

19 October 2026

Chief Executive Officer
Council of the City of Gold Coast
PO Box 5042
GOLD COAST MC QLD 9729
Attention: Ms K Reid

By email: kreid@goldcoast.qld.gov.au

Dear Ms Reid

Change representations | ROL/2024/116 at 176 Baileys Mountain Road, Upper Coomera

1. We act for Norfolk Estates Pty Ltd ATF the Solander Investments Unit Trust (**Norfolk**) and are authorised to send this letter on its behalf.
2. We refer to the decision notice issued by Council of the City of Gold Coast (**Council**) on 23 September 2026 (**Decision Notice**). The Decision Notice approved our client's development application for a development permit for reconfiguring a lot (7 into 195 lots, drainage reserves and open space) at 176 Baileys Mountain Road, Upper Coomera (**Land**).
3. The Decision Notice attached an Infrastructure Charges Notice (**ICN**) dated 17 September 2026 which levied charges in the amount of \$6,958,990.26.
4. On 2 October 2026, our client suspended the applicant's appeal period for the Decision Notice and ICN by a notice given pursuant to sections 75(2) and 126 of the *Planning Act 2016* (Qld) (**Planning Act**).
5. Our client seeks to make further representations about matters in the Decision Notice and ICN. The representations in this letter relate to conditions 14, 37, 38 and 41 and the ICN.

Infrastructure Conditions

6. Pursuant to section 63(2)(e)(iv) of the Planning Act, the decision notice must, for each condition about infrastructure under Chapter 4, state the provision of the Planning Act under which Council imposes the condition.
7. There are several conditions that lack the legal precision required by the Planning Act and fail to identify the source of Council's conditioning power.
8. Our client's primary concerns in respect of the conditions are:

- (a) the conditioning approach, to duplicate infrastructure requirements across multiple developments, creates uncertainty about who is delivering infrastructure and, in some circumstances, appears to avoid properly construing infrastructure as necessary (trunk);
- (b) the absence of any cost-apportionment or cost-sharing mechanism in circumstances where the works required by each condition will serve existing and future development in the catchment beyond the subject development; and
- (c) specific legal deficiencies in the drafting of conditions that require land outside of the site boundaries.

Condition 14 Land dedication for an intersection upgrade – Lot 58

9. Our client objects to Condition 14 for the following reasons:
 - (a) the condition is expressed in identical terms as condition 3 in COM/2024/317 issued to MG Land Pty Ltd on 14 September 2026; and
 - (b) requires the dedication of land outside of the site boundary shown on the Proposal Plan prepared by Saunders Havill dated 4 February 2026, Drawing No. 11694 P11 Rev T – PRO 01.
10. A condition requiring an applicant to dedicate land it neither owns nor controls and that falls outside the site boundaries of a development application is an unreasonable imposition on the development within the meaning of section 65 of the Planning Act.
11. Lot 58 is owned by MG Land Pty Ltd, an entity that is unrelated to Norfolk other than by the land swap agreement referred to below. A condition that requires construction of infrastructure dependent on land owned by a third party, where there is no guarantee of the third party's cooperation, imposes an obligation that may be incapable of satisfaction through no fault of the applicant. Such a condition is both unreasonable and potentially void for uncertainty.
12. In imposing Condition 14, Council has failed to take into account the nature of our client's development application and its relationship to Lot 58 owned by MG Land Pty Ltd.
13. Our client's development application was lodged, including Lot 58, because of a land swap agreement between our client and MG Land Pty Ltd for the purposes of ensuring a more regular lot orientation.¹
14. On the basis that the necessary infrastructure conditioned is for land that falls outside the premises included in the development approval, Council should remove Condition 14 from the Decision Notice.
15. The most appropriate outcome is for the necessary infrastructure to be delivered in accordance with condition 3 in COM/2024/317.
16. We also note that, in accordance with section 121(1)(f) of the Planning Act, the ICN does not include information about the offset or refund in connection with the trunk land required under Condition 14.

Condition 37 New Intersection at Courtney Drive / Road 6 (Roundabout)

17. Our client objects to Condition 37, particularly in circumstances where the condition requires the dedication of land, Lot 11 on SP341124 (**Lot 11**), not owned or controlled by our client or included in the development application.
18. The condition is unlawful for the reasons discussed below.

¹Town Planning Report prepared by Saunders Havill Group dated 12 December 2024, page 1 section 1.

Condition does not comply with section 65 of the Planning Act

19. Lot 11 is owned by TRSR Pty Ltd, an entity that is unrelated to Norfolk. Norfolk does not have an ownership interest in, or ability to control, Lot 11. A condition requiring an applicant to dedicate land it neither owns nor controls is an unreasonable imposition on the development within the meaning of section 65 of the Planning Act.
20. A condition that requires construction of infrastructure dependent on land owned by a third party, where there is no guarantee of the third party's cooperation, imposes an obligation that may be incapable of satisfaction through no fault of the applicant. Such a condition is both unreasonable and potentially void for uncertainty.
21. Further, while a development approval and its conditions attach to, and bind successors in title of, the premises the subject of the approval, Lot 11 does not form part of the premises the subject of this development approval. Condition 37 cannot, therefore, be used to compel TRSR Pty Ltd, as owner of Lot 11, to dedicate land or otherwise cooperate in giving effect to the condition.²
22. We note that Lot 11 is currently the subject of a development application for reconfiguring a lot, ROL/2025/49, lodged 29 May 2025. If Council considers land from Lot 11 is required to accommodate future infrastructure, Council should consider imposing a condition on the proposed development for Lot 11 which requires a future dedication and works.
23. In circumstances where there is other proposed development that Council could condition the requirement for land and works which could connect to any infrastructure provided by Norfolk, Council should amend Condition 37 to:
 - (a) permit an interim intersection arrangement at Stage 6 pending delivery of land from Lot 11, with the full roundabout to be constructed by whichever site is developed second;
 - (b) limit the kerb ramp requirement to the southern side of Courtney Drive only; and
 - (c) delete the advice note requiring the applicant to ensure dedication of land by TRSR Pty Ltd.

Condition 38 Existing Roads and Courtney Drive (Non-Trunk)

24. The condition appears to be characterised as a 'non-trunk development infrastructure' condition. We have assumed that the condition is purportedly imposed under section 145(b)(iii) of the Planning Act on the basis that it is about providing development infrastructure for protecting or maintaining the safety or efficiency of the broader infrastructure network. However, the Decision Notice does not identify, with precision, the conditioning power being exercised by Council.
25. Condition 38(a)(i) requires the upgrade of the full length of Courtney Drive, beyond the site's frontage, imposing obligations disproportionate to the development's traffic impacts. Courtney Drive is used by other existing and future developments in the precinct. Requiring a single applicant to fund the full upgrade of a shared collector road is an unreasonable imposition on the development.
26. We have reviewed the development applications currently under assessment in the surrounding area. In the amended confirmation notice and information request for ROL/2026/54 dated 2 July 2026 (**IR for ROL/2026/54**), Council has expressed an intention to impose a condition in similar terms on any approval of that development application. The advice note at item 12 of the IR for ROL/2026/54 states:

'...Note: Council is in receipt of multiple development applications within the Courtney Drive Emerging Community Precinct. Each development application is in different stages of

²*Pike v Tighe* [2018] HCA 9, [34]-[35], [41]-[43].

assessment, and it will be necessary to align all developments consistently to ensure a coordinated and sequenced delivery of necessary infrastructure."

27. The statement in item 12 of the IR for ROL/2026/54 is inconsistent with the approach taken in the Decision Notice and Condition 37. Council appears to acknowledge that the infrastructure is necessary (trunk) in one development application whilst imposing a non-trunk requirement for Norfolk to deliver an upgrade that will service multiple developments at no cost to Council.
28. Further, the advice note at item 9 of the information notice for ROL/2025/49 dated 9 July 2025 (**IR for ROL/2025/49**) states:

"...Should Council endorse the proposal, Officers will impose conditions for the applicant to upgrade Courtney Drive at the full frontage of the subject site (i.e. frontage of Lot 11SP341124 and 201RP173727) prior to plan sealing for Stage 1 at no cost to Council."
29. It is clear from the statement in the IR for ROL/2025/49 that a conditioning approach that requires Norfolk to provide an upgrade on its frontage only is achievable.
30. Our client has previously made representations that Condition 38 requires the alignment of the intersection of Courtney Drive with Baileys Mountain Road so that it intersects further south, providing separation from Jenkins Court. Norfolk's traffic engineers have advised that the specified alignment is not physically feasible as it passes an existing bank edge with an approximate 6m fall, making the required works impractical and unsafe.
31. Condition 38 should be amended to:
 - (a) require the upgrade of Courtney Drive for the development's frontage only;
 - (b) delete the requirement to realign the intersection of Courtney Drive with Baileys Mountain Road; and
 - (c) be timed to Stage 6 (not Stage 3), as all development fronting Courtney Drive occurs in Stage 6.
32. In the interest of ensuring coordinated and sequenced delivery of necessary infrastructure, the delivery of the upgrade to Courtney Drive should be conditioned to be delivered, in a manner that is fair and equitable, by the proposed developments on Courtney Drive.
33. Council has multiple lawful mechanisms available to it to facilitate the coordinated delivery of necessary infrastructure, and it should not exercise its conditioning power, by copying conditions across multiple developments, to avoid exercising lawful mechanisms such as an infrastructure agreement.
34. This puts developers, in an already strained economic environment, to significant cost and assumes that Norfolk, in addition to bearing the responsibility for delivery of necessary infrastructure beyond what is fair and equitable, also bearing the responsibility for its coordination with surrounding developments. This is the role of local government and achievable by Council using the powers and mechanisms available to it.

Condition 41 Footpaths

35. Conditions 41(a)(iv) and (v) are unlawful on the basis that they are an unreasonable imposition on the development and are not reasonably required in relation to the development within the meaning of section 65 of the Planning Act.
36. The requirement in Condition 41(a)(iv) to construct and maintain a footpath along Baileys Mountain Road (from the Courtney Drive intersection) to Reserve Road is an unreasonable imposition on the development, as it will service a broad catchment extending well beyond the proposed development. Further, the footpath will need to be demolished as part of the upgrade works to Baileys Mountain Road required in the future.
37. The footpath obligation should be limited to the full frontage of the Land to Baileys Mountain Road as part of Stage 1. The remainder of the footpath is appropriately delivered by other

development as the catchment develops, whether through conditions on those developments or Council's own infrastructure program.

38. Council has stated, as part of its Amended Information Request issued in ROL/2026/54 for 17 Courtney Drive and 176 Baileys Mountain Road, Upper Coomera, that the proposed development needs to submit revised plans to link the footpath to the adjoining development, being Norfolk's proposed development. It is clear that the footpath can be delivered in a manner that connects to neighbouring developments as they are delivered.
39. Our view is that it is feasible for Council to condition the footpath works as each lot is developed, with the ultimate goal for the future connection of the pedestrian network.
40. We note that some of the requirements in Condition 41 have been duplicated in the MG Land Pty Ltd development approval, COM/2024/317, condition 35.
41. This creates uncertainty around who is to deliver the infrastructure and requires developers, rather than Council, to coordinate delivery of infrastructure when Council is the ultimate asset owner.
42. Our client, depending on which development proceeds first, may be left in a position where another developer delivers the infrastructure and plan sealing is ultimately delayed because Council has not accepted works on-maintenance.
43. A development approval attaches to the land and binds the owner/s and successors in title, even where later development (including reconfiguring a lot) is approved for the land.³ Development conditions have the character of personal obligations capable of enduring in their effect beyond completion of the development.⁴
44. Imposing the same obligations across multiple developments, where those obligations cannot be fulfilled by each person with the benefit of the approval, creates further uncertainty with respect to enforcement and imposes unreasonable requirements on future landowners.
45. We note that for the multiple dwelling approval at 203 Baileys Mountain Road, Upper Coomera (MIN/2022/336), Council approved the removal of the footpath condition (Condition 35) along the site's frontage. The Delegated Report justifies the removal of the condition on the basis the future road upgrades on Baileys Mountain Road will result in a complete reprofile and reconstruction of the road verge, meaning any footpath constructed prior would need to be demolished.
46. This is further justification that the footpath works should be limited to the frontage of 176 Baileys Mountain Road, which forms part of the Land. The remaining portion of the footpath could be delivered as part of 17 Courtney Drive and the MG Land Pty Ltd development can provide for the frontage of 202 Baileys Mountain Road, to the extent not affected by the upgrade works.
47. The footpath connection required by Condition 41(a)(v) links Baileys Mountain Road or Reserve Road to the recreational linkage REC_LR-0021 in Council's Local Government Infrastructure Plan (**LGIP**). The recreational linkage is identified trunk infrastructure.
48. A condition requiring the applicant to construct an ancillary footpath connection to trunk infrastructure identified in the LGIP constitutes, on its proper characterisation, a requirement to provide trunk infrastructure. Such a condition ought to be imposed (if at all) under section 128 of the Planning Act, with Norfolk receiving an offset against any infrastructure charges payable.
49. Condition 41(a)(v) should be deleted. Alternatively, if Council requires the footpath connection, the condition should be properly identified as a necessary infrastructure condition under section 128 of the Planning Act.

³Planning Act, section 73.

⁴*Pike v Tighe* [2018] HCA 9, [35].

Infrastructure charges notice

- 50. Condition 14 identifies necessary infrastructure and, pursuant to section 121(1)(f) of the Planning Act, the ICN must state whether an offset or refund applies and, if so, information about the offset or refund.
- 51. The ICN does not identify any offset or refund in relation to land required under Condition 14.
- 52. Our client's primary position remains that Condition 14 is unlawful and should be deleted.
- 53. For any matters identified as necessary infrastructure by these change representations, the ICN should be amended to comply with the requirements under section 121 of the Planning Act for a lawful ICN.
- 54. Please do not hesitate to contact Amelia Prokuda on 0410 032 358 should Council wish to discuss any aspect of this letter.

Yours faithfully



Amelia Prokuda
Partner
Hamilton Locke