



ORDINARY MEETING OF COUNCIL

SUPPLEMENTARY AGENDA

13 SEPTEMBER 2017

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11. ORGANISATIONAL DEVELOPMENT AND PLANNING REPORTS

11.5 Application for Request to Change Development Approval ROL2017/0016

Date: 11 September 2017
Author: Trevor Boheim, Manager Planning and Environment
Responsible Officer: Dan McPherson, Executive Manager Organisational Development & Planning

Summary:

The application has been assessed in accordance with the requirements of the *Planning Act 2016* and is recommended for refusal. The basis for this recommendation is that the Condition does not require an electricity connection to be provided and is consistent with correspondence from Energex regarding electricity supply to rural lots dated 17 October 2016.

Officer's Recommendation:

THAT the application to change Development Approval ROL2016/0016 by the removal of Condition 3 be refused for the following reasons:

- 1. Condition 3 is a reasonable and relevant condition;**
- 2. Condition 3 does not require an electricity supply to be provided but instead requires evidence to be provided to Council, in the form of a Certificate of Supply, that an electricity supply can be made available; and**
- 3. The circumstances are consistent with those for which Energex has indicated a condition of the nature of Condition 3 should be applied, that is it is a boundary realignment and the lots are within 500m of the Energex network;**

And Further;

THAT the wording of Condition 3 instead be amended to read as follows:

Condition 3 – Certificate of Supply (Electricity)

Provide written evidence (e.g. Certificate of Supply) that an electricity supply has been provided or that it will be provided to each lot and that satisfactory arrangements have been made for the supply of electricity to each lot.

Report

1. Introduction

The application seeks a permissible change to development approval ROL2017/0016 for a property located at 3 Friis Road, Iredale. The approval is for a boundary realignment to allow a creek that intersects the two properties to be wholly contained within 1 allotment and also to remove the access handle from lot 1 to ensure the access driveway for lot 2 is wholly contained within the lot it serves. This report provides an assessment of the request to change

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application and considers all relevant matters in accordance with Section 81 (2) of the *Planning Act 2016*.

2. Background

A Development Permit for Reconfiguration of a Lot (Boundary Realignment) was given on 5 July 2017. A request for a negotiated decision notice was received by Council on 14 July 2017, seeking to remove Condition 3 (Certificate of Supply Electricity). Council decided by delegated authority not to agree to remove the condition and advised the applicant on 15 August 2017. The applicant now seeks that Council reconsider the representations and therefore a request to change the approval was received by the Council on 8 September 2017 again seeking to remove condition 3 (Certificate of Supply Electricity).

3. Report

3.1 Site and Approval

The land subject to the development approval comprises Lot 1 on RP32758 and Lot 2 on RP889166 at 3 Friis Road Iredale.



Figure 1 – Aerial image of subject land showing current boundaries.

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Figure 2 – Aerial image showing the detail of the current boundary and the access handle which is to be removed by the approved boundary realignment.



Figure 3: Aerial image showing the outcome of the approved boundary realignment.

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3.2 Request details

The applicant has requested that condition 3 be removed from the Development Permit ROL2017/0016. Condition 3 provides as follows:

Condition 3 – Certificate of Supply (Electricity)

Provide evidence (e.g. Certificate of Supply to Subdividers with agreement Number of Certificate of Supply) that an electricity supply has or will be provided to each lot.

The applicant requests that the condition be removed as it is minor boundary realignment and that Proposed Lot 1 will continue farm operations. The need to supply electricity to the lot is excessive, costly and considered to not be reasonable or relevant for the continued agricultural use of the land.

3.3 Legislative Requirements

Assessment of a request to change an application has been carried out in accordance with Section 81 (2) of the Planning Act 2016.

3.4 Assessment of Request to Change Development Approval

As part of the assessment of the original reconfiguration a lot application and in particular the inclusion of Condition 3, Council officers have had regard to correspondence from Energex dated 17 October 2016 regarding the supply of electricity to rural lots, a copy of which is provided in full as Attachment 1.

Energex has indicated in this correspondence that:

Council should include as a condition of any subdivision approval (whether boundary realignment or those resulting in the creation of new lots) that where the lot is located within 500m of the supply network, evidence of electricity be submitted to Council prior to the endorsement of the survey plan.

The reasons for this approach have been provided by Energex as follows:

Conditioning of electricity connection requirements for various subdivisions in the rural zones contained in the Gatton and Laidley Planning Schemes is vital in ensuring that costs of connection are not unfairly passed onto the new purchaser.

There have been situations where the purchaser has discovered that the cost of connecting to the network is prohibitive, and this was not costed into the purchase price.

In respect of this approval, Council officers took into consideration that an electricity supply is available along Friis Road, and that the surrounding area is characterised by multiple rural properties of a similar size to Lot 1 of which all have a dwelling. Council officers recognise that while Lot 1 is currently being used for agriculture; however, should it be sold it would be reasonable for a future purchaser to expect that this lot would be able to connect to a power supply.

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Representations from Anywhere Surveys provided on 8 September 2017 on behalf of the landholder indicate that:

As stated in the letter that you have received from me, and dated 4th September and expressed in previous correspondence, the condition that we seek to have removed is the absurd requirement that electrical supply be provided to the rural grazing lot comprising the vacant land that is the subject of the development approval noted above. That condition being condition 3 as outlined on the decision notice of development approval dated 5th July 2017.

I repeat the sentiments outlined in my previous correspondence in stating that we believe that the condition regarding this mains power availability/connection is unreasonable and potentially represents a substantial expense to the landowner to pay for infrastructure that would then not be utilized as there is no building or infrastructure that could be connected to a mains electricity supply and the expensive connection would therefore remain idle and unused.

The continued insistence by Council that mains power be connected represents a significant economic impediment to the finalization of what commenced as a simple boundary realignment of rural grazing blocks to remove an existing boundary from a location where any fencing of the boundary would pose a considerable challenge to a location where the new alignment will be clear of the steep creek banks that the existing boundary currently traverses. In that manner it was sought to minimise any necessary clearing as well as lowering the cost of erection of a fence on the property boundary.

The representations appear to be based on a concern that Condition 3 requires an actual electricity supply to be connected to Lot 1 potentially at considerable expense, whereas the condition only requires that evidence be provided to Council that an electricity supply can be made available to Lot 1. This is how the condition has been consistently interpreted by Council officers.

It is a concern that the wording of Condition 3 may be misinterpreted and so it would be appropriate to amend the wording to read as follows:

Condition 3 – Certificate of Supply (Electricity)

Provide written evidence (e.g. Certificate of Supply) that an electricity supply has been provided or that it will be provided to each lot and that satisfactory arrangements have been made for the supply of electricity to each lot.

A Certificate of Supply is a common document required by all Councils and investigations undertaken by Council officers with a firm that regularly obtains these certificates indicates the cost of obtaining a certificate for Lot 1 would be in the order of \$770. The Certificate of Supply does not provide an electrical supply but is confirmation that a 3 phase connection point is available within the road reserve and that all of Energex guidelines have been adhered too. The end user/future home owner will still need to make an application through their electricity retailer for an electrical service to the proposed dwelling. Council does not require electricity infrastructure to be put on the property, unless it is deemed necessary by Energex prior to issue of the Certificate of Supply.

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It would not be appropriate to remove Condition 3 for the reasons outlined in this report however the wording of the Condition should be changed to ensure that it is not interpreted as requiring an electricity supply to be provided.

4. Policy and Legal Implications

The requirement that where in rural areas the creation of new lots or changes to the boundaries of existing lots will require evidence to be provided of an electricity supply being available will need to be clearly articulated in the new planning scheme.

It is unlikely that a decision to refuse the application to change the approval will be appealed in the Planning and Environment Court.

5. Financial and Resource Implications

There will be no financial or resource implications unless the decision of Council is appealed in the Planning and Environment Court.

6. Delegations/Authorisations

There are no implications for delegations or authorisations arising from the recommendation provided in this report.

7. Communication and Engagement

The decision of Council will be formally communicated to the applicant in accordance with the requirements of the *Planning Act 20016*.

8. Conclusion

Condition 3 is a reasonable and relevant condition that was attached to the approval in accordance with the 17 October 2016 correspondence from Energex regarding electricity supply to rural lots. It appears that there is a misunderstanding that the condition requires an actual connection to be provided as it is stated in the representations that it

".... represents a substantial expense to the landowner to pay for infrastructure that would then not be utilized as there is no building or infrastructure that could be connected to a mains electricity supply and the expensive connection would therefore remain idle and unused."

The outcome sought by Condition 3 is that evidence be provided that an electricity supply is available in the form of a Certificate of Supply and this is how the condition has been consistently interpreted by Council officers.

9. Action/s

That the application to delete Condition 3 is refused and Condition 3 instead be amended in accordance with the recommendation provided.

Attachments

1 [View](#) Letter 5 Pages

17 October 2016

Trevor Boheim
Manager, Planning & Environment
Lockyer Valley Regional Council
PO Box 82
Gatton QLD 4343
Via email: mailbox@lvrc.qld.gov.au



positive energy

Dear Trevor,

RE: Electricity Supply – Rural Lots

Thank-you for your letter dated 6 September 2016 regarding electricity supply for rural lots in the Lockyer Valley Regional Council area. Energex is happy to provide advice on matters of electricity supply and we appreciate Council raising and discussing this issue with us.

While we understand that the development permit that was the subject of Energex's concerns cannot be altered, we agree that this as an opportunity to provide additional information to Council in an effort to better inform future development conditions relating to electricity supply.

Energex recommends aiming for an outcome which avoids creating lots with no electricity supply, where a potential purchaser would reasonably think that supply would be available.

Conditioning of electricity connection requirements for various subdivisions in the rural zones contained in the Gatton and Laidley Planning Schemes is vital in ensuring that costs of connection are not unfairly passed onto the new purchaser.

There have been situations where the purchaser has discovered that the cost of connecting to the network is prohibitive, and this was not costed into the purchase price.



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Rural Electricity Supply Conditioning - Supply

Rural subdivisions which involve the creation of a lot or lots without an existing connection, should be required to have a connection to the electricity supply network, where located within 500 metres of the electricity supply network (11kV or lower). This should include boundary realignments. A boundary realignment should not reduce the number of lots previously afforded a connection to the supply network, and would only require service where located within 500 metres of a mains supply (11kV or lower).

Where additional lots are created and located in excess of 500 metres from a mains supply, connection to an alternative source of supply is supported by Energex, as these lots are generally expected to be un-serviced by potential purchasers.

The zones that Energex believe could be considered for the 500m are in the table below.

Zone Name	Scheme	Typical 500m Rule Application
Rural Uplands	Laidley Planning Scheme & Gatton Planning Scheme	Many lots not within 500m of Energex network.
Rural Agricultural	Laidley Planning Scheme & Gatton Planning Scheme	Most if not all lots within 500m of Energex network
Rural General	Gatton Planning Scheme	Varies.
Rural Landscape	Laidley Planning Scheme	Varies.
Open Space and Recreation	Gatton Planning Scheme	Many lots not within 500m of Energex network, although given the land is State / Council owned, is not as likely to be a problem.

500m Rule Application

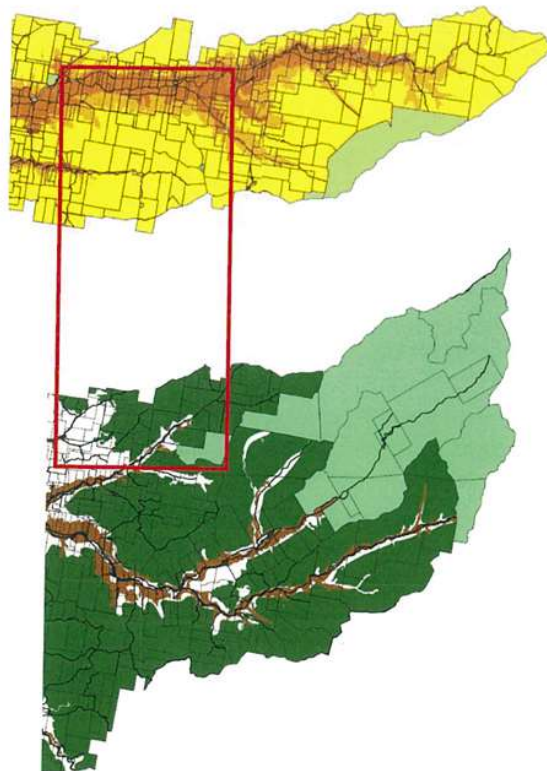
The Energex network in the Lockyer Valley follows the roads and rivers through the valleys. So as a general rule the electricity in rural areas is typically located in the Rural Agricultural Zone. The yellow line below is one of the southern most powerlines of the Energex network in the Council area, with the white arrow showing the 500m distance.



This page shows the Energex network in the southern part of Lockyer valley, with the following page showing the zoning of the area.



Aerial view of Energex network in Southern Lockyer Valley Regional Council



Map of Zoning of Southern Lockyer Valley Regional Council Area (Red box shows the area shown in the previous aerial).

When comparing the map above with the aerial map, it seems quite clear that the Rural Agricultural Zone for both the Gatton and Laidley Schemes seems to be always within 500m of the Energex network. Clearly, within the Rural Agricultural Zone it seems fair to require a certificate of supply, prior to sealing of the survey plan for any subdivision, whether a subdivision, or a realignment of boundaries.

Whereas for the Rural Uplands Zone for both schemes, lots are often further than 500m from the Energex network, and the land is predominantly heavily vegetated and very sparsely populated. In these areas, where there is obviously no urban services, an alternative to connection to the grid is obviously the most likely way of providing supply to the site.

Rural Electricity Supply Conditioning - Implementation

Council should include as a condition of any subdivision approval (whether boundary realignment or those resulting in the creation of new lots) that where the lot is located within 500m of the supply network, evidence of electricity be submitted to Council prior to the endorsement of the survey plan. Energex suggests this could be conditioned as follows:

Where the lot is located within 500m of the supply network the Applicant is to make provision of electricity supply to the proposed lots by;

- o *The State electricity grid through the State authorised supplier (Energex).*

Where connection to the state electricity grid is proposed, the applicant is to submit to Council prior to the endorsement of the survey plan, written evidence in the form of a Certificate of Supply from the State authorised supplier (Energex) indicating that satisfactory arrangements have been made for the supply of electricity to the proposed lots.

Note: Energex will require that any validation the above condition will be undertaken by an Energex Accredited Consultant (WCS47.1). Energex will not provide a Certificate for Electricity Supply for lots that do not require reticulated electricity supply as part of the DA conditions. Where it is a condition to make reticulated electricity supply available, a Certificate for Electricity Supply will be provided upon validation by an Energex Accredited Consultant (WCS47.1) to Energex Subdivision department (current process).

Should Council require any further information on these matters, please don't hesitate to contact me.

Yours faithfully



Chris Fogarty
Town Planning Manager
Property Services
Energex Limited