

REPORT TITLE	Preliminary Approval – Impact – Material Change of Use and Reconfiguring a Lot including a Variation Request located at 99-117 Hayden Street East, KEARNEYS SPRING QLD 4350
AUTHOR	Senior Planner (Sophie Spencer)
Application No.	MCUI/2021/6070

PURPOSE OF REPORT

To consider a Development Application for Preliminary Approval – Impact – Material Change of Use and Reconfiguring a Lot including a Variation Request located at 99-117 Hayden Street East, KEARNEYS SPRING QLD 4350

EXECUTIVE SUMMARY

This report considers a Development Application seeking Preliminary Approval for Material Change of Use and Reconfiguring a Lot including a Variation Request in relation to land at 99-117 Hayden Street East, Kearney Spring.

The purpose of the Variation Request is to extend the land use rights and assessment provisions of the Low-medium Density Residential Zone (Urban Residential Precinct) over that part of the subject land currently identified in the Open Space Zone, being an area of 8,484m².

Council Officers’ review found that the area of Open Space Zoning is a historic zoning which was likely to identify a future stormwater detention basin. Under the current *Toowoomba Regional Planning Scheme 2012* (TRPS), the future stormwater detention basin is identified as Future Trunk Infrastructure - Detention Basin (DB15) within the Local Government Infrastructure Plan. Please refer to Attachments 1 and 2.

The Purpose of the Open Space Zone is to provide for local, district and regional scale parks that serve the recreational needs of a wide range of residents and visitors. Council’s Parks and Recreation Branch confirmed the land is not required for park or recreational purposes.

Having regard to the above, the identification of a future stormwater detention basin within the Open Space Zoning is not required. The Open Space Zoning will also unnecessarily complicate future development applications for Reconfiguring a Lot, making these Impact Assessable. As such, the proposed Variation Request is supported.

To remove any doubt, as a result of the Variation Request, future Development Applications for Reconfiguring a Lot to create a residential subdivision will be Code Assessable, where meeting the minimum lot size, and the future stormwater detention basin would be required within that process.

The proposed development has been assessed with regard to the applicable assessment benchmarks as identified within this report and the attached Statement of Reasons (refer to Schedule 1). The proposed development generally complies with the assessment benchmarks or it can be conditioned to comply. Where the applicant has not provided sufficient information, conditions have been imposed to ensure compliance.

RECOMMENDATION

APPROVED - Application No. MCUI/2021/6070 for a Development Permit for Material Change of Use - Impact - Preliminary Approval for a Variation Request, pursuant to the provisions of Section 60 of the *Planning Act 2016* and subject to the conditions listed below.

ASSESSMENT MANAGER CONDITIONS

PLANNING

TYPE OF APPROVAL

1. This Preliminary Approval is for Material Change of use and Reconfiguring a Lot including a Variation Approval.

PARAMETERS OF APPROVAL

2. All future development within the Variation Approval Area must be undertaken in accordance with the provisions of the Variation Approval Document as amended, 'West Street Variation Scheme' Version 2, prepared by Precinct Urban Planning and dated December 2021, and the applicable Codes and Planning Scheme Policies contained in *Toowoomba Regional Planning Scheme 2012 Version 26* subject to the conditions of this Development Approval and subject to the following amendments to the Variation Approval Document:
 - 2.1 Removal of the text "Eagle Heights" in Clause 3.2, as struck out in red.
3. The Variation Approval Document 'West Street Variation Scheme' as amended varies the effect of the *Toowoomba Regional Planning Scheme 2012 Version 26* for the Variation Approval Area pursuant to Section 43(7) of the *Planning Act 2016* as stated within the Variation Approval Document as amended.
4. Where the Variation Approval Document 'West Street Variation Scheme' 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 26* will take effect.
5. Unless otherwise stated, all conditions must be complied with prior to the commencement of use or prior to Council's endorsement of the Plan of Subdivision, whichever occurs first.

VARIATION APPROVAL AREA

6. The Variation Approval Area is the area identified as the 'Existing Open Space To Be Removed 8,484m²' on the Approved Plan below:

Plan No: Drawing Number PR13 Issue P2

Description: West Street Variation Scheme Area – Zone Map, prepared by Kehoe Meyers and dated 18/10/2021

Amendments: Nil

VARIATION APPROVAL DOCUMENT

7. The Codes and Policies applicable to development within the Variation Approval Area are the *Toowoomba Regional Planning Scheme 2012 Version 26* Codes and Policies, unless otherwise specified in the Variation Approval Document 'West Street Variation Scheme' 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*, unless otherwise specified in the Variation Approval Document 'West Street Variation Scheme' as amended.
9. The Variation Approval Document 'West Street Variation Scheme' varies the effect of the *Toowoomba Regional Planning Scheme 2012 Version 26* for the Variation Approval Area pursuant to Section 43(7) of the *Planning Act 2016* by:
 - 9.1 Changing the category of development and assessment for the Variation Approval Area in accordance with the Variation Approval Document 'West Street Variation Scheme' as amended; and
 - 9.2 Providing Statements of Intent (Planning Intent and Outcomes) and applicability of assessment benchmarks contained within *Toowoomba Regional Planning Scheme 2012*, for the Variation Approval Area.
10. The category of development and assessment for future Development Applications for Material Change of Use and Reconfiguring a Lot within the Variation Approval Area must be in accordance with the category of development and assessment specified within the Variation Approval Document 'West Street Variation Scheme' as amended.

CURRENCY PERIOD

11. This Variation Approval has a currency period of five (5) years from the date this Development Approval starts to have effect.

ADVICES

OTHER LAWS & REQUIREMENTS

- 1) 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.
- 2) Carrying out works on a road or interfering with the road or its operation will require a permit under *Subordinate Local Law No. 1.15 (2020)*. The application form can be found on Council's website at www.tr.qld.gov.au. For further information contact the Road Operations Branch through Council's Customer Service Centre on 131 872.
- 3) 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

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

WHEN APPROVAL LAPSES

- 5) 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.

ABORIGINAL CULTURAL HERITAGE ACT 2003

- 6) 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.

REASONS FOR RECOMMENDATION

The proposed development has been assessed with regard to the applicable assessment benchmarks as identified within this report and the attached Statement of Reasons (refer to Schedule 1). The proposed development generally complies with the assessment benchmarks or it can be conditioned to comply. Where the applicant has not provided sufficient information, conditions have been imposed to ensure compliance.

DELEGATE'S RECOMMENDATION:

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 application be Approved subject to the conditions contained in the recommendation. I exercise delegation in accordance with the delegations adopted by the Toowoomba Regional Council.



Tamara Katai, Acting Senior Planner
Development Services

Decision Date: 28 April 2022

CORPORATE PLAN REFERENCE

Strategic Action 2.3.3 Ensure development aligns with community sentiment, through effective and efficient assessment, with the planning scheme, planning instruments, codes and legislation.

BACKGROUND

SITE DETAILS				
Site Address	99-117 Hayden Street East, KEARNEYS SPRING QLD 4350			
Real Property Description	Lot 12 SP187254, Emt B RP216771			
Site Area	9.683 ha			
Owner	Wagners Properties Pty Ltd			
SITE CHARACTERISTICS				
Current Land Use	Vacant			
Site Frontage/s	West Street Hayden Street East			
Road/s	Order of Road	Width of Road Reserve	Width of Pavement	Road Material
West Street	Sub-Arterial	20m	6m	Asphalt
Hayden Street East	Local	20m	5m	Asphalt
Easements	Ergon Energy easement.			
Existing Structures	Nothing of note.			
Infrastructure	The site has access to urban infrastructure.			
Topography	The site slopes towards a gully that continues on adjoining land to the east.			
Street Trees	None along the West Street or Hayden Street frontages of the site.			
Other Features	The site is partly affected by the State mapped Koala Habitat Area. The part of the site currently in the Open Space Zone, and proposed to be varied under the development application, is outside of the Koala Habitat Area.			
PLANNING SCHEME SITE DATA				
Current Planning Scheme	Toowoomba Regional Planning Scheme 2012 (Version 26)			Adopted: 30/04/21
Zone	Low-medium Density Residential Zone & Open Space Zone			
Precinct	Urban Residential Precinct			
Overlays	Environmental Significance Overlay Bushfire Hazard Overlay – Applies to the subject site, however does not affect the Variation Scheme Area.			
Infrastructure Charges Resolution	Charges Resolution No. 5			Adopted: 01/03/22
SURROUNDS:				
Direction	Land Use	Zone/Precinct		
North	Vacant	Low-medium Density Residential Zone (Urban Residential Precinct)		
East	Vacant (approved urban residential subdivision)	Low-medium Density Residential Zone (Urban Residential Precinct)		
South	Dwelling houses on large lots	Low-medium Density Residential Zone (Urban Residential Precinct)		
West	Dwelling houses on large lots	Low-medium Density Residential Zone (Urban Residential Precinct)		
Other Features	Nothing to note			

APPLICATION HISTORY

Application No.	Description	Decision Date	Decision
PREL/2021/5549	Pre-lodgement Advice dated 14 October 2021 about the Variation Request.		
Other	A Pre-lodgement Meeting (PREL/2022/1438) was held on 6 April 2022 in relation to a subsequent Reconfiguring a Lot – Subdivision on the premises.		

PROPOSED DEVELOPMENT	
Name of Applicant	Wagner Corporation Pty Ltd
Type of Application	Preliminary Approval for a Material Change of Use and Reconfiguring a Lot including Variation Request
Proposed Development	Material Change of Use and Reconfiguring a Lot
Variations Sought	Development to be assessed in accordance with the Variation Scheme Document West Street Variation Scheme. The purpose of the Variation Request is to extend the land use rights and assessment provisions of the Low-medium Density Residential Zone (Urban Residential Precinct) over that part of the subject land currently identified in the Open Space Zone, being an area of 8,484m ² .
Level of Assessment	Impact Assessment
Submissions Received	Objection: Two (2)
	Support: None
Decision Making Period Ends	5 May 2022

CONSULTATION UNDERTAKEN

Referral Agency/ies

Referral Agency (Technical Agency)	Referral Role	Aspect of Development Requiring Referral	Response
Ergon Energy	Advice	Electricity Transmission Line easement	Ergon Energy provided a Pre-application Referral Response dated 22 October 2021, including advice that the Variation Request should be as per submitted plans.

The site is partly affected by the State mapped Koala Habitat Area. The part of the site currently in the Open Space Zone, and proposed to be varied under the development application, is outside of the Koala Habitat Area. Given this, it is considered that the proposed variation would not give rise to development would result in interfering with koala habitat. As such the development application does not trigger referral for Koala Habitat Area.

Internal Referrals

Internal Referral Partner	Referral / Response
Development Engineering and Plumbing	Had no requirements.
Parks	Comment: The open space zone as shown in relation to this site is not required for park or open space purposes.
Strategic Planning and Economic Development	Recommended approval noting the preference that the TRPS Low-medium Density Residential Zone Code is applied without changes to assessment levels or benchmarks. Comment:

	<p>The Open Space Zoned land is presumed to be dedicated for a future stormwater detention basin. Under the superseded <i>Toowoomba City Planning Scheme 2003</i>, one of the reasons for designating land as Open Space was for water detention. Stormwater detention is likely needed in this general location, however it would be suitable for the applicant's engineers along with Council to determine the best location based on a detailed site investigation.</p> <p>It is unlikely the Open Space Zone is not linked to the currently mapped koala habitat, given it does not cover the southern portion of the land where the koala habitat vegetation is located.</p>
Infrastructure Charges Unit	Prepared an Infrastructure Charges Notice in accordance with Charges Resolution No. 5 to accompany an approval of the development.

Public Notification

The Notice of Compliance was received by Council on 10 March 2022. The information attached to the notice confirms that the public notification of the application was undertaken in accordance with the requirements of Part 4 of the *Planning Act 2016*. The Notice of Compliance states the public notification included:

- Publishing a notice in the Chronicle on 21 January 2022;
- Placing a notice on the land from 21 January 2022 until 8 March 2022; and
- Notifying owners of all land adjoining the site on 19 January 2022.

Two (2) Submissions were received opposing the development.

A summary of the matters raised in the submission/s and Council officer responses are outlined in the Table below:

Issue	How matter was dealt with
Encroachment of development into native fauna habitat (kangaroos)	<p>The purpose of the Variation Request is to extend the land use rights and assessment provisions of the Low-medium Density Residential Zone (Urban Residential Precinct) over that part of the subject land currently identified in the Open Space Zone, being an area of 8,484m². This will ensure consistency with the remainder of the site which is identified within the Low-medium Density Residential Zone.</p> <p>The site is partly affected by the State mapped Koala Habitat Area. The part of the site currently in the Open Space Zone, proposed to be varied under the development application, is outside of the Koala Habitat Area and the existing vegetated area. Given this, it is considered that the proposed variation would not give rise to development interfering with koala habitat.</p> <p>Council's mapping of Environmental Significance Overlay - Areas of Ecological Significance also approximately aligns with the existing vegetated area, and it is noted the subject land is located outside of these areas. A review of the historic zoning has identified the Open Space Zoning is not related to vegetation or habitat protection, but to reference future stormwater infrastructure.</p> <p>The proposal subject to this Development Application has been assessed against the Strategic Framework of the <i>Toowoomba Regional Planning Scheme 2012</i> and considered does not compromise the intent of the Strategic Framework, and does not obstruct the assessment of future Development Applications in relation to mapped environmental areas. Furthermore, it is noted the cleared section of the site has been historically disturbed by previous farming practices.</p>
Site history including land contamination (former abattoir)	<p>The submitter provided local insight into the history of the site.</p> <p>The subject Development Application does not authorise development to occur, and the purpose of the application is to correct a historic zoning which is no longer required.</p> <p>However, addressing any potential land contamination will be relevant in future</p>

	Development Applications for example seeking a residential subdivision. At that time, this matter must be addressed to ensure the health and wellbeing of future and existing nearby residents.
Construction impacts	The subject Development Application does not authorise development to occur. Future Development Applications will be required for any subdivision of the site, at which time standard conditions would be imposed regarding construction practices to minimise impacts, such as dust and noise, on nearby properties.

ISSUES, RISKS AND RESPONSES – ASSESSMENT

Categorising Instrument – *Planning Regulation 2017*:

PLANNING REGULATION 2017	
<i>Prohibited Development</i>	The proposed development is not prohibited development in accordance with the <i>Planning Regulation 2017</i> .
<i>Infrastructure Charges</i>	The <i>Planning Regulation 2017</i> provides for the levying of infrastructure charges on development approvals.
<i>Schedules 9 and 10</i>	Schedules 9 and 10 categorises particular development and details the relevant assessment benchmarks for development as relevant. The proposed development is not for Reconfiguring a Lot as defined in Part 1 of Schedule 12A of the Regulation.

REGIONAL PLANS	
<i>Shaping SEQ – South East Queensland Regional Plan 2017</i>	The subject site is mapped within the bounds of the <i>Shaping SEQ – South East Queensland Regional Plan 2017</i> (SEQRP). The SEQRP identifies that the subject site is within the Urban Footprint, which is intended to identify the land required for the region’s urban development needs up to 2041. The development application is consistent with the land use intent for the Urban Footprint as it proposes an urban use within the bounds of the urban footprint.
<i>Darling Downs Regional Plan October 2013</i>	The <i>Darling Downs Regional Plan 2013</i> (DDRP) is a statutory regional plan that is intended to provide planning policy to address planning matters that are of State interest and specific to the Darling Downs region. The DDRP identifies that the subject site is mapped within a Restricted Area 384 under Appendix 2 of the Regional Plan. This designation reflects the boundaries of the SEQ Regional Plan and accordingly will not compromise the outcomes sought under the Darling Downs Regional Plan.

STATE PLANNING POLICY (SPP) <i>July 2017</i>	
Interests	Assessment Comments
Housing Supply and Diversity	The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive mapping (DAMS) which accompanies the SPP does not include mapping associated with this State Interest. However, the policies identified for this interest in Part E of the SPP generally apply to development proposing the establishment of land for residential development, particularly large subdivisions. It is considered the proposed development does not compromise this State Interest
Livable Communities	The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive mapping (DAMS) which accompanies the SPP identifies that this interest is applicable to the subject property. However, the assessment benchmarks identified in Part E of the SPP for this interest do not apply to the proposed development. It is considered the proposed development does not compromise this State Interest.

Agriculture	<p>The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive mapping (DAMS) which accompanies the SPP identifies this site is located in the Agricultural Land Classification Classes A and B.</p> <p>However, it is noted the site is located in the Low-medium Density Residential Zone and within an existing urban settlement.</p> <p>It is therefore considered the proposed development does not compromise this State Interest.</p>
Development and Construction	<p>The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive (DAMS) mapping which accompanies the SPP does not specifically identify that this interest is applicable to the subject property or identifies the subject property as being located with a Priority Development Area.</p>
Mining and Extractive Resources	<p>The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive mapping (DAMS) which accompanies the SPP identifies that this interest is not applicable to the subject property.</p>
Tourism	<p>The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive mapping (DAMS) which accompanies the SPP does not include mapping associated with this State Interest.</p> <p>It is considered the proposed development does not compromise this State Interest.</p>
Biodiversity	<p>The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive mapping (DAMS) which accompanies the SPP identifies that this interest is applicable to the subject property.</p> <p>The majority of the site is covered with native vegetation identified as Wildlife Habitat (endangered or vulnerable, special least concern animal, koala habitat areas – core, and essential habitat). This vegetation is contained within the southern and eastern part of the site.</p> <p>The site is partly affected by the State mapped Koala Habitat Area. The part of the site currently in the Open Space Zone, and proposed to be varied under the development application, is outside of the State mapped Koala Habitat Area and SPP Biodiversity mapping. Given this, it is considered that the proposed variation would not give rise to development would result in interfering with koala habitat. As such the development application does not trigger referral for Koala Habitat Area.</p> <p>It is further noted that proposed interference with Koala Habitat Area will require subsequent Development Applications for Reconfiguring a Lot to trigger referral to the State for assessment.</p>
Cultural Heritage	Not applicable.
Water Quality	Not applicable. This will be considered in subsequent Development Applications for Reconfiguring a Lot.
Emissions and Hazardous Activities	Not applicable.
Natural Hazards, Risk and Resilience	<p>The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive mapping (DAMS) which accompanies the SPP identifies that this interest is applicable to the subject property.</p> <p>The site is identified in the Bushfire Prone Area of DAMS mapping. It is considered the Variation Request does not compromise this State Interest. This will be considered in subsequent Development Applications for Reconfiguring a Lot.</p>
Energy and Water Supply	Not Applicable.
Infrastructure Integration	<p>The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive mapping (DAMS) which accompanies the SPP does not include mapping associated with this State Interest.</p>

	<p>However, the policies identified for this interest in Part E of the SPP generally apply to development that relates to or impacts on the establishment and integration of infrastructure.</p> <p>It is considered the proposed development does not compromise this State Interest.</p>
Transport Infrastructure	<p>The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) interactive mapping (DAMS) which accompanies the SPP does not include mapping associated with this State Interest.</p> <p>It is considered the proposed development does not compromise this State Interest.</p>
Strategic Airports and Aviation Facilities	<p>It is considered the proposed development does not compromise this State Interest.</p>

Local Categorising Instrument – *Toowoomba Regional Planning Scheme 2012*:

The proposed development was assessed against the following assessment benchmarks:

- Strategic Framework
- Low-medium Density Residential Zone Code
- Reconfiguring a Lot Code
- Environmental Significance Overlay Code
- Airport Environs Overlay Code
- Works and Services Code

The development was assessed against all of the assessment benchmarks listed above and is considered to comply with note to the following:

STRATEGIC FRAMEWORK:

Theme	Assessment Comments
Settlement Pattern	<p>Council's Strategic Land Use Team advises the Open Space Zoned land is presumed to be dedicated for a future stormwater detention basin. Under the superseded <i>Toowoomba City Planning Scheme 2003</i>, one of the reasons for designating land as Open Space was for water detention. Stormwater detention is likely needed in this general location, however it would be suitable for the applicant's engineers along with Council to determine the best location based on a detailed site investigation.</p> <p>It is likely the Open Space Zone is not linked to the currently mapped koala habitat, given it does not cover the southern portion of the land where the koala habitat vegetation is located.</p> <p>Having regard to the above, it is considered the Variation Request is consistent with this Theme.</p>
Natural Environment	Not Applicable.
Community Identity and Diversity	Not Applicable.
Natural Resources and Landscaping	Not Applicable.
Access and Mobility	Not Applicable.
Infrastructure and Services	<p>Council's Strategic Land Use Team advised the purpose of the historic Open Space Zoning was likely to identify a future stormwater detention basin. The identification of this land in the Open Space Zone is not required for this purpose, as future Development Applications will be required to provide the stormwater detention basin regardless.</p> <p>It is considered the Variation Request does not compromise this Theme, particularly the variation will not obstruct the planning, design and provision of water infrastructure in new development.</p>

Economic Development	Not Applicable.

Local Categorising Instrument – Variation Approval:

Not Applicable.

Local Categorising Instrument – Temporary Local Planning Instrument:

Not Applicable.

Local Categorising Instrument – Preliminary Approval:

Not Applicable.

Local Categorising Instrument – Local Government Infrastructure Plan:

The subject site is located within the Priority Infrastructure Area (PIA).

A future stormwater detention basin (DB15) is identified on the site, in the approximate location of the Variation Scheme Area.

Other Relevant Matters

Not Applicable.

FINANCIAL / RESOURCE IMPLICATIONS

Infrastructure charges will be applied in accordance with Council's Charges Resolution No. 5.

CONCLUSION

The development has been assessed with regard to the applicable assessment benchmark as identified within this report and the attached Statement of Reasons (refer to Schedule 1). The proposed development generally complies with the assessment benchmarks or it can be conditioned to comply. Where the applicant has not provided sufficient information, conditions have been imposed to ensure compliance. It is therefore recommended that the development application be approved subject to the conditions identified above.

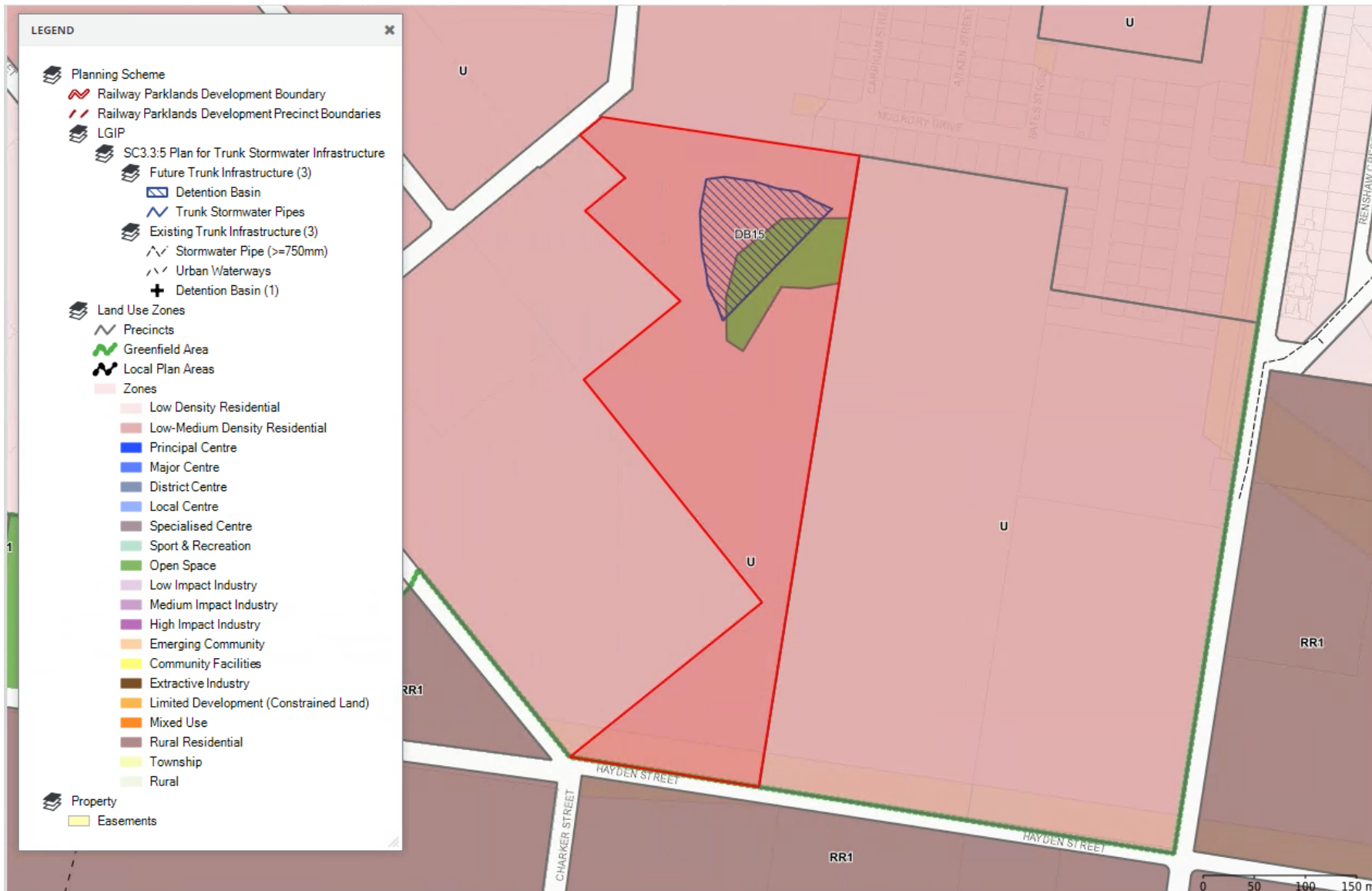
ATTACHMENT/S

Attachment	1	of	2	Zoning Map and Future Trunk Infrastructure – Detention Basin DB15
Attachment	2	of	2	Zoning Map and Aerial Imagery

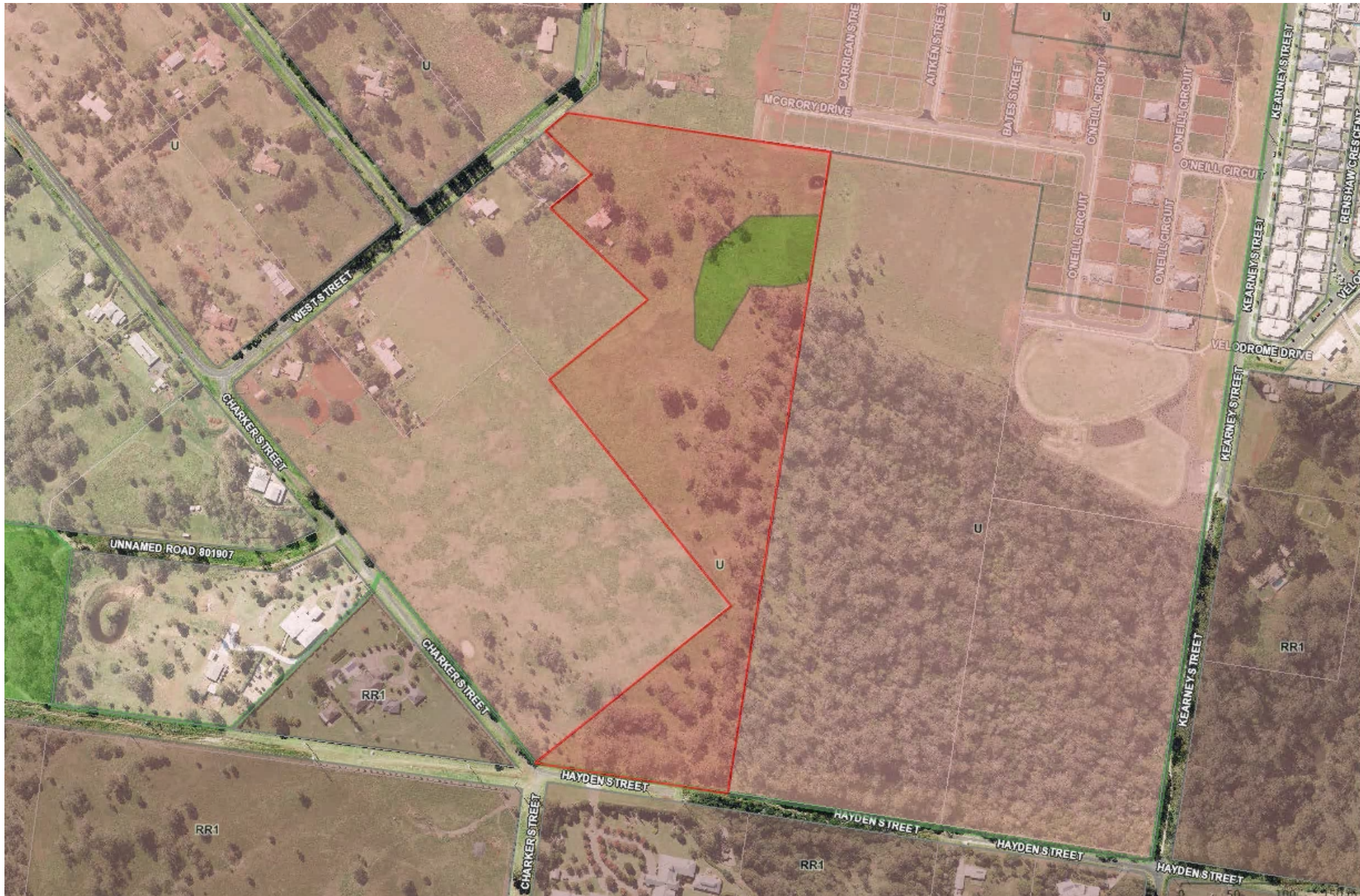
SCHEDULES

Schedule	1	Pre-application Advice Agency Response
Schedule	2	Statement of Reasons

ATTACHMENTS



Attachment 1 – Zoning Map and Future Trunk Infrastructure – Detention Basin DB15 (Source: IntraMaps 2022)



Attachment 2 – Zoning Map and Aerial Imagery (Source: IntraMaps 2022)

SCHEDULE 1

Pre-application Advice Agency Response



420 Flinders Street, Townsville QLD 4810
PO Box 1090, Townsville QLD 4810
ergon.com.au

22 October 2021

Wagner Corporation Pty Ltd
c/- Precinct Urban Planning
PO Box 3038
Toowoomba QLD 4350

Attention: Paul Kelly
Via email: paul@precinctplan.com.au

Dear Paul,

Pre-application Referral Agency Response – Preliminary Approval for a Variation Request to vary the effect of the *Toowoomba Regional Planning Scheme 2012* over land in the Open Space Zone at 99-117 Hayden Street East, Kearneys Spring (Lot 12 on SP187254)

Our Ref: HBD 7562327

We refer to the abovementioned proposed Development Application, material for which has been provided to Ergon Energy for pre-application assessment.

In accordance with Schedule 10, Part 9, Division 2 of the *Planning Regulation 2017*, the proposed application has been assessed against the purposes of the *Electricity Act 1994* and *Electrical Safety Act 2002*. This notice is provided in accordance with sections 56 and 57 of the *Planning Act 2016*.

Should the Assessment Manager decide to approve the proposed Variation Request, being the adoption of use rights and assessment provisions consistent with the Low-medium Density Residential Zone and Urban Residential Precinct, Ergon advises the following in relation to the development:

1. The development is to be carried out in accordance with the plans identified below. Any changes to these plans should be resubmitted to Ergon for further review and comment.

Approved Plans			
Title	Plan Number	Rev.	Date
West Street Variation Scheme Area – Zone Map	PR13	P2	18 October 2021
West Street Variation Scheme Area	PR14	P4	18 October 2021

Have you seen our fact sheets?

See the 'considerations when developing around electricity infrastructure' section of our website www.ergon.com.au/referralagency

2. The conditions of any easements in favour of Ergon must be maintained at all times.

Pursuant to section 54(4) of the *Planning Act 2016*, the Applicant is not required to refer to Ergon a future Development Application for the proposed development, providing the Development Application is:

- a) the same, or not substantially different from the proposed Development Application detailed in this notice; and
- b) made to the Assessment Manager within six months of the date of this notice.

Should you require further information regarding this matter, feel free to contact the undersigned on 0455 403 399 or email townplanning@ergon.com.au.

Yours faithfully,



Benjamin Freese
Town Planner

Have you seen our fact sheets?

See the 'considerations when developing around electricity infrastructure' section of our website www.ergon.com.au/referralagency

SCHEDULE 2

Statement of Reasons

Statement of Reasons
Section 63(4) and (5) of the *Planning Act 2016*

SITE DETAILS	
Site Address	99-117 Hayden Street East, KEARNEYS SPRING QLD 4350
Real Property Description	Lot 12 SP187254, Emt B RP216771
Site Area	9.683 ha
Owner	Wagners Properties Pty Ltd

PROPOSED DEVELOPMENT	
Name of Applicant	Wagner Corporation Pty Ltd
Type of Application	Preliminary Approval for a Material Change of Use and Reconfiguring a Lot including Variation Request
Proposed Development	Material Change of Use and Reconfiguring a Lot
Level of Assessment	Impact Assessment
Submissions Received	Objection: Two (2)
	Support: None
Decision	Approval
Decision Date	28 April 2022

ASSESSMENT MATTERS					
Assessment benchmarks	<p>The proposed development was assessed against the following assessment benchmarks:</p> <ul style="list-style-type: none"> • Schedules 9 and 10 of the Planning Regulation 2017 (as relevant); • State Planning Policy July 2017; • South-east Queensland Regional Plan • Darling Downs Regional Plan; • The Local Government Infrastructure Plan; and • Toowoomba Regional Planning Scheme 2012 (Version 26) <ul style="list-style-type: none"> ○ Strategic Framework ○ Low-medium Density Residential Zone Code ○ Reconfiguring a Lot Code ○ Environmental Significance Overlay Code ○ Airport Environs Overlay Code ○ Works and Services Code 				
Relevant matters	There were no relevant matters.				
Matters raised in submissions	<table border="1"> <thead> <tr> <th>Issue</th> <th>How matter was dealt with</th> </tr> </thead> <tbody> <tr> <td>Encroachment of development into native fauna habitat (kangaroos)</td> <td> <p>The purpose of the Variation Request is to extend the land use rights and assessment provisions of the Low-medium Density Residential Zone (Urban Residential Precinct) over that part of the subject land currently identified in the Open Space Zone, being an area of 8,484m². This will ensure consistency with the remainder of the site which is identified within the Low-medium Density Residential Zone.</p> <p>The site is partly affected by the State mapped Koala Habitat Area. The part of the site currently in the Open Space Zone, proposed to be varied under the development application, is outside of the Koala Habitat Area and the existing vegetated area. Given this, it is considered that</p> </td> </tr> </tbody> </table>	Issue	How matter was dealt with	Encroachment of development into native fauna habitat (kangaroos)	<p>The purpose of the Variation Request is to extend the land use rights and assessment provisions of the Low-medium Density Residential Zone (Urban Residential Precinct) over that part of the subject land currently identified in the Open Space Zone, being an area of 8,484m². This will ensure consistency with the remainder of the site which is identified within the Low-medium Density Residential Zone.</p> <p>The site is partly affected by the State mapped Koala Habitat Area. The part of the site currently in the Open Space Zone, proposed to be varied under the development application, is outside of the Koala Habitat Area and the existing vegetated area. Given this, it is considered that</p>
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		<p>the proposed variation would not give rise to development interfering with koala habitat.</p> <p>Council's mapping of Environmental Significance Overlay - Areas of Ecological Significance also approximately aligns with the existing vegetated area, and it is noted the subject land is located outside of these areas. A review of the historic zoning has identified the Open Space Zoning is not related to vegetation or habitat protection, but to reference future stormwater infrastructure.</p> <p>The proposal subject to this Development Application has been assessed against the Strategic Framework of the <i>Toowoomba Regional Planning Scheme 2012</i> and considered does not compromise the intent of the Strategic Framework, and does not obstruct the assessment of future Development Applications in relation to mapped environmental areas. Furthermore, it is noted the cleared section of the site has been historically disturbed by previous farming practices.</p>
	Site history including land contamination (former abattoir)	<p>The submitter provided local insight into the history of the site.</p> <p>The subject Development Application does not authorise development to occur, and the purpose of the application is to correct a historic zoning which is no longer required.</p> <p>However, addressing any potential land contamination will be relevant in future Development Applications for example seeking a residential subdivision. At that time, this matter must be addressed to ensure the health and wellbeing of future and existing nearby residents.</p>
	Construction impacts	<p>The subject Development Application does not authorise development to occur. Future Development Applications will be required for any subdivision of the site, at which time standard conditions would be imposed regarding construction practices to minimise impacts, such as dust and noise, on nearby properties.</p>
Reasons for decision	<p>The development was assessed against all of the assessment benchmarks listed above and complies with all of these with the exception listed below.</p>	
	Assessment benchmark	Reasons for the approval despite non-compliance with benchmark
	Strategic Framework - Settlement Pattern	<p>Council's Strategic Land Use Team advises the Open Space Zoned land is presumed to be dedicated for a future stormwater detention basin. Under the superseded <i>Toowoomba City Planning Scheme 2003</i>, one of the reasons for designating land as Open Space was for water detention. Stormwater detention is likely needed in this general location, however it would be suitable for the applicant's engineers along with Council to determine the best location based on a detailed site investigation.</p> <p>It is likely the Open Space Zone is not linked to</p>

		<p>the currently mapped koala habitat, given it does not cover the southern portion of the land where the koala habitat vegetation is located.</p> <p>Having regard to the above, it is considered the Variation Request is consistent with this Theme.</p>
	<p>Strategic Framework – Infrastructure and Services</p>	<p>Council's Strategic Land Use Team advised the purpose of the historic Open Space Zoning was likely to identify a future stormwater detention basin. The identification of this land in the Open Space Zone is not required for this purpose, as future Development Applications will be required to provide the stormwater detention basin regardless.</p> <p>It is considered the Variation Request does not compromise this Theme, particularly the variation will not obstruct the planning, design and provision of water infrastructure in new development.</p>

For further details on the assessment of this development application, please see the Delegated Report available for public viewing on the Toowoomba Regional Council Planning and Development Online website at: <http://www.tr.qld.gov.au/payments-self-service-laws/web-apps/pdonline/8892-planning-and-development-online>. When accessing Council's website please use the following Application Number: MCUI/2021/6070.