



gassman
development
perspectives

planning
design
environment
surveying

OUR REF: 5093-BG/GJS
GCCC REF: MCU201100650 (PN163781/01/DA1)

5th April 2013

ATTENTION: MONIQUE ANDERSON

The Chief Executive Officer
Gold Coast City Council
City Planning
PO Box 5042
GOLD COAST MC QLD 9729

BY EXPRESS POST

Secondary Transmittal: gcccmail@goldcoast.qld.gov.au

Dear Monique,

RE: NEGOTIATED DECISION NOTICE REQUEST
GCCC REF: MCU201100650 (PN163781/01/DA1)
APPLICATION: DEVELOPMENT PERMIT FOR PRELIMINARY APPROVAL FOR MAKING
A MATERIAL CHANGE OF USE (IMPACT ASSESSMENT) TO OVERRIDE
THE PLANNING SCHEME FOR INDUSTRY USES
PROPERTY: 31 YELLOWOOD ROAD, 60 STAPYLTON JACOBS WELL ROAD AND 82
CHRISTENSEN ROAD, STAPYLTON

We write following receipt of Council's Decision Notice on the 6th March 2013 and our subsequent suspension of the applicants appeal period on the 14th March 2013 for the above development application. We act on behalf of the applicant, Patricia Hester.

Upon review of the contents of Council's decision notice, we wish to make the following written representations in relation to the current conditions of approval in accordance with s361 of the *Sustainable Planning Act 2009*:

Condition 1(a)(vii) – Delete Condition



Amended plans/drawings must be submitted generally in accordance with - Include a notation on the plan that states 'development within Precinct C shall not occur until all other development within the remaining area of the Generations Industrial Park is exhausted'.

GDP Comment

The prohibition of development occurring within Precinct C until the final stage is not a relevant or reasonable consideration in relation to this application. Whilst it is clear that the intent of this condition is



Quality
ISO 9001

Email mail@gassman.com.au
Web www.gassman.com.au
A.B.N. 62 010 752 388 A.C.N. 010 752 388
Director Brian F Gassman BAppSc (Surv), LS, MSSI
Director David R Hansen BRTP, MPIA, CPP

Brisbane Office
Level 13, 97 Creek Street
Brisbane Q 4000
Phone (07) 3221 6732
Fax (07) 3221 7308
Post GPO Box 999 Brisbane Q 4001

Gold Coast & Logan Office
Access Business Park
76 Business Street Yatala Q 4207
Phone (07) 3807 3333
Fax (07) 3287 5461
Post PO Box 392 Beenleigh Q 4207

to enable future expansion to occur on the Council landfill site prior to any development occurring within Precinct C, there is no planning argument or justification for this to occur. In essence, there are no known mechanisms in which Council can lawfully suspend development occurring on adjoining sites so that they can expand and grow their own operations. On face values it appears that Council are enforcing restrictions on our client's property for their own commercial gain.

Importantly, both the current and ongoing expanded use of the landfill site is required to comply with the relevant legislative environmental requirements and Council do not have the ability to restrict development on adjoining sites such that their future compliance may be more readily achieved. Any development on our client's site will need to comply with such legislative requirements just that same as that on the Council landfill site.

It is also pointed out to Council that a large proportion of Stage 3 includes Precinct C, with there also being parts of Precinct B within proposed Stage 4. Based on this condition, Stage 3 cannot be completed and Stage 4 will not be able to be commenced as it conflicts with the conditions requiring each stage to be constructed in accordance with the approved staging.

Accordingly, it is requested that this condition be deleted as it is not considered relevant or justified and places an unreasonable imposition on the future use of the subject site.

Condition 1(a)(xi) – Delete Condition

Showing the following amendments to the Generations Industrial Park Place Code – The inclusion of the words 'Development within Precinct C shall not occur until all other development within the remaining area of the Generations Industrial Park is exhausted'.

GDP Comment

As discussed in greater detail above in relation to the prohibition of development within Precinct C, it is requested that this condition be deleted as it is not considered relevant or justified and places an unreasonable imposition of the future use of the subject site.

Condition 1(a)(xvii) – Delete Condition

Showing the following amendments to the Generations Industrial Park Place Code – Amend within section 6.3 Development Requirements, to include a new Acceptable Solution and associated Performance Criteria for Development that is self assessable, code assessable or impact assessable. The AS is to state 'For development located within Precinct C an Environmental Management Plan (EMP) has been prepared and approved by Council and the development complies with the requirements of the EMP. The EMP is to be prepared in accordance with the Planning Scheme Policy 10 – Guidelines for preparing Management Plans and Plans of Development'. The associated PC is to state 'The environmental mitigation methods for the development as detailed within an Environmental Management Plan must take into account and seek to ameliorate any negative aspects of the existing amenity of the local

area having regard, but not limited, to the impact of noise, hours of operation, visual amenity, odour, emissions and dust’.

GDP Comment

Following from the discussion outlined earlier in relation to the unreasonable prohibition of development within Precinct C, there is no justification for the Place Code to be modified to require each development located within Precinct C to prepare and comply with an Environmental Management Plan. Particularly, an EMP that is to address ‘environmental nuisance’ from the nearby Council landfill which is neither owned; operated nor the responsibility of the applicant.

An EMP is generally required by Council when certain forms of development are proposed which may have the potential to result in adverse amenity impacts on the surrounding environments. This is further emphasised in the ‘Purpose’ section of Council’s ‘Policy 10 – Guidelines for Preparing Management Plans and Plans of Development’ where it is stated that the purpose of an EMP (or MP as referred to in the Policy) is for “*managing impacts during the establishment phase of development, or provide a framework for the ongoing or long term management of development proposals and associated activities*”. This purpose clearly focuses on likely impacts resulting from proposed development, not mitigation measures for external sources.

It is clear the intent of this condition is to attempt to impose the amelioration of any future impacts from the Council landfill on future development within Precinct C as no ‘heavier’ forms of industry are proposed within Precinct C and this condition has been structured to only apply to development within Precinct C. Similar to the discussion provided in relation to the prohibition of development within Precinct C, this approach is not considered reasonable or relevant and places an unreasonable imposition on the future use of the subject site.

Notwithstanding, it is considered that the current measures incorporated into the overall developments design being that of increased building setbacks and preference for larger allotments adjoining the Council landfill are adequate measures in attempting to mitigate any potential future impacts. Importantly, any ‘environmental nuisance’ that may be present within the immediate locality (as eluded to by this condition) is not the result of our client’s activities and as such should not need to be mitigated by them.

Accordingly, it is requested that this condition be deleted as sufficient and appropriate measures have already been included within the Place Code. These measures go above those which would normally be required in relation to industrial developments within industrial estates and no further requirements should be enforced.

Condition 1(a)(xxi) – Amend Condition

Showing the following amendments to the Generations Industrial Park Place Code – Amend within section 6.3 Development Requirements, Performance Criteria PC28 to include the statement ‘The number of allotments within Precinct C is controlled to minimise the number of

premises exposed to any environmental nuisance from the nearby landfill and associated heavy industrial uses'.

GDP Comment

Following from the earlier discussion in relation to the unreasonable prohibition of development within Precinct C, there is no justification for PC28 to be modified to acknowledge 'environmental nuisance' from the nearby Council landfill. Importantly, any 'environmental nuisance' that may be present within the immediate locality (as eluded to by this condition) is not the result of our client's activity and as such should not need to be mitigated by them.

Notwithstanding, as previously agreed with Council it is considered that the provision of larger lots within Precinct C could benefit the area and assist with minimising multiple land use interfaces. It will also provide a greater lot mix when compared with the potential smaller allotments within Precincts A & B.

In this regard, it is requested that this condition be amended to read as follows: "***The number of allotments within Precinct C is minimised to assist with promoting positive land use interfaces and providing a mix of allotment sizes within the Generations Industrial Park***".

Condition 2(c) – Delete Condition

Development within Precinct C shall not occur until all other development within the remaining area of the Generations Industrial Park is exhausted

GDP Comment

As discussed in greater detail earlier in relation to the prohibition of development within Precinct C, it is requested that this condition be deleted as it is not considered relevant or justified and places an unreasonable imposition of the future use of the subject site.

Condition 2(d) – Clarify Condition

Any subsequent proposed amendments to the approved staging plan (including sequence of development must be approved by the Chief Executive Officer.)

GDP Comment

Please clarify what process would be required if the current proposed staging is to be modified. Whilst it is agreed that any changes to the current proposed staging must first be approved by the Chief Executive Officer, it is not clear what process Council would require for any such modification to occur.

It is our understanding that any such modification would not involve a formal permissible change request application being lodged with Council and that it is a matter that could be dealt with via appropriate forms of written correspondence.

Based on the discussion outlined above, it is requested that this condition and the process it envisages for any staging modifications to be clarified.

Condition 7 – Delete Condition

Buildings and structures must not be painted in highly reflective, bright or obtrusive colours. .

GDP Comment

Whilst the general intent of this condition is noted and agreed, it is not understood how it can be correctly and consistently implemented. In this regard, it is not clear as to who and/or how the tests in relation to 'brightness' or 'obtrusiveness' are to be applied.

It is envisaged that due to the industrial nature of the preliminary approval application any resulting form of development on the site will be consistent with that of similar larger industrial estates. Generally speaking, this does not include highly reflective or obtrusive colours being used.

In this regard, for the purposes enforceability it is requested that this condition be deleted.

Condition 9 – Staged development – Amend

Subject to the changes required by Condition 1 within section B of this Decision Notice the stages shown on Proposal Plan/Staging Plan: 5093 P00 12A, Land Use Classification and Staging Plan, dated 06/11/12 and prepared by Gassman Development Perspectives are approved for the purposes of construction (subject to the relevant Operational Work approvals) and compliance assessment of subdivision plans, subject to the following requirements:

- a The future Operational Works application can cover more than one stage. However, the engineering plans must be split into the individual stages shown on the approved staging plan.*
- b The construction of any approved operational works (including provision of "as constructed" information) and compliance assessment of subdivision plans must be in the sequence (i.e. order) of the stages shown on the approved staging plan. To be clear, the subdivision plan for stage 1 must be approved by Council before (or at the same time as) the stage 2 subdivision plan, and so on.*
- c Subdivision plans must correspond to the stages shown on the approved staging plan.*
- d Any subsequent proposed amendments to the stage boundaries or the sequence of development must be first approved by Council as a change to the reconfiguration of a lot development approval and any operational work development approval. .*

GDP Comment

Whilst the general intent of this condition is agreed and noted, it is requested that some minor amendments be made. These amendments are in relation to any potential changes to the stage boundaries and direct references to modified subdivision/operational works approvals.

Specifically, in relation to any requested changes to the stage boundaries the discussion provided earlier in relation to Condition 2 outlines what process will be required if any stage boundaries are to be modified. This condition should be amended to reflect this same process.

It is also noted that this condition refers to amended reconfiguration and/or operational works approvals in relation to any change to the stage boundaries. Whilst potential reconfiguration and operational works drawings were provided in support of this application, no specific approvals were requested or obtained. In this regard, it is requested that these references be deleted to reduce any unnecessary confusion.

Accordingly, it is requested that this condition be amended as outlined above to ensure consistency with other conditions of approval and remove unnecessary references.

Condition 40 – Amend Condition

The part of Lot 4 on RP6843 that is identified as Excavation below RL8.6m AHD in Figure 4.6 (Compensatory Excavation for Flood Storage Volume Balance) of the stormwater manager report, being 'Generations Industrial Park – Stormwater Management Plan', dated 20 June 2012 and prepared by Hyder Consulting Pty Ltd must be used solely for the purpose of flood storage/conveyance and not be used for any purposes that involve the construction of any building, structures or earthworks. This obligation applies independently of any registered covenant.

GDP Comment

Whilst the general intent and objective of this condition is noted, it is requested that some minor amendments be made. Specifically, it is considered that there is potential for subsequent forms of development (i.e. earthworks) to be accommodated on part of Lot 4 on RP6843.

Importantly, any such future forms of development will be subject to separate Council consideration and this requested blanket restriction is not warranted at this stage. Any development that may occur within the future however must ensure that the flood storage/conveyance attributes of this part of Lot 4 on RP6843 are not compromised.

Accordingly, it is requested that this condition be amended as follows: "*The part of Lot 4 on RP6843 that is identified as Excavation below RL8.6m AHD in Figure 4.6 (Compensatory Excavation for Flood Storage Volume Balance) of the stormwater manager report, being 'Generations Industrial Park – Stormwater Management Plan', dated 20 June 2012 and prepared by Hyder Consulting Pty Ltd must be used solely for the purpose of flood storage/conveyance and not be used for any purposes that involve*

the construction of any building, structures or earthworks **unless it can be demonstrated that these flood storage/conveyance attributes are not compromised**. This obligation applies independently of any registered covenant".

Importantly, as all these requested modifications to the conditions of approval are either in response to unreasonable conditions conflicting with the 'tests' of the *Sustainable Planning Act 2009* or Council administrative matters, it is requested that Council accept and process this request at no cost to our client. Council's timely consideration and formal response to this fee relaxation request is sought so as to ensure all necessary statutory timeframes are complied with.

Following the acceptance of this request, it is sought that Council issue a Negotiated Decision Notice in accordance with s363 of the *Sustainable Planning Act 2009* based on the representations outlined above.

Should you require any further information, please do not hesitate to contact myself on the details contained below.

Yours faithfully,

GASSMAN DEVELOPMENT PERSPECTIVES PTY LTD



GARY SAVINS

Senior Town Planner