

REPORT TITLE	Assessment of Change Application (Minor Change) for a Preliminary Approval for a Material Change of Use – Variation Request located at 689 Toowoomba Cecil Plains Road, WELLCAMP QLD 4350
AUTHOR	A/ Principal Planner (Jayden Forbes-Mitchell)
Application No.	MCUI/2020/5051/A

PURPOSE OF REPORT

To consider a change application regarding a development approval for a Preliminary Approval for a Material Change of Use – Variation Request located at 689 Toowoomba Cecil Plains Road, WELLCAMP QLD 4350

EXECUTIVE SUMMARY

This report considers a change application regarding a development approval for a Preliminary Approval for a Material Change of Use – Variation Request located at 689 Toowoomba Cecil Plains Road, Wellcamp. The Variation Approval varies assessment levels and benchmarks for future development within the Gainsborough Lodge Preliminary Approval Area (PAA). The Variation Scheme Document (VSD) generally aligns with the Low Density Residential Zone provisions of the Planning Scheme.

The change application seeks to amend the VSD to change the minimum lot size within the PAA from 450m² to 420m², and to allow for the creation of lots 420m² and over to be Code Assessable. Other amendments include reducing the minimum frontage from 15m to 13m. The current VSD sets 450m² as the threshold for triggering Impact Assessment, except for the ‘Hilltop Residential Precinct’, where 800m² is the minimum lot size. By comparison, the minimum lot size is 500m² in the Low Density Residential Zone in the Planning Scheme. The reduced lot size of 420m² will not apply to land within the Hilltop Residential Precinct in the PAA.

The Gainsborough Lodge development, approved across multiple stages, consists of 396 lots on 42.2ha, with an overall density of 9.2 dwellings per hectare and an average lot size of 675m². The applicant argues that housing affordability issues experienced within the LGA necessitate a higher dwelling yield by incorporating smaller lots with dual street frontages, including a rear laneway. The applicant also cites the difficulty of managing slope without excessive earthworks to provide a flat building pad, which will be managed through the design of lots with dual road frontage to accommodate split-level house designs.

The change application relates to the variation approval and not approved subdivision over the site. Changes to existing approved lot and road layouts within the PAA will be subject to the lodgement and future assessment of change applications to Development Permits RAL/2020/5054/B and/or RAL/2022/4965. Notwithstanding, the applicant has provided conceptual material demonstrating the likely form of future small lot development that will be sought should this change application be approved. The creation of small lots adjoining a rear laneway is indicated to be undertaken within approved Stage 3 of RAL/2022/4965.

As the change provides for lots below 450m², minor changes to Council’s Small Lot Housing Design Code are proposed that will apply to all future dwellings within the PAA on lots smaller than 450m². Variations to the Small Lot Housing Design Code are proposed through the introduction of a new code within the VSD (‘Gainsborough Lodge Small Lot Housing Code’), that reproduces the existing equivalent Planning Scheme Code with minor amendments. Changes are sought to allow for vehicular access to occur from both the primary (street) and rear (laneway) to satisfy acceptable outcome AO_{7.2}. Currently, the Small Lot Housing Design Code requires that lots provided with rear lane access provide vehicular access only via the rear lane.

Minor changes are also proposed to the ‘Gainsborough Lodge Reconfiguring a Lot Code’ within the VSD, to ensure that any future change to an approved subdivision within the PAA seeking to introduce lots below 450m² would not conflict with an acceptable outcome within that code due to the reduced lot sizes and/or typologies sought.

The report concludes that the proposed changes should be approved in part.

RECOMMENDATION

APPROVED IN PART – Change Application regarding Development Approval MCUI/2020/5051 for a Preliminary Approval for a Material Change of Use – Variation Request, pursuant to the provisions of Sections 81 and 81A of the *Planning Act 2016* and subject to the amendments listed below.

Extent Refused

Varying the assessment benchmarks within the Small Lot Housing Design Code through the introduction of the Gainsborough Lodge Small Lot Housing Code into the Gainsborough Lodge Variation Scheme Document (VSD)

Extent Approved

All proposed changes, other than those identified within the recommendation to be refused and subject to the amendments required to be made to the VSD as identified within the recommendation.

ASSESSMENT MANAGER CONDITIONS

PLANNING

PARAMETERS OF APPROVAL

1. All future development within the Variation Approval Area must be undertaken in accordance with the provisions of the Variation Approval Document, *Gainsborough Lodge Variation Scheme Document (VSD)* dated ~~4 February 2022~~ **17 January 2025 (as amended)** and the applicable Codes and Planning Scheme Policies contained in the *Toowoomba Regional Planning Scheme 2012* (Version 24).
2. Where the Variation Approval Document, *Gainsborough Lodge Variation Scheme Document (VSD)* dated ~~4 February 2022~~ **17 January 2025 (as amended)** does not state the way in which the approval will vary the effect of the Planning Scheme, the provisions contained in the *Toowoomba Regional Planning Scheme 2012* (Version 24) will take effect.
3. Unless otherwise stated, all conditions must be complied with prior to Council's endorsement of the Plan of Subdivision.

VARIATION APPROVAL AREA

4. The Variation Approval Area "*Gainsborough Lodge Approval Area*" is the area described in Table 1.3 and Figure 1 of the Variation Approval Document *Gainsborough Lodge Variation Scheme Document (VSD)* dated ~~4 February 2022~~ **17 January 2025 (as amended)** and comprises the following land parcels:

Lot 4 on A341;
Lot 5 on A341;
Lot 6 on A341;
Lot 7 on A341;
Lot 8 on A341;
Lot 20 on A341;
Lot 21 on A341;
Lot 22 on A341;
Lot 23 on A341;
Lot 24 on A341;
Lot 379 on AG3110;
Lot 280 on AG3111;
Lot 9 on RP113281; and
Lot 19 on RP113281

VARIATION APPROVAL DOCUMENT

5. Where the Variation Approval Document *Gainsborough Lodge Variation Scheme Document (VSD)* dated ~~4 February 2022~~ **17 January 2025 (as amended)** is “silent” on a particular issue, the provisions contained in *Toowoomba Regional Planning Scheme 2012 (Version 24)* will take effect.
6. For the assessment of development under the Variation Approval Document *Gainsborough Lodge Variation Scheme Document (VSD)* dated ~~4 February 2022~~ **17 January 2025 (as amended)** by Council as Assessment Manager, where there is any question as to the applicability of the Variation Approval Document *Gainsborough Lodge Variation Scheme Document (VSD)* dated ~~4 February 2022~~ **17 January 2025 (as amended)** or an Applicable Planning Code or Policy, the applicability of the Variation Approval Document *Gainsborough Lodge Variation Scheme Document (VSD)* dated ~~4 February 2022~~ **17 January 2025 (as amended)** or Applicable Planning Code or Policy must be as determined by Council.
7. The Codes and Policies applicable to development within the Variation Approval Area are the *Toowoomba Regional Planning Scheme 2012 (Version 24)* Codes and Policies, unless otherwise specified in the Variation Approval Document *Gainsborough Lodge Variation Scheme Document (VSD)* dated ~~4 February 2022~~ **17 January 2025 (as amended)**.
8. The category of development and assessment applicable to development within the Variation Approval Area is in accordance with the *Toowoomba Regional Planning Scheme 2012 (Version 24)* unless otherwise specified in the Variation Approval Document *Gainsborough Lodge Variation Scheme Document (VSD)* dated ~~4 February 2022~~ **17 January 2025 (as amended)**.

CURRENCY PERIOD

9. This Variation Approval has a currency period of ten (10) years from the date this Development Approval starts to have effect.

APPROVED DOCUMENT

10. The development must be carried out generally in accordance with the Approved Document listed below:

Document: 8824 - Version 3

Description: Gainsborough Lodge Variation Scheme Document (VSD) prepared by Saunders Havill Group and dated ~~4 February 2022~~ **17 January 2025**

Amendments: Nil Resubmitted to include the following amendments:

- Removal of ‘draft’ watermark from all pages;
- Table 5.3.1.2 – insert under a heading ‘Where not within the Hilltop Residential Precinct’ – ‘PO₂₃ Lot reconfiguration contributes to a generally low density form of housing, with higher densities supported in walkable and well-located areas within the site to achieve a minimum dwelling yield of 15 dwellings per hectare net’ and ‘AO_{23.1} All lots created by reconfiguring a lot are 500m² or greater’;
- Remove Section 5.3.2 – Gainsborough Lodge Small Lot Housing Code;
- Remove all references to Gainsborough Lodge Small Lot Housing Code / Gainsborough Lodge Small Lot Housing Design Code;
- Amend AO_{4.1} in Table 5.3.7.1 to refer to Table 5.3.7.3 instead of Table 5.3.8.3; and
- Update Table of Contents following above amendments.

Document: 14700 - Revision C

Description: Slope Stability Risk Assessment – Soils – Gainsborough Lodge Development – Toowoomba Cecil Plains Road – Glenvale, prepared by RMA and dated 7 November 2019.

Amendments: Nil

Note: The above Approved Document is the "Approved Slope Stability Report" referred to in Table 5.3.4.1 and Table 5.3.4.2 of the Variation Approval Document Gainsborough Lodge Variation Scheme Document (VSD) dated 4 February 2022.

ADVICES

SUBMISSION OF DOCUMENTS FOR ENDORSEMENT

- 1) The conditions of this Development Approval require submission of documents to Council for endorsement. Please address the documents for endorsement to Council's Development Services Branch with the Reference No. RAL/2020/5054 and send to development@tr.qld.gov.au.

OTHER LAWS & REQUIREMENTS

- 2) This Development Approval relates to development requiring approval under the *Planning Act 2016* only. It is the approval holder's responsibility to obtain any other necessary approvals, licenses or permits required under State and Federal legislation or Council local law, prior to carrying out the development. Information with respect to other Council approvals, licenses or permits may be found on the Toowoomba Regional Council website. For information about State and Federal requirements please consult with these agencies directly.
- 3) Any works impacting outside the property boundary will require a permit under Subordinate Local Law 1.15 (Carrying Out Works on a Road or Interfering with a Road or its Operation) 2011. Please contact Council's Road Operations Branch through our Customer Service Centre on 131 872. The application can be found on Council's website at www.tr.qld.gov.au.
- 4) The development has only been assessed in accordance with the provisions of the *Toowoomba Regional Planning Scheme 2012*. No assessment has been made in respect of the provisions of the *Building Code of Australia* and/or the *Queensland Development Code*.

WHEN APPROVAL STARTS TO HAVE EFFECT

- 5) This Development Approval starts to have effect in accordance with the provisions of Section 71 of the *Planning Act 2016*.

WHEN APPROVAL LAPSES

- 6) This Development Approval will lapse in accordance with the provisions contained in Sections 85 and 88 of the *Planning Act 2016*, unless otherwise stated elsewhere within this Development Approval.

CLEARING OF NATIVE VEGETATION

- 7) The subject land supports regulated vegetation under the *Vegetation Management Act 1999* (VM Act). The clearing of regulated vegetation can only be undertaken where associated with exempt clearing activities established under the VM Act. For further information regarding exempt clearing activities please contact your local office of the Department of Resources.

CLEARING OF PROTECTED PLANTS

- 8) In accordance with *Nature Conservation (Animals) Regulation 2020* you must check the flora survey trigger map, prior to the clearing of any native plants found on the subject land to determine if a flora survey must be undertaken and if a clearing permit for clearing endangered, vulnerable and near threatened plants ('EVNT plants') and their supporting habitat is required.

Under the Regulation, if a flora survey identifies that EVNT plants are not present or can be avoided by 100m, the clearing activity may be exempt from a permit, however an exempt clearing notification form must be submitted to the Department of Environment and Science. In an area other than a high risk area, a clearing permit is only required where a person is, or becomes, aware that EVNT plants are present, though a range of exemptions do apply. Clearing of least concern plants is generally exempt from requiring a clearing permit. For further information associated with the clearing of protected plants and to obtain flora survey trigger map for your site please refer to the Departmental website.

EXCAVATION & FILLING

- 9) The *Toowoomba Regional Planning Scheme 2012* (TRPS) declares excavation and filling activity involving less than 50m³ of material and excavation and filling activity to a depth or height lower than 1m to be accepted development. Any combination of excavation or filling where 50m³ or more of fill is deposited on, or 50m³ or more of excavated material is removed from the premises and excavation or filling is not associated with 'Building Work' as defined under the *Planning Act 2016*, must obtain an Operational Work approval from Council before commencing site works.

ENVIRONMENTAL HARM

- 10) The *Environmental Protection Act 1994* (EP Act) states that a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm.

Environmental harm includes environmental nuisance. In this regard persons and entities involved in the civil, earthworks, construction and operational phases of this development are to adhere to their 'general environmental duty' to minimise the risk of causing environmental harm. Environmental harm is defined by the EP Act as any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value and includes environmental nuisance.

Therefore, no person should cause any interference with the environment or amenity of the area by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, sediment, oil or otherwise, or cause hazards likely in the opinion of the Administering Authority to cause undue disturbance or annoyance to persons or affect property not connected with the use.

ENVIRONMENT PROTECTION & BIODIVERSITY CONSERVATION ACT 1999

- 11) An additional approval from the Commonwealth Government under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) may be required in relation to the approved development. The *EPBC Act* relates to actions that may have a significant impact on matters of national environmental significance (NES) or the environment generally if on Commonwealth land. These matters of NES include nationally listed threatened and migratory species, Ramsar wetlands, World Heritage, Commonwealth marine and nuclear actions.

The EPBC Act provides that a person must not take an action that has, will have or is likely to have a significant impact on matters of NES, without the approval of the Commonwealth Environment Minister. Such actions should be referred to the Minister for a decision on whether or not approval is required under the EPBC Act.

Contact the Australian Government Department of Agriculture, Water and the Environment to discuss any obligations under the EPBC Act.

WATER POLLUTION

- 12) In accordance with the *Environmental Protection Act 1994*, all sand, silt, mud, paint, cement, concrete, construction material and demolition material, and other such waste material must not be deposited or placed where it could reasonably be expected to travel into a roadside gutter, stormwater drain or watercourse. On the spot fines apply for such offences.

ABORIGINAL CULTURAL HERITAGE ACT 2003

- 13) There may be a requirement to establish a Cultural Heritage Management Plan and/or obtain approvals pursuant to the *Aboriginal Cultural Heritage Act 2003* ("ACH Act").

The ACH Act establishes a cultural heritage duty of care which provides that: "A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage." It is an offence to fail to comply with the duty of care. Substantial monetary penalties may apply to individuals or corporations breaching this duty of care. Injunctions may also be issued by the Land Court, and the Minister administering the ACH Act may

also issue stop orders for an activity that is harming or is likely to harm Aboriginal cultural heritage or the cultural heritage value of Aboriginal cultural heritage.

You should contact the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) Cultural Heritage Unit on 07 3247 6212 to discuss any obligations under the ACH Act.

FIRE ANTS

- 14) The State of Queensland has been declared a quarantine area for the Red Imported Fire Ant. Should this approval involve the movement of restricted items from areas of known infestation the provisions of the *Biosecurity Act 2014* apply, compliance with statutory provisions must be achieved.

THIRD PARTY ADVICE – SEQWATER

- 15) Council received third-party advice on 18 October 2021 from the Queensland Government Bulk Water Authority (Seqwater) in regard to a preferred preliminary alignment for a bulk water pipeline (part of) the Southern Downs Drought Resilience Package, the preparatory works of which follow designation in Division 10 of the *State Development and Public Works Organisation Amendment Regulation 2021*.

The preferred pipeline alignment, subject to final design, traverses the subject land over Lot 279 AG3110. The third-party advice was provided to the applicant on 4 November 2021. Please contact Seqwater for further information regarding the advice.

REASONS FOR RECOMMENDATION

The change application has been assessed with regard to the applicable assessment framework as identified within this report. The proposed changes are considered to be generally acceptable, except where identified within the recommendation. It is therefore recommended that the development approval be changed as identified above.

A Statement of Reasons is not required to be published in accordance with Section 83(8) of the *Planning Act 2016*.

DELEGATE'S DECISION:

I have reviewed the report for this application in accordance with the Relevant Instruments, Statutory and Non-Statutory Provisions and in accordance with Council's process and procedures. I agree with the responsible officer's recommendation that the request be approved in part subject to the conditions contained in the recommendation. I exercise delegation in accordance with the delegations adopted by the Toowoomba Regional Council.



Krysen den Hertog
A/ Manager, Planning Branch

Decision Date: 3 June 2025

BACKGROUND

SITE DETAILS				
Site Address	689 Toowoomba Cecil Plains Road, WELLCAMP QLD 4350			
Real Property Description	Lots 4-8 & 20-24 on A341, Lots 9 & 19 on RP113281, Lot 279 on AG3110 and Lot 280 on AG3111			
Site Area	102.051 ha			
Owner	Charles Calthrop Pty Ltd			
SITE CHARACTERISTICS				
Current Land Use	Animal Husbandry (former) / residential development (under construction)			
Site Frontage/s	Hursley Road (955m), Toowoomba-Cecil Plains Road (310m) Devine Road (1,270m)			
Road/s	Order of Road	Width of Road Reserve	Width of Pavement	Road Material
Hursley Road	Sub-Arterial	18m	8m	Bitumen
Toowoomba – Cecil Plains Road	Regional-Arterial (State Controlled Road)	20m	8m	Bitumen
Devine Road	Local	37m	Not applicable	Mostly unformed with a short section in the west of the site frontage being a gravel driveway
Easements	Easements for reticulated sewer purposes traverse the site from north to south as part of approved development over and adjoining the land.			
Existing Structures	Structures and buildings associated with the horse stud are mainly contained in the western part of the site which is not proposed to be developed for residential lots.			
Infrastructure	<ul style="list-style-type: none"> A stormwater main is located in the Hursley Road and Toowoomba-Cecil Plains Road verges along the frontage of the subject land. Reticulated sewer infrastructure is located across Hursley Road which services the existing development at London Circuit. Existing overhead electricity supply infrastructure is located adjacent to the site in the Hursley Road and Toowoomba-Cecil Plains Road frontages. 			
Topography	The topography of the subject land is characterised by a steep vegetated hill in its east which adjoins Harvey Court Park (a bushland park) and low-lying areas over the balance of the site.			
Street Trees	Nil			
Other Features	Low-lying areas of the site are characterised by cleared paddocks currently used for animal husbandry. Areas of environmental significance, bushfire hazard and landslide hazard are present in the hilly area of the subject land with areas of overland flow present over parts of the low-lying areas.			
PLANNING SCHEME SITE DATA				
Current Planning Scheme	<i>Toowoomba Regional Planning Scheme 2012</i> (Version 28)		Adopted: 28/11/2022	
	Gainsborough Lodge Variation Scheme Document (VSD)			
Zone	<ul style="list-style-type: none"> Emerging Community Zone and Rural Zone (Planning Scheme) Rural Zone and Low Density Residential Zone (Gainsborough Lodge Variation Scheme Document) 			
Precinct	<ul style="list-style-type: none"> No Precinct and 100 ha minimum Precinct (Planning Scheme) No Precinct and 100 ha minimum Precinct and Hilltop Residential Precinct (Gainsborough Lodge Variation Scheme Document) 			
Overlays	<ul style="list-style-type: none"> Agricultural Land Overlay; Environmental Significance Overlay; 			

	<ul style="list-style-type: none"> • Bushfire Hazard Overlay; • Landslide Hazard Overlay; and • Flood Hazard Overlay. 		
Infrastructure Charges Resolution	<i>Charges Resolution No. 6</i>	Adopted: 10/12/2024	
SURROUNDS:			
Direction	Land Use	Zone/Precinct	
North	Medium density residential and rural residential development	Emerging Community Zone and Rural Zone/100 ha Precinct (opposite Hursley Road);	
East	Parkland and low-density residential development	Open Space Zone and Rural Residential Zone/4,000m ² Precinct	
South	Medium density residential development under construction	Emerging Community Zone	
West	Rural and warehousing/logistics uses	Rural Zone/100 ha Precinct	
Other Features	The subject land is located near to the western edge of the urban footprint in the <i>South-east Queensland Regional Plan 2023</i> and is partly contained in the Rural Zone and partly in the Emerging Community Zone of the <i>Toowoomba Regional Planning Scheme 2012</i> . The subject land included in the Rural Zone is outside of the Priority Infrastructure Area (PIA).		
APPLICATION HISTORY			
Application No.	Description	Decision Date	Decision
OW/2018/6323	Sewage Infrastructure	14/05/2019	Approved
OW/2018/6323/A	Request to Change Approval Sewage Infrastructure	18/10/2019	Approved
MCUI/2020/5051 & RAL/2020/5054	Combined MCU and RAL Preliminary Approval for a Variation Request and Reconfigure 10 Lots into 56 Residential Lots plus 2 Balance Lots	03/03/2022	Approved
RAL/2020/5054/A	Request to Change Approval Reconfigure 10 Lots into 56 Residential Lots plus 2 Balance Lots	31/10/2022	Approved
RAL/2020/5054/B	Request to Change Approval Reconfigure 10 Lots into 56 Residential Lots plus 2 Balance Lots	10/05/2024	Approved
OW/2022/5330	Road Work, Stormwater, Water Infrastructure, Earthworks, Sewage Infrastructure, Landscaping and Signage	23/06/2023	Approved
MCUI/2023/1992	Preliminary Approval for a Variation Request to Vary the Effects of the <i>Toowoomba Regional Planning Scheme 2012</i> to adopt the planning framework of the Low Density Residential Zone	-	Under Assessment
RAL/2022/4965	Two (2) Lots into 340 Residential Lots, Three (3) Balance Lots and One (1) Drainage Lot	14/09/2023	Approved
OW/2024/8468	Earthworks	27/02/2025	Approved
OW/2025/1678	Roadwork, Water Infrastructure, Sewage Infrastructure and Stormwater	-	Under Assessment
PREL/2024/7157	Meeting held 26 November 2024.		
Other	No further relevant details.		

APPROVED DEVELOPMENT	
Type of Approval	Variation Approval
Approved Development	The Variation Approval varies the levels of assessment and applicable assessment benchmarks that apply to future development within the Preliminary Approval Area (PAA) referred to as the Gainsborough Lodge

	<p>Approval Area and which covers the entire subject land. The PAA comprises a 'Low Density Residential Zone' (predominantly over the land currently in the Emerging Community Zone) and an 'Existing Rural Zone' over the remainder. The PAA also includes a 'Hilltop Precinct' in the south-east of the site which corresponds to the hilly area adjoining Council's parkland. This precinct also redefines the spatial extent of the Environmental Significance Overlay applying to development in the PAA which marginally differs from its extent in the current planning scheme.</p> <p>The Variation Scheme Document (VSD) includes changes to the levels of assessment which are specific to the proposal and which overall reflect the Low Density Residential Zone provisions of the Planning Scheme. The minimum lot size for Reconfiguring a Lot, below which triggers Impact Assessment is 450m² (which by comparison is 500m² in the Low Density Residential Zone of the Planning Scheme). The Hilltop Precinct has a minimum lot size of 800m², below which triggers Impact Assessment reflecting the constraints of topography, environmental significance and bushfire hazard.</p>
Variations Sought	<p>The approved Variation Scheme Document (VSD) includes changes to the levels of assessment which are specific to the proposal and which overall reflect the Low Density Residential Zone provisions of version 24 of the Planning Scheme but varies the minimum lot size for Reconfiguring a Lot which triggers Impact Assessment to 450m² (from 500m²) generally and includes a minimum lot size of 800m² in the Hilltop Precinct.</p> <p>The VSD includes an Environmental Significance Overlay which varies the extent of that pertaining to version 24 of the Planning Scheme. The proposed overlay is of a lesser extent proposed to reflect the area of land identified as containing environmentally significant features.</p>
Level of Assessment	Impact
Gross Floor Area	Not applicable
Impervious Area	Not applicable
Site Cover	Not applicable
Car Parking Spaces	Not applicable
Service Vehicle Provision	Refuse Vehicle (Heavy Rigid Vehicle)
Submissions Received	Objection: Nil
	Support: Nil
Decision Notice Issued	4 March 2022

CHANGE APPLICATION	
Applicant Name	Gainsborough Developments Pty Ltd
Type of Application	Change Application
Type of Change	Minor Change
Public Notification	Not required for a Minor Change.
Application Received	19 December 2024

CONSULTATION UNDERTAKEN

Internal Referrals

Internal Referral Partner	Referral / Response
Development Engineering and Plumbing	Provided commentary on proposed laneway typology.
Water and Waste	No requirements.
Infrastructure Charges Unit	No requirements.

ISSUES, RISKS AND RESPONSES – ASSESSMENT

Assessment Framework

Section 81 of the *Planning Act 2016* establishes the following parameters in relation to the assessment of change applications for minor changes:

- (2) *In assessing the change application, the responsible entity must consider—*
 - (a) *the information the applicant included with the application; and*
 - (b) *if the responsible entity is the assessment manager—any properly made submissions about the development application or another change application that was approved; and*
 - (c) *any pre-request response notice or response notice given in relation to the change application; and*
 - (d) *if the responsible entity is, under section 78A(3), the Minister—all matters the Minister would or may assess against or have regard to, if the change application were a development application called in by the Minister; and*
 - (da) *if paragraph (d) does not apply—all matters the responsible entity would or may assess against or have regard to, if the change application were a development application; and*
 - (e) *another matter that the responsible entity considers relevant.*
- (3) *Subsections (4) and (5) apply if the responsible entity must, in assessing the change application under subsection (2)(d) or (da), consider—*
 - (a) *a statutory instrument; or*
 - (b) *another document applied, adopted or incorporated (with or without changes) in a statutory instrument.*
- (4) *The responsible entity must consider the statutory instrument, or other document, as in effect when the development application for the development approval was properly made.*
- (5) *However, the responsible entity may give the weight the responsible entity considers is appropriate, in the circumstances, to—*
 - (a) *the statutory instrument or other document as in effect when the change application was made; or*
 - (b) *if the statutory instrument or other document is amended or replaced after the change application is made but before it is decided—the amended or replacement instrument or document; or*
 - (c) *another statutory instrument—*
 - (i) *that comes into effect after the change application is made but before it is decided; and*
 - (ii) *that the responsible entity would have been required to consider if the instrument had been in effect when the development application for the development approval was properly made.*

Assessment of Proposed Changes – Change to Development Approval

Changes to the development approval, not being changes to the conditions of the approval, have been proposed by the applicant. The following table identifies the proposed changes, the relevant representations made by the applicant and the officer's assessment of the proposed changes.

Assessment of Proposed Changes – Change to Development Approval

Change to Gainsborough Lodge Variation Scheme Document (VSD):

Reduction of minimum lot size from 450m² to 420m² – mechanism and framework

Although the VSD describes the land with the Preliminary Approval Area (PAA) as being with the Low Density Residential Zone (as given effect by the VSD), the VSD currently enables lots under 500m² to proceed as Code Assessable. Under the current *Toowoomba Regional Planning Scheme 2012*, this aligns more closely with the provisions of the Low-medium Density Residential Zone, rather than the Low Density Residential Zone which elevates lots <500m² to Impact Assessment.

Changes are proposed to Table 4.3.2 – Minimum Lot Sizes to enable lots as small as 420m² to proceed as Code Assessable. Changes to Table 5.3.7.3 – Lot Sizes and Dimensions in the VSD are also proposed to reflect this. No corresponding changes are proposed to the purpose and overall outcomes of the Gainsborough Lodge Low Density Residential Zone Code (Zone Code) or Gainsborough Lodge Reconfiguring a Lot Code (RAL Code). There is an inherent conflict between the purpose and overall outcomes of the VSD, the development outcomes that may proceed as Code Assessable under the VSD, and the intended and approved pattern of residential development over the site. Relevantly:

- Overall outcome (2)(a) of the Zone Code states that the outcome sought for the Gainsborough Lodge Low Density Residential Zone is the provision of detached dwelling houses as the primary form of housing within the zone and dual occupancy as a secondary form of housing, on a range of lot sizes greater than 500m²;
- Overall outcome (b) of the Zone Code stipulates where 'medium density forms of development are supported', being areas that are within walking distance of a centre or adjacent or opposite a district or regional park. Overall outcome (b) anticipates a form of a density that is greater than specified in overall outcome (a) of the Zone Code in suitable areas within the site, but does not expressly support the creation of lots <450m²; and
- Approved residential development over the PAA and which benefit from the VSD achieve an overall dwelling yield of 9.2 dwellings per hectare and an average lot size of 675m². Though complying with the current minimum lot sizes under the VSD, this yield and density is below the minimum density anticipated in overall outcome (2)(e) of the Zone Code and overall outcome (2)(c) of the RAL Code, which requires lot configurations in the PAA to achieve a minimum dwelling yield of 15 dwellings per hectare net. This density must be achieved through the creation of smaller lot sizes and cannot be achieved under the current VSD provisions through higher density forms of development, with Multiple Dwellings not supported and Dual Occupancy development limited throughout the PAA.

The proposed changes effectively enable the creation of smaller lots to proceed as Code Assessable, without changing the overall outcome sought across the PAA. Currently, there is no assessment benchmark within the Zone Code linking lot size and density to the overall outcomes, and only a tangible link via AO_{4.1} and PO₄ of the RAL Code. For a future Impact Assessable application (including an 'other change application'), this would not be an issue. However, to ensure that compliance with the outcomes sought within the Gainsborough Lodge Low Density Residential Zone can be reliably assessed in a future Code Assessable application, amendments are required to be made to the VSD to incorporate the overall outcomes into an acceptable/performance outcome combination in the Zone Code.

Necessary amendments to the VSD to resolve the abovementioned issue have been incorporated into the conditions provided in the recommendation within this report. This is an existing issue with the approved VSD. However, as the change to minimum lot sizes moves further from the overall outcomes stated in the respective codes in the VSD, it is important that this issue is resolved through the change.

Following the adoption of the conditions and required amendments to the VSD recommended within this report, any future change to the approved lot layouts of RAL/2020/5054/B and/or RAL/2022/4965 will therefore need to demonstrate compliance with the purpose and overall outcomes of the relevant codes in the VSD relating to lots <500m² in area, even where proceeding as Code Assessable.

Reduction of minimum lot size from 450m² to 420m² – consistency with scheme and prior assessment

The zoning of the subject land under the Planning Scheme prior to the variation approval taking effect was Emerging Community. The Emerging Community Zone Code requires that urban development that occurs in accordance with a masterplanning process for the site provides for a variety and diversity of housing types and achieves a minimum dwelling yield of 15 dwellings per hectare net. It is considered that the variation request previously assessed by Council demonstrated the detailed land use and infrastructure planning for this site and appropriately applied a minimum lot size consistent with the targets in the former Emerging Community zoning of the site. The proposed change assists in achieving the intended density target of 15 dwellings per hectare net within the PAA.

The original assessment of the variation request provided commentary on the density targets and minimum lot sizes enabled under the VSD. The assessment considered that the variation request was “*consistent with the intent of the Emerging Community Zone, providing for the growth of the Toowoomba Region whilst able to be serviced with the extension and or augmentation of existing infrastructure in a timely and cost-effective manner*”. The original assessment further noted that the proposed development “*provides for a walkable neighbourhood located in proximity to parkland and facilitates a compact urban form with a variety of lot sizes to assist with providing housing choice suitable for a suburban neighbourhood on the edge of the Urban Extent of the Strategic Framework.*”

Relevantly, Council implemented a Temporary Local Planning Instrument (TLPI 01/2022) on 23 December 2022 which ceased to have effect on 23 December 2024. At the time of lodgement of this change application, TLPI 01/2022 was still in effect and is a relevant matter to consider in the assessment of this change application. TLPI 01/2022 identified various sites within the region in the Emerging Community Zone and sought to apply the provisions of the Planning Scheme as if identified land was either in the Low or Low-medium Density Residential Zones. Most of the subject land (being the PAA) was designated as land that the provisions of the Low-medium Density Residential Zone ought to be applied to.

Accordingly, the application of TLPI 01/2022 over this site represents an expression of Council's view that the land within the PAA is most appropriately developed at a density consistent with the Low-medium Density Residential Zone, which supports the creation of lots smaller than the reduced lot size sought in this change application (300m²).

The proposed change in lot sizes is therefore considered appropriate and is recommended for approval.

Variation of Small Lot Housing Design Code through introduction of Gainsborough Lodge Small Lot Housing Code

Changes are sought to AO_{7.2} of Council's Small Lot Housing Design Code through the introduction of the Gainsborough Lodge Small Lot Housing Code into the VSD. AO_{7.2} is identified in the Planning Scheme as an alternative provision for P8 within QDC Part MP1.1 Design and Siting Standard for Single Detached Houses – On lots under 450m².

Issue is not taken with the proposed amendment to allow for vehicular access from either/both frontages for lots with a rear laneway. However, alternative provisions to QDC residential design and siting provisions for particular buildings as contemplated by Section 33 of the *Building Act 1975* can only be made under a planning scheme or a PDA instrument; not a variation scheme document under the *Planning Act 2016*. The legislation does not prohibit the inclusion alternate provisions in a variation approval, however the inclusion of such provisions would have no effect.

To avoid confusion, removal of the erroneously included alternative provisions in the proposed Gainsborough Lodge Small Lot Housing Code is recommended.

Assessment of Proposed Changes – Change to Conditions of the Development Approval

Changes to the conditions of approval have been proposed by the applicant or are required to give effect to the changes proposed by the applicant. Amendments to conditions are included within the recommendation.

FINANCIAL / RESOURCE IMPLICATIONS

There are no financial or resource implications associated with this decision.

Human Rights Act 2019 CONSIDERATIONS

The *Human Rights Act 2019* provides that it is unlawful for a public agency to act or make a decision in a way that is not compatible with human rights, or to fail to give proper consideration to a human right. This necessitates understanding the human rights that are protected. When making decisions or taking actions, consideration needs to be given to how that may impact on a person's human rights. Where there is a restriction on a person's human rights the restriction must be no greater than is justifiable to protect the rights of others or the community at large.

Council has considered the rights contained in the *Human Rights Act 2019*, and identified the following to be relevant here:

Section 21 – Freedom of expression

Section 24 – Property rights

It is the opinion of the decision maker that the decision is not incompatible with human rights.

CONCLUSION

The change application has been assessed with regard to the applicable assessment framework as identified within this report. The proposed changes are considered to be generally acceptable, except where identified within the recommendation. It is therefore recommended that the development approval be changed as identified above.

A Statement of Reasons is not required to be published in accordance with Section 83(8) of the *Planning Act 2016*.

SCHEDULES

Schedule 1 Concurrence Agency Response/s

SCHEDULE 1

Concurrence Agency Response/s



SARA reference: 2012-20145 SRA
 Council reference: MCUI/2020/5051 & RAL/2020/5054
 Applicant reference: 8824

24 February 2021

Chief Executive Officer
 Toowoomba Regional Council
 PO Box 3021
 TOOWOOMBA Qld 4350
 development@tr.qld.gov.au

Attention: Mr Liam Wiley

Dear Liam

SARA response—689 Toowoomba Cecil Plains Road, Wellcamp

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 17 December 2020.

Response

Outcome:	Referral agency response – with conditions.
Date of response:	24 February 2021
Conditions:	The conditions in Attachment 1 must be attached to any development approval.
Advice:	Advice to the applicant is in Attachment 2 .
Reasons:	The reasons for the referral agency response are in Attachment 3 .

Development details

Description:	Development permit	Preliminary Approval for a Material Change of Use for a Variation Request and a Development Permit for Reconfiguring a Lot – Fourteen (14) Lots into Fifty – Eight (58) Lots and Balance Lot in Two (2) Stages)
SARA role:	Referral Agency.	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 1, Table 1, Item 1	

(10.9.4.1.1.1) - Development impacting on state transport infrastructure

Schedule 10, Part 9, Division 4, Subdivision 2, Table 1, Item 1
(10.9.4.2.1.1) Reconfiguring a lot near a state transport corridor

Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1
(10.9.4.2.4.1) Material change of use of premises near a state transport corridor

SARA reference: 2012-20145 SRA
 Assessment Manager: Toowoomba Regional Council
 Street address: 689 Toowoomba Cecil Plains Road, Wellcamp
 Real property description: Lots 19-24 on A341, Lot 279 on AG3110, Lot 280 on AG3111, Lots 4-8 on A341 and Lot 9 on RP113281
 Applicant name: Gainsborough Developments Pty Ltd
 C/- Saunders Havill Group
 Applicant contact details: 9 Thompson Street
 BOWEN HILLS QLD 4006
 liamwiley@saundershavill.com

Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules) Copies of the relevant provisions are in **Attachment 4**.

A copy of this response has been sent to the applicant for their information.

For further information please contact Ian McHugh, Principal Planning Officer, on (07) 4616 7320 or via email ToowoombaSARA@dsgmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Darren Cooper
 Manager - DDSW (Planning)

cc Gainsborough Developments Pty Ltd, liamwiley@saundershavill.com

enc Attachment 1 - Referral agency conditions
 Attachment 2 - Advice to the applicant
 Attachment 3 - Reasons for referral agency decision
 Attachment 4 - Representations about a referral agency response

Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the plans and specifications referenced below are found at Attachment 5)

No.	Conditions	Condition timing
Development Permit - Reconfiguring a Lot [Fourteen (14) Lots into Fifty – Eight (58) Lots and Balance Lot in Two (2) Stages		
10.9.4.1.1.1, 10.9.4.2.1.1 & 10.9.4.2.4.1—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following conditions:		
1.	<p>(a) Stormwater management of the development must ensure no worsening or actionable nuisance to the state-controlled road.</p> <p>(b) Any works on the land must not:</p> <ul style="list-style-type: none"> (i) create any new discharge points for stormwater runoff onto the state-controlled road; (ii) interfere with and/or cause damage to the existing stormwater drainage on the state-controlled road; (iii) surcharge any existing culvert or drain on the state-controlled road; (iv) reduce the quality of stormwater discharge onto the state-controlled road. <p>(c) Registered Professional Engineer Queensland certification with supporting documentation must be provided to Downs.South.West.IDAS@tmr.qld.gov.au within the Department of Transport and Main Roads, confirming that the development has been designed and constructed in accordance with parts (a) and (b) of this condition.</p>	<p>(a) At all times</p> <p>(b) At all times</p> <p>(c) Prior to the commencement of use</p>

Attachment 2—Advice to the applicant

General advice	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP), version 2.6. If a word remains undefined it has its ordinary meaning.
2.	The Department of Transport and Main Roads is presently investigating potential corridor routes for a bypass road to the west of the Toowoomba urban area. The Preliminary Approval area, and specifically stage 1 of the proposed reconfiguration, is located within an alignment being considered by DTMR for the bypass.

Attachment 3—Reasons for referral agency response

(Given under section 56(7) of the *Planning Act 2016*)

The reasons for SARA's decision are:

The development complies with State code 1: Development is a state-controlled road environment and State code 6: Protection of state transport networks of the SDAP. Specifically, the development:

- does not create a safety hazard for users of a state-controlled road
- does not compromise the structural integrity of state-controlled roads, road transport infrastructure or road works
- does not result in a worsening of the physical condition or operating performance of state-controlled roads and the surrounding road network
- does not compromise the state's ability to construct, or significantly increase the cost to construct state-controlled roads and future state-controlled roads
- does not compromise the state's ability to maintain and operate state-controlled roads, or significantly increase the cost to maintain and operate state-controlled roads
- does not compromise the structural integrity of public passenger transport infrastructure or compromise the operating performance of public passenger transport services

Material used in the assessment of the application:

- The development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- The SDAP (version 2.6)
- The Development Assessment Rules
- SARA DA Mapping system.

Attachment 4—Representations about a referral agency response

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Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules¹ regarding **representations about a referral agency response**

Part 6: Changes to the application and referral agency responses

28 Concurrence agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrence agency may, after its referral agency assessment period and any further period agreed ends, change its referral agency response or give a late referral agency response before the application is decided, subject to section 28.2 and 28.3.
- 28.2. A concurrence agency may change its referral agency response at any time before the application is decided if—
- (a) the change is in response to a change which the assessment manager is satisfied is a change under section 26.1; or
 - (b) the Minister has given the concurrence agency a direction under section 99 of the Act; or
 - (c) the applicant has given written agreement to the change to the referral agency response.²
- 28.3. A concurrence agency may give a late referral agency response before the application is decided, if the applicant has given written agreement to the late referral agency response.
- 28.4. If a concurrence agency proposes to change its referral agency response under section 28.2(a), the concurrence agency must—
- (a) give notice of its intention to change its referral agency response to the assessment manager and a copy to the applicant within 5 days of receiving notice of the change under section 25.1; and
 - (b) the concurrence agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrence agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

Part 7: Miscellaneous

30 Representations about a referral agency response

- 30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.³

³ An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.