

5 May 2026

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Dear Dan

RL/127/2025: Development Application by Flynn Nune Development 6 Pty Ltd ATF Bahrs Scrub 2 Unit Trust at 31 Bahrs Scrub Road, Bahrs Scrub Information Request

We refer to your request for legal advice regarding Item 1 of Council's further information request dated 18 March 2026 (**Further Information Request**) and the relevance of Council's extra payment policy to the Development Application.

Background

1. You are assisting Flynn Nune Development 6 Pty Ltd ATF Bahrs Scrub 2 Unit Trust (**Applicant**) with a development application for a development permit for Reconfiguring a Lot (1 into 2 lots) (**Development Application**).
2. The site is located at 31 Bahrs Scrub Road, Bahrs Scrub (**Site**) and is within the Emerging Community zone of the *Logan Planning Scheme 2015* (**Planning Scheme**).
3. A Planning Report prepared by Consult Planning dated December 2025 was lodged in support of the Development Application.
4. The Development Application:
 - (a) requires impact assessment;
 - (b) has been made to facilitate future development;
 - (c) proposes development which is consistent with that of adjoining allotments in the area; and
 - (d) does not otherwise propose any intensification of use of the Site.
5. An information request was given by Council on 18 December 2025.
6. On 24 February 2026, Consult Planning on behalf of the Applicant provided a response to the information request.
7. On 18 March 2026, Council gave the Further Information Request.

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Further Information Request

Further Information Request

8. Relevant to your request for advice, the Further Information Request states:

“Council officers have reviewed the Information Response and have critical outstanding concerns. These are outlined below for your actioning:

1. Traffic

1.1. *Provide amended plans that show the following:*

1.1.1. *Proposed driveway locations for each of the proposed lots.*

Advice Note: if access is proposed directly via Bahrs Scrub Road, ensure there is sufficient separation provided from the Bahrs Scrub Road / New Horizon Avenue intersection.

1.1.2. *Land dedication along the frontage of Bahrs Scrub Road and Bahrs Scrub Road / New Horizon Avenue intersection consistent with Council’s concept plans for Bahrs Scrub Road. The land dedication area should be identified and dimensions should be included in the development plan.*

1.1.3. *Details of the external roadworks along the site’s frontage to Bahrs Scrub Road and New Horizon Avenue, including preliminary road cross-sections for the frontage works.*

Advice Note: The section of Bahrs Scrub Road and New Horizon Avenue along the site frontage is not formalised. Frontage works including footpaths will be required along both frontages as part of the proposed development.

Advice Note: The information response does not provide sufficient detail to enable Council officers to fully assess the application. To allow a full and proper assessment, the applicant is required to submit the above additional information and revised plans.

In addition, the applicant is proposing significant amendments to the land dedication requirements. Accordingly, for Council to consider and accept the proposed reduction in road reserve width, the applicant must demonstrate that all required road works along the site frontages can be satisfactorily accommodated within the reduced road reserve as per Council’s preliminary plans. This is to be demonstrated through the submission of preliminary engineering designs for the proposed intersection works and frontage roads, including details of any retaining walls and associated infrastructure.

...

In addition to the above, I provide the below response to your representations to Council’s Extra Payment Policy:

- *Bahrs Scrub Road and the intersection of Bahrs Scrub Road / New Horizon Avenue is not identified in Council’s LGIP;*
- *The Planning Act 2016 gives Council the head of power to impose extra payment conditions and does not require a specific PSP; however, reference is made to Part 3.13 – Infrastructure of the Strategic framework where specific outcome 3.13.2.1(1) states that:*

1. Infrastructure:

Is provided:

ii. *Outside the priority infrastructure area only where:*

A. *The infrastructure is provided as part of a development;*

B. *The infrastructure is not provided or funded by the local government.*

- *s.130(3) states that an extra payment condition is taken to comply with section 65(1) to the extent that the infrastructure is necessary, but not yet available, to service the development. Further. S.130(3) states that subsection 3 applies even if the infrastructure is also intended to service other development. The*

items requested by Council officers under our Extra Payment Policy meet this test.

Failure to provide the relevant works identified as part of Council's Extra Payment Policy constitutes grounds of refusal."

9. In summary, Council appears to have formed a view that the Development Application (amongst other things), does not include sufficient traffic and road engineering details, and does not propose sufficient land dedication requirements.

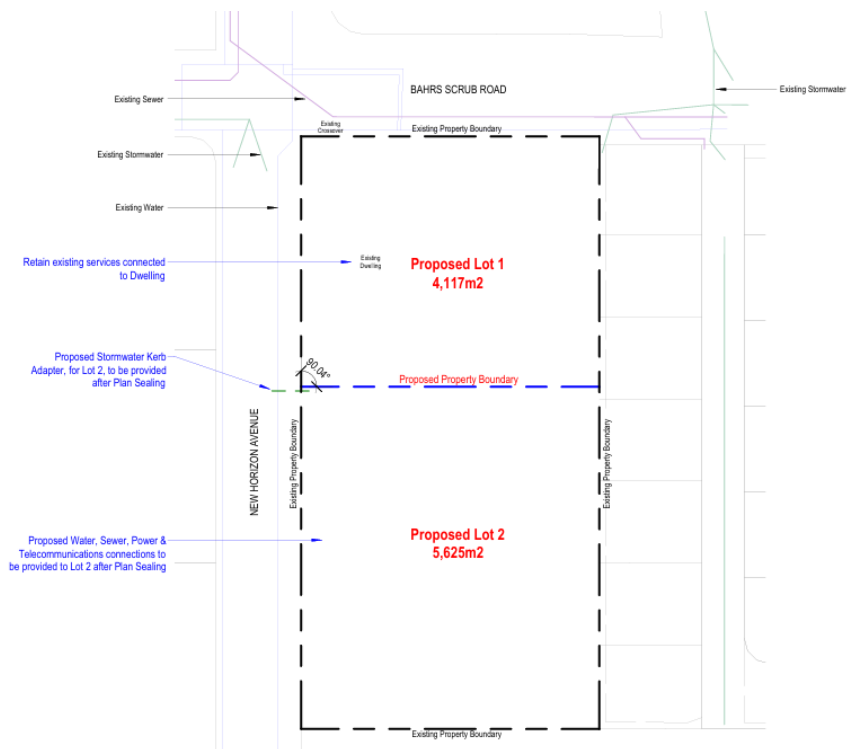
Legal framework relevant to Council's Further Information Request

10. The basis of Council's Further Information Request is that the Applicant must provide a land dedication and associated infrastructure to Council as part of this Development Application.
11. Trunk infrastructure, for a local government, means—
- (a) development infrastructure identified in a LGIP as trunk infrastructure; or
 - (b) development infrastructure that, because of a conversion application, becomes trunk infrastructure; or
 - (c) development infrastructure that is required to be provided under a condition under section 128(3).
12. The Further Information Request refers to section 130 of the *Planning Act 2016* (Qld) (**Planning Act**) as being the basis for the imposition of the extra payment condition, which states:
- "(1) A local government may impose a development condition (an extra payment condition) requiring the payment of extra trunk infrastructure costs if—*
- (a) the development—*
 - (i) will generate infrastructure demand of more than that required to service the type or scale of future development that the LGIP assumes; or*
 - (ii) will require new trunk infrastructure earlier than when identified in the LGIP; or*
 - (iii) is for premises completely or partly outside the PIA; and*
 - (b) the development would impose extra trunk infrastructure costs on the local government after taking into account either or both of the following—*
 - (i) levied charges for the development;*
 - (ii) trunk infrastructure provided, or to be provided, by the applicant under this part.*
- (2) However, an extra payment condition must not be imposed for a State infrastructure provider.*
- (3) An extra payment condition is taken to comply with section 65(1) to the extent the infrastructure is necessary, but not yet available, to service the development.*
- (4) Subsection (3) applies even if the infrastructure is also intended to service other development.*
- (5) The power to impose an extra payment condition is subject to sections 131 to 136."*
13. The mechanism by which Council can lawfully impose the delivery of trunk infrastructure is pursuant to section 128 of the Planning Act, which states:
- (1) If the LGIP identifies adequate trunk infrastructure to service the subject premises, the local government may impose a development condition requiring either or both of the following to be provided at a stated time—*
- (a) the identified infrastructure;*
 - (b) different trunk infrastructure delivering the same desired standard of service.*

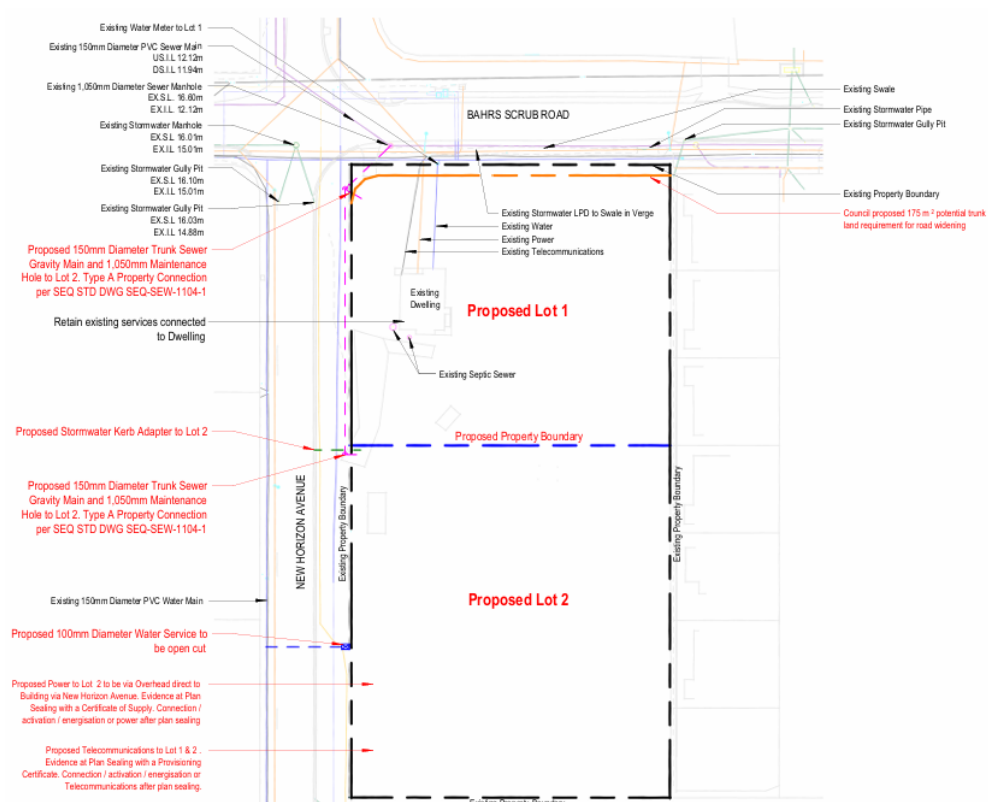
- (2) *If the LGIP does not identify adequate trunk infrastructure to service the subject premises, the local government may impose a development condition requiring development infrastructure necessary to service the premises to be provided at a stated time.*
- (3) *However, a local government may impose a condition under subsection (2) only if the development infrastructure services development consistent with the assumptions in the LGIP about type, scale, location or timing of development.*
- (4) *A necessary infrastructure condition is taken to comply with section 65(1) if—*
- (a) generally, the infrastructure required is the most efficient and cost-effective solution for servicing other premises in the general area of the subject premises; and*
 - (b) for a necessary infrastructure condition that requires the provision of the infrastructure located on the subject premises—*
 - (i) the provision is not an unreasonable imposition on the development; or*
 - (ii) the provision is not an unreasonable imposition on the use of the subject premises as a consequence of the development.*
- (5) *To remove any doubt, it is declared that a necessary infrastructure condition may be imposed for infrastructure even if the infrastructure will service premises other than the subject premises.*

The Development Application Proposal

14. The Development Application proposes to reconfigure the Site from 1 lot into 2, as shown in the proposed plan of development below. Relevantly, the Development Application:
- (a) does not propose a new use of premises;
 - (b) does not involve the construction of any new buildings;
 - (c) does not result in the intensification of any use of the Site; and
 - (d) includes the provision of necessary infrastructure to develop the Proposed Lot 2 as well as other southern allotments of land should they be developed in the future.
15. The Site is located outside of Council's priority infrastructure area and has the following characteristics:
- (a) frontage of 70.077m to Bahrs Scrub Road to the north;
 - (b) frontage of 139.05m to New Horizon Avenue to the west;
 - (c) the Site is currently improved by a dwelling house located towards the north western corner of the site;
 - (d) an existing access driveway from Bahrs Scrub Road;
 - (e) there is a small outbuilding located centrally to the site;
 - (f) there is an existing sewer main along the Bahrs Scrub Road frontage of the Site;
 - (g) there are existing stormwater mains located adjacent to the north eastern and north western corners of the Site, in Bahrs Scrub Road; and
 - (h) water mains are located along the Bahrs Scrub Road and New Horizon Avenue frontages of the Site.

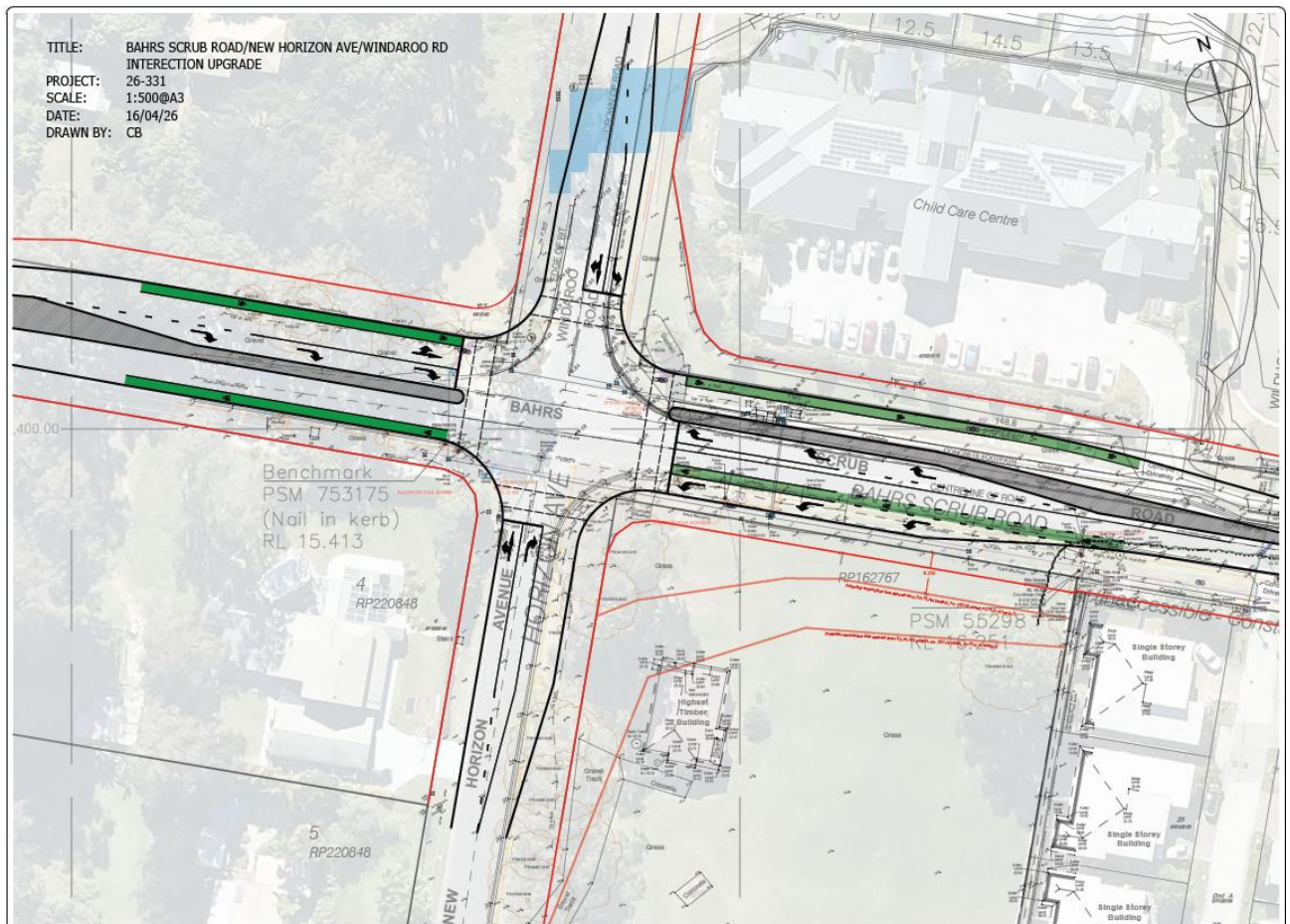


Extract from original plans of development



Extract from updated plans of development

- Further, as part of the Development Application, a peer review of Council's future intersection upgrade has been conducted which confirms a land dedication of a 175m² can be accommodated. See below.



Peer review functional layout of Council Roadworks Plan

Correct approach to assessing the Development Application

17. In our view, the Development Application ought to be assessed based on the merits of the proposed development and having regard to the supporting material. The proposed development is for the reconfiguration of a lot and it follows the proposed development could be adequately serviced by the existing infrastructure arrangements, particularly where it has been demonstrated the Development Application:
 - (a) does not propose a new use of premises;
 - (b) does not involve the construction of any new buildings;
 - (c) does not result in the intensification of any use of the Site; and
 - (d) provides adequate infrastructure to service future development.
18. In any event, the Applicant has prepared a thoughtful development application which contemplates further intensification and development by including the provision of the necessary infrastructure to address potential demand.

Land Dedication

19. To the extent Council contends the concept plans for Bahrs Scrub Road are appropriate, the Applicant has obtained expert traffic advice which says the plans:
 - (a) are nearly 10 years old and have been prepared based on outdated traffic generation and demand assumptions;
 - (b) require outdated design concepts;
 - (c) propose an excessive amount of land to be dedicated to Council; and
 - (d) have never been formally adopted by Council.
20. Rather, the traffic engineering advice is that a land dedication of 175m² will adequately accommodate any future intersection upgrade.

21. In our view, any dedication of land ought to be treated the same as the development which has been carried out at 32 Bahrs Scrub Road (opposite the Site). See below extract from the amended development conditions with respect to MCUI/27/2018/1/A.

Land dedication – Specifically as road reserve (Frontage)

- 6.2. Dedicate to the state the following land as road reserve:
- 6.2.1. Along the full frontage of the site to Bahrs Scrub Road generally in accordance with *Project No. KJP911, prepared by K.J.Packer, Dated ~~13/2/2019~~ 03/10/2019*, or as shown on the approved plan(s) of development, whichever is greater.
- 6.3. The development must be located outside any planned road widening to protect existing and planned infrastructure networks in accordance with Councils Planning Scheme Policy Part 9 Development codes, Table 9.4.3.3.1 – Infrastructure code accepted development and assessable development. *This condition is imposed under section 128 of the Planning Act 2016.*

Extract from amended development conditions for MCUI/27/2018/1/A.

22. In our view:
- (a) where the Applicant has provided material that supports a land dedication of 175m² will adequately accommodate the future intersection upgrade, it follows that only 175m² of land ought to be conditioned to be dedicated to Council;
 - (b) the inclusion of trunk infrastructure ought to be conditioned pursuant to section 128(2) of the Planning Act and offset against any infrastructure charges; and
 - (c) in the alternative, a land dedication is not imposed because it is not reasonably required now.

Extra Payments Policy

23. In our view, the extra payment policy provisions of the Act are not relevant here.
24. For section 130 of the Planning Act to be engaged on these facts, the following elements would need to have been satisfied for Council to be able to impose a development condition requiring the payment of extra trunk infrastructure costs:
- (a) development is for premises completely or partly outside the PIA;
 - (b) the development would impose extra trunk infrastructure costs on the local government after taking into account either, or both:
 - (i) levied charges for the development; or
 - (ii) trunk infrastructure provided, or to be provided, by the applicant under this part.
25. In our view:
- (a) the proposed development is completely outside the PIA;
 - (b) the original proposed development would not have imposed any extra costs on Council because trunk infrastructure was not proposed nor was it required to be constructed to facilitate the development; and
 - (c) any reliance on section 130 of the Planning Act to compel the Applicant to include the trunk infrastructure into the Development Application would likely be unlawful.
26. Relevantly, Council cannot decide to refuse the Development Application based on the extent of the land dedication or by having regard to Council's Extra Payment Policy. These are matters for conditions and not matters for which an assessment manager can have regard to when assessing the merits of a development application.¹

Conclusion

27. In conclusion:
- (a) the orthodox approach should be to impose a condition that the 175m² of frontage is dedicated to Council as trunk infrastructure and offset against the infrastructure charges, consistent with the development at 32 Bahrs Scrub Road (opposite the Site);

¹ *Planning Act 2016* (Qld) section 60

- (b) alternatively, a land dedication is not required as part of the Development Application because it is not reasonably required now; and
- (c) the extra payment policy provisions are not relevant to this Development Application as there is no extra demand being placed on the trunk infrastructure system which would cause further trunk infrastructure costs to be incurred by Council.

If you have any questions or require further information, please do not hesitate to contact Rayne Nelms +61 7 3228 0483 or rneelms@millssoakley.com.au.

Yours faithfully



RAYNE NELMS
PARTNER