

Our Ref: Q16163.2
Council Ref: COM/2019/82



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Zone Planning QLD Pty Ltd
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23 May 2024

The Chief Executive Officer
City of Gold Coast
PO Box 5042
GCMC QLD 9729

Via Online Lodgement

Dear Sir,

**REQUEST FOR A MINOR CHANGE
PLANNING ACT 2016 SECTION 78
REFERRAL AGENCY RESPONSE FOR DEVELOPMENT APPLICATION FOR BUILDING WORK
(DESIGN & SITING OF DWELLING HOUSES)
79-99 COURTNEY DRIVE, UPPER COOMERA
(LOTS 188-192 RP173728)**

We write on behalf of our client, HB QLD Pty Ltd, regarding a Referral Agency Response (RAA) for the Design and Siting of Dwelling Houses granted by the City of Gold Coast on 10 August 2023 (COM/2019/82) over 79-99 Courtney Drive, Upper Coomera (Lots 188-192 RP173728) – herein referred to as the 'subject site'.

In accordance with *Section 78* of the *Planning Act 2016*, we provide written notice requesting a Minor Change seeking changes to the existing approval (RAA). Specifically, the subject application seeks to amend the side setbacks for future Dwelling Houses located over approved Lots 111-118 (within the associated subdivision) to avoid a 'step in' of the side building facades required by virtue of the stepped blocks (i.e. creating a building height of 4.5m+ toward the rear of same). The proposed change is minor in nature and aims to achieve a practical built form outcome for the Dwelling Houses over Lots 111-118 only, whilst ensuring no adverse impacts to the amenity of the adjoining lots and will ensure a high-quality development outcome.

The following attachments have been provided in support of this request:

- Completed Planning Act Form 5 – Change Application (**Attachment 1**);
- Copy of Decision Notice and Stamped Approved Plans dated 10 August 2023 – COM/2019/82 (**Attachment 2**); and
- Plan of Development prepared by Bennett & Bennett (**Attachment 3**).



1 SUBJECT SITE

The subject site is located in Upper Coomera and comprises a total site area of 188,490m² (18.8Ha). The City Plan designates the site within the Emerging Community Zone and Upper Coomera Precinct.

The site details are outlined within **Table 1** below.

Table 1: Site Details

Address	79-99 Courtney Drive, Upper Coomera QLD 4209
Real Property Description	Lots 188-192 RP173728
Site Area	Lot 188: 30,790m ² Lot 189: 30,340m ² Lot 190: 30,950m ² Lot 191: 37,390m ² Lot 192: 59,020m ² Total: 188,490m ²
Zone	Emerging Community Zone
Precinct	Upper Coomera Precinct
SEQRP Designation	Urban Footprint



Figure 1: Aerial Image of Subject Site (Source: NearMap 28/12/2023)

2 PREVIOUS APPROVAL

On 10 August 2023, Council issued a combined development approval for a Reconfiguration of a Lot (5 into 208 Lots) and a Referral Agency Response (RAA) for the Design and Siting of Dwelling Houses over the subject site (COM/2019/82). This application sought to establish a 208 Lot Subdivision with lots ranging in size from 400m² to 1,308m², and a number of environmental, recreation and drainage lots also being created. The RAA component sought to effect a Plan of Development facilitating building parameters for future Dwelling Houses commensurate with a low density residential outcome.

Figure 2 below provides an extract of the approved Plan of Development.

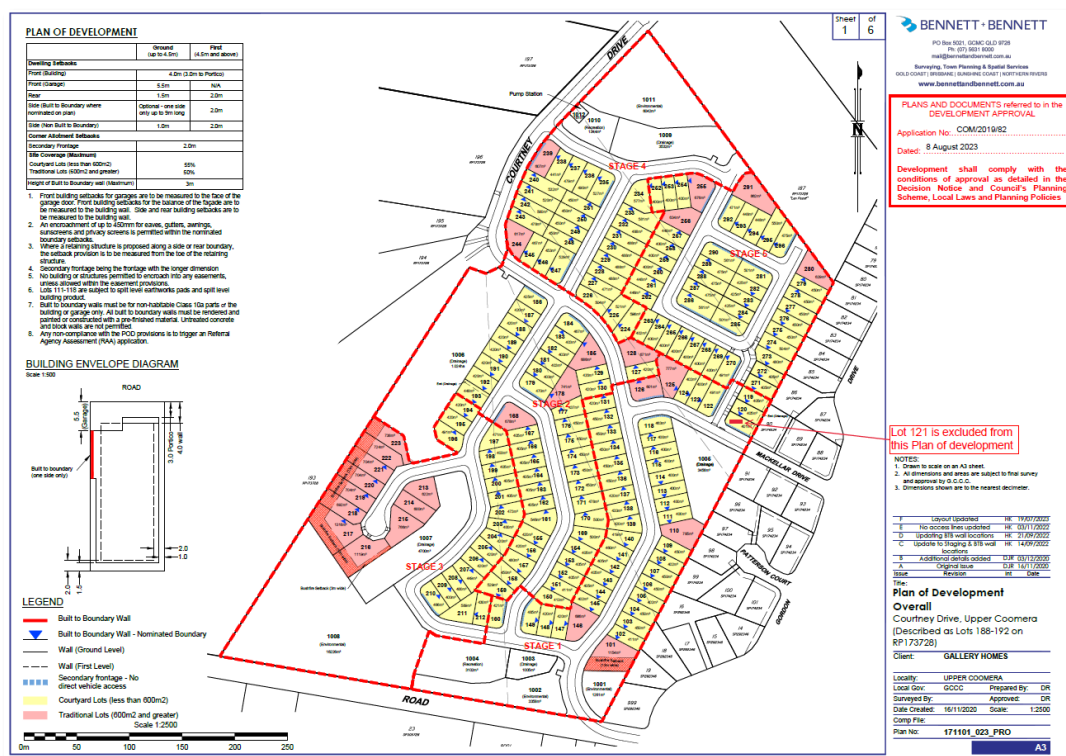


Figure 2: Approved Plan of Development (Source: Bennett & Bennett)

A summary of the approved Dwelling House setbacks for all lots has been provided within **Table 2** below.

Table 2: Approved Dwelling House Setbacks

BOUNDARY	Approved (COM/2019/82)	
	Ground (Up to 4.5m)	First (4.5m+)
Front (Building)	4m (3m to Portico)	
Front (Garage)	5.5m	N/A
Rear	1.5m	2m
Side (Built to Boundary)	Optional – one side only up to 9m long	2m
Side (Non-Built to Boundary)	1m	2m



3 OUTLINE OF PROPOSED CHANGES

The subject application seeks to make changes to the approved side boundary setbacks for the Dwelling Houses located on Lots 111-118 only. The approved setbacks for the Dwelling Houses located over Lots 111-118 include a 1m side setback for the ground level, being the part of the building which is up to 4.5m in height, and a 2m side setback for the second storey of the building, being the portion of the building above 4.5m in height – refer to **Figure 3** below. Whilst this is typical on a standard flat lot, as noted within the approved Plan of Development, Lots 111-118 are split level lots. This subsequently presents issues with the side setback of the ground floor for the front portion of the site transitioning to become the second storey over the rear, lower portion, resulting in a need to step the building in. Such presents as an impractical and inefficient design/construction outcome.

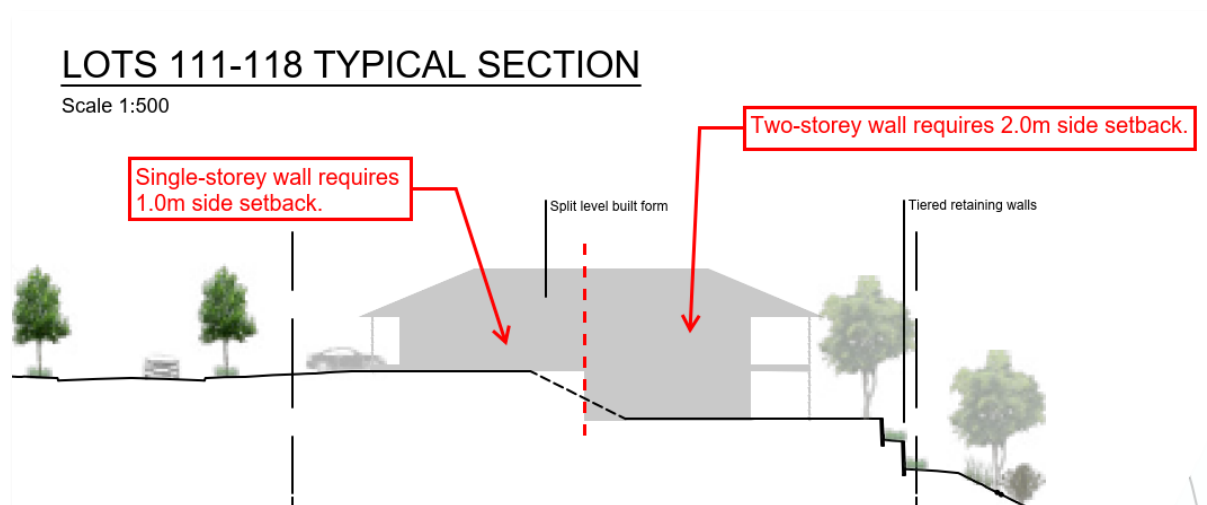


Figure 3: Approved Setbacks – Lots 111-118 Typical Section (Source: Bennett & Bennett x CoGC)

Accordingly, it is proposed to reduce the side (non-built to boundary) setbacks for Lots 112-118 for the first-floor levels (i.e. 4.5m+) from 2m to 1m, to provide one straight wall for the side of the Dwelling Houses, avoiding a 'step in'. The first-floor southern side boundary for Lot 111 is also proposed to be reduced from 2m to 1.5m for the same reason, whilst remaining cognisant of adjoining amenity of Lot 110. This proposed outcome is considered practical and will allow for a more affordable construction method without adversely affecting surrounding amenity.

Table 3 below provides a summary of the proposed side boundary setbacks for Lots 111-118.

Table 3: Proposed Setbacks

	Ground (Up to 4.5m)	First (4.5m+)
Dwelling Setbacks – Side (Non-Built to Boundary)		
Lots 111-118	1m	1m
Southern Side Boundary of Lot 111	1m	1.5m
The Northern boundary of Lot 118 is a secondary frontage. Thus, such setbacks apply.		



The proposed development will allow the continuation of the same setback for each of the aforementioned lots along the entire side building facades instead of having to 'step in' the rear portion of same, of which would create significant inefficiencies in design and use.

It is noted that the lots subject to the proposed change will still present as a single storey to the street and two storeys to the drainage reserve in accordance with the existing approval.

An extract of the updated Plan of Development is provided within **Figure 4** below.

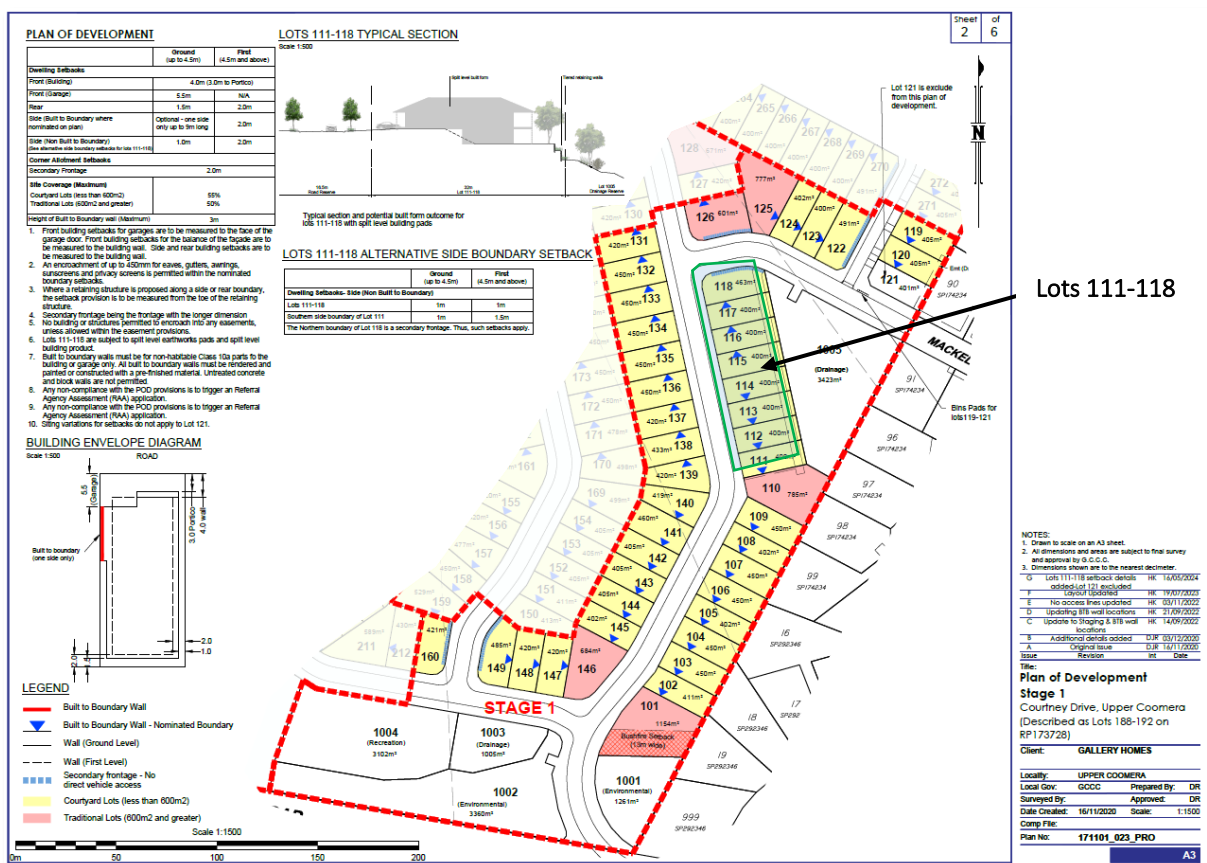


Figure 4: Proposed Plan of Development – Stage 1 (Source: Bennett & Bennett)

4 PROPOSED AMENDMENTS TO CONDITIONS OF APPROVAL

A summary of the conditions of approval sought to be amended as part of this application is provided below.

4.1 Condition 2 – Approved Drawings

It is requested that this condition be amended to reference the new revision of the Plan of Development prepared by Bennett & Bennett contained in **Attachment 3**.

Upon a detailed review of the conditions associated with the approval (COM/2019/82), no further conditions are required to be amended.



5 MINOR CHANGE CONSIDERATIONS

5.1 Minor Change Test

The proposed changes to the approved development are consistent with the requirements for a Minor Change Application under the *Planning Act 2016*. The key consideration as to whether the proposal can be dealt with as a Minor Change is the test as to whether the changed proposal is ‘substantially the same’.

Schedule 2 of the Act states the following with regard to Minor Change:

Minor change means a change that

(b) For a development approval –

- (i) would not result in substantially different development; and
- (ii) if a development application for the development, including the change, were made when the change application is made would not cause—
 - (A) the inclusion of prohibited development in the application; or
 - (B) referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or
 - (C) referral to extra referral agencies, other than to the chief executive; or
 - (D) a referral agency to assess the application against, or have regard to, matters prescribed by regulation under section 55(2), other than matters the referral agency must have assessed the application against, or have had regard to, when the application was made; or
 - (E) public notification if public notification was not required for the development application.

Table 3 below provides an assessment of the Minor Change criteria.

Table 4: “Minor Change Definition” Test

‘MINOR CHANGE’ DEFINITION	ASSESSMENT OF PROPOSAL
i) would not result in substantially different development; and	As demonstrated in Section 3 of this Report and Table 4 below, the proposed minor changes do not result in a substantially different development.
ii) if a development application for the development, including the change, were made when the change application is made would not cause—	
A. the inclusion of prohibited development in the application; or	The proposed development is not prohibited.
B. referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or	This application is made to Council in their capacity as a Concurrence Agency.
C. referral to extra referral agencies, other than to the chief executive; or	The proposal does not require an extra referral agency.
D. a referral agency to assess the application against, or have regard to, matters prescribed by regulation under section 55(2), other than matters the referral agency must have assessed the application against, or have had regard to, when the application was made; or	The application does not require referral regarding any additional matters.
E. public notification if public notification was not required for the development application.	The proposal does not trigger Impact Assessment.



From a review of the relevant criteria, it is evident the change is consistent with the test for a Minor Change. Furthermore, the following assessment in accordance with Schedule 1(4) of the Development Assessment Rules made under the *Planning Act 2016*, Section 68(1), confirms the proposed change is a Minor Change in that it does not result in a substantially different development as required by (b)(i).

Table 5: Substantially Different Development” Test

‘SUBSTANTIALLY DIFFERENT DEVELOPMENT’ TEST		ASSESSMENT OF PROPOSAL
<i>A change may result in a substantially different development if the proposed change:</i>		
▪ involves a new use		No new uses are proposed.
▪ results in the application applying to a new parcel of land		No new land is being included in the amended proposal.
▪ dramatically changes the built form in terms of scale, bulk and appearance		The proposed change will not <i>dramatically</i> change the built form in terms of bulk, scale or appearance. Slight alterations have been made to the setbacks of eight lots only within a 208-lot Master Planned subdivision. Therefore, in the context of the entire development, these alterations are not considered to be dramatic for the purposes of this test. The proposed change is considered to allow the Dwelling Houses to respond to the split-level nature of the lots, maintain a low rise appearance and remain appropriately setback from the property boundaries. It is concluded that none of the visual changes result in a dramatic adverse change to the scale, bulk or appearance of the development and therefore are do not offend the provisions of the ‘Substantially Different Development Test’.
▪ changes the ability of the proposal to operate as intended.		The proposal will continue to function in accordance with the existing approval.
▪ removes a component that is integral to the operation of the development		No integral components of the proposal have been removed and the development will continue to operate as approved. Any changes proposed as part of this Minor Change request (i.e. setbacks), have been addressed in detail within this report and supporting documents.
▪ significantly impacts on traffic flow and the transport network, such as increasing traffic to the site		The proposal will not impose any impact on traffic flow given the proposed development yield and number of bedrooms remain as approved.
▪ introduces new impacts or increases the severity of known impacts		The proposal change to the setbacks of the eight lots will not impact on the amenity of the adjoining landowners as demonstrated in Section 3 of this Report, does not introduce any new impacts or increase the severity of known impacts.
▪ removes an incentive or offset component that would have balanced a negative impact of the development; or		The change does not remove an incentive or offset component that would have balanced a negative impact of the development.
▪ impacts on infrastructure provision.		The amendments will have no impact on demand on local infrastructure.



5.2 Assessing & Deciding Minor Changes

In accordance with *Section 81* of the *Planning Act 2016*, the Responsible Entity must consider the Applicant's response to the following criteria with respect to the proposed Minor Change.

(a) the information the applicant included with the application; and

Please consider the material provided in this report and detailed in the supporting documentation.

(b) if the responsible entity is the assessment manager and submissions were properly made about the development application—the submissions; and

The ROL component of the original Development Application (i.e. 5 into 208-Lot Subdivision) was subject to Impact Assessment and received six properly made submissions (objections) during the Public Notification Period. The matters raised within the objections identified concerns regarding siting of public notification signage, yield and density, the Courtney Drive road extension, provision of off street car parking, environmental impacts, sewer infrastructure alignment, delivery of open space areas and timing for the development.

To this end, it is noted that the proposed development does not seek to alter the development in a way that would raise additional or exacerbate existing concerns raised within the objections received. It is noted that, whilst some of the approved setbacks are sought to be reduced, such have been demonstrated to be minor in nature, are internal to the overall site impacting only eight lots and avoid any significant change to the approved built form in terms of bulk, scale and appearance.

The proposed development is considered to provide a superior development outcome in comparison to that of the approved, specifically in terms of functionality and efficiencies in design and use of the Dwelling Houses on split level lots. Therefore, the subject proposal is not considered to raise additional or exacerbate existing concerns raised within the objections.

(c) any pre-request response notice or response notice given in relation to the change application; and

This application directly seeks a Minor Change to the Pre-Request Response Notice dated 10 August 2023. Please consider the material provided in support of this application.

(d) all matters the responsible entity would or may assess against or have regard to, if the change application were a development application; and

With respect to *Section 81(2)(d)* of the *Planning Act 2016*, the Act goes on to further detail the assessment requirements against this provision. *Section 81(3)* outlines that the Responsible Entity:

a) must assess against, or have regard to, the matters that applied when the development application was made; and

b) may assess against, or have regard to, the matters that applied when the change application was made.

The changes proposed within this Minor Change Application do not conflict with the nature of the existing approval and/or the Gold Coast City Plan.



(e) another matter that the responsible entity considers relevant.

It is noted that the Assessment Manager may consider other matters that they consider to be relevant. However, we are confident that all relevant matters have been adequately addressed within this report.

6 CONCLUSION

This Minor Change Application seeks an amendment to the Referral Agency Assessment Response (RAA) for the Design and Siting of Dwelling Houses granted by the City of Gold Coast on 10 August 2023 (COM/2019/82) over 79-99 Courtney Drive, Upper Coomera (Lots 188-192 RP173728). The proposed change is minor in nature and is required in order to provide a logical development footprint for the Dwelling Houses and in turn will result in a higher quality development and more affordable outcome.

Based on the assessment contained within this correspondence, it is concluded that the proposed changes to development approval comply with the requirements of The Act for a 'Minor Change'.

The Applicant awaits Council's timely decision on this matter to enable the construction of the development to continue.

We trust that the information contained herein is sufficient for your purposes. Should you have any queries concerning the above please contact Kassim Mahomed or the undersigned on 07 5562 2303.

Yours sincerely,

David Geyer | Director
ZONE PLANNING QLD