant to sections 626 and 626A in the SPA (the latter of which may apply due to the Douglas Shire Council not having yet passed an Adopted Infrastructure Charges Resolution) it is noted that conditions related to external infrastructure may only:
 - Relate to non-trunk infrastructure; and
 - Relate to internal networks; or
 - Require connections to external infrastructure networks; or
 - Relate to protection or maintenance of safety or efficiency of the infrastructure network of which the non-trunk infrastructure is a component.

On review of the condition in question, insofar as upgrades beyond the sites intersection with Andreassen Road at the eastern point of Lot 3 on C2254, it appears that whilst the condition may relate to non-trunk infrastructure, it:

1. Does not relate to internal networks;
2. Does not require connection to an external infrastructure network, given this legal connection to existing allotments already exists, and the proposed development will not

result in an increase of traffic likely to be generated (noting the existing lots in question).

In considering whether the condition seeks to "protect" or "maintain" safety or efficiency of the network in question, the following representations are provided for consideration:

- Andreassen Road is a lower order, rural road with informal drainage networks that already exists;
- Whilst flood / inundation immunity along Andreassen Road is understood to have been an issue from a Council perspective, it is noted that the subject Application relates to an Access Easement only; no new lots are proposed, and traffic generation additional to that already in existence for lots in question (existing lots) is considered unlikely;
- Any benefit to be derived from an expansive external upgrade to Andreassen Road will be derived by adjoining owners, not the Applicant.

In summary:

1. The Condition, insofar as it requires upgrades to Andreassen Road west of its intersection with Lot 3 on C2254 is considered to be irrelevant to the subject development, which is for an Access Easement only, facilitating altered / improved access arrangements for existing allotments; and
2. The Condition, insofar as it requires upgrades to Andreassen Road west of its intersection with Lot 3 on C2254 is considered to be an unreasonable imposition upon the subject development, which is for an Access Easement only; and
3. The Condition, insofar as it requires upgrades to Andreassen Road west of its intersection with Lot 3 on C2254 appears to contravene sections 626 and / or 626A of the SPA.

It is also noted that the requirements within Condition 3 appear contradicted by Council's Information / Advice Statement numbered 3, which provides that:

"This Development Approval relies on the completion of works associated with Development Approvals 8/13/1547 and 8/30/119 in order to gain formal and constructed access to the lots at an appropriate level of flood immunity, through the proposed extension and construction of Andreassen Road. If the construction of a dwelling or access road occurs prior to the upgrade of Andreassen Road it will solely be at the applicant's / landowner's risk. Council is not required to construct or contribute to the construction of Andreassen Road."

This Information / Advice Statement seems to recognize that a reduced extent of Andreassen Road will be upgraded by the Applicant.

The Applicant reiterates its position that it will not bear the burden of costs associated with rectification of drainage issues along Andreassen Road, such issues arising as a result of third party actions.

In the above circumstances, Council is requested to amend the Condition in question as follows:

3. ***Any unformed part of Andreassen Road must be upgraded to Access Road Standard to the junction of the subject easement with Andreassen Road prior to the issue of a Compliance Certificate for the Plan of Survey.***

For the purposes of this condition, the 'unformed part of Andreassen Road' requiring upgrade is that part of Andreassen Road from its eastern intersection with Lot 3 on C2254 (that is, east of the stormwater culvert on Andreassen in front of Lot 3), to the junction of the subject easement with Andreassen Road.

~~Note the unformed parts of Andreassen Road may be either:~~

- ~~a. The whole length of Andreassen Road if road upgrading has not proceeded under either of Development Approvals 8/12/1547 and 8/30/119; or~~***
- ~~b. The balance of Andreassen Road after road upgrading has been completed under either of Development Approvals 8/12/1547 and 8/30/119.~~***

Advice Note 1 – Relevant Period

In addition to the requests for modification of conditions outlined above, the Applicant notes Council's confirmation of the Relevant Period for the Application as two years within Advice Note 1.

Given the extent of earthworks and subsequent approvals required to effect development as approved, Council is requested to modify this relevant period, providing a four (4) year period in this instance. Of particular note is the 'standard' approach in the Sustainable Planning Act 2009 for Reconfigurations involving subsequent applications / approvals (in this case, Operational Works) to enable a four (4) year relevant period.

Conclusion

Council is requested to consider the above representations in accordance with Section 362 of the SPA, and issue a Negotiated Decision Notice for the Application.

In conjunction with Council's consideration of these Representations, the Applicant requests the opportunity to meet with relevant Council Officers to discuss issues raised, and work towards a decision in a collaborative manner. We would welcome the opportunity to attend this meeting, together with the Applicant and its Engineers, in February 2014. Please advise of suitable dates for this meeting, so that arrangements may be confirmed as soon as possible.

Should additional information be required, please do not hesitate to call or email.

Kind regards,

A handwritten signature in black ink, appearing to read 'Kristy Gilvear', with a stylized flourish at the end.

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