



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-012
Appellant:	Desley Jennifer Dunn and Mitchell Gregory Fryk
Respondent/Assessment manager:	Gladstone Regional Council
Site address:	286 Rocky Crossing Road, Round Hill Qld 4677 and described as Lot 28 on RP619598 – the subject site

Appeal

Appeal against refusal of an extension application for a development permit for material change of use for a class 1 building (dwelling house) under Section 229 of the *Planning Act 2016* (PA), Schedule 1, Section 2(e), Table 1, Item 3(a).

Date and time of hearing:	Site visit – 1pm Hearing – approx. 2pm
Place of hearing:	The subject site (Site visit) Agnes Rural Transaction Centre, 71 Springs Road, Agnes Water (Hearing)
Tribunal:	Kristy Gilvear—Chair Mark Westaway—Member
Present:	Desley Dunn and Mitchell Fryk—Appellant Helen Robertson, Manager Development Assessment and Tegan McDonald, Principal Planning Lead— Respondent/Council

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) **replaces** Council's refusal of the extension request for Development Permit for Material Change of Use for a Dwelling House on land located at 286 Rocky Crossing Road, Round Hill (Lot 28 on RP619598) (Council Ref: DA/28/2017) with a decision to **approve** the request for extension to currency period for an additional two (2) years from the date of this Tribunal decision, taking the currency period for the approval to **9 December 2026**.

Background

The subject site

1. The subject site is located at 286 Rocky Crossing Road, Round Hill, and is described as Lot 28 on RP619598.
2. The subject site is a rectangular shaped allotment, with a frontage of 222m to Rocky Crossing Road.
3. The subject site has an area of 16.3ha, and slopes significantly from north to south, with the elevation at the Rocky Crossing Road frontage being approximately 25m AHD, rising to 100m AHD in its south-western portion. A gully bisects the site.
4. The subject site is mapped as containing Category B regulated vegetation and is partially affected by a Wetland Protection Area Trigger Area in its south-eastern portion.

The proposed development

5. A single level, 15m x 16m dwelling house accommodating four (4) bedrooms, an ensuite and bathroom/laundry, dining, living and kitchen is proposed to be constructed on a platform at approximately 90m AHD, approximately 465m from the road frontage of the site in the southern portion.
6. Access to the proposed dwelling is to be via a formed vehicle track.
7. The proposed dwelling house would be served by on-site effluent disposal and onsite water storage.
8. The proposed development is illustrated on Drawing No Z16309-A dated 6 October 2016, Drawing No A02 (Floor Plan) dated 23 November 2016 and Drawing No A03 (Elevations) dated 23 November 2016.

Application history and assessment

9. Under cover of letter dated 9 October 2016, a request for assessment of an application for a Dwelling House under the Superseded Planning Scheme for Miriam Vale Shire 2009 was lodged with Gladstone Regional Council ('Council').
10. By letter dated 24 October 2016, Council confirmed approval of the request for consideration of the application for a Dwelling House under the Superseded Planning Scheme for Miriam Vale Shire 2009 (Council Ref: SPS/24/2016).
11. Under cover of letter dated 24 April 2017, an application for a Dwelling House under the Superseded Planning Scheme for Miriam Vale Shire 2009 was lodged with Council.
12. A Development Permit for Material Change of Use permitting construction of a dwelling house ('the Approval') on the subject site was granted by Gladstone Regional Council under the provisions of the Superseded Planning Scheme for Miriam Vale Shire 2009 on 5 January 2018.
13. The Approval had a stated currency period of four (4) years.
14. On 8 July 2020, the State issued a Declaration under section 275R of the *Planning Act 2016* ('the Act'), extending all currency periods for approvals across the State by six (6) months.
15. On 1 September 2021, the State issued a further Declaration under section 275R of the Act extending all currency periods for approvals across the State by six (6) months.

16. On 29 April 2022, the State issued another Declaration under section 275R of the Act extending currency periods for approvals across the State by twelve (12) months.
17. The Approval had a total currency period (original and with additional Declaration periods totalling two (2) years) of six (6) years, ending 5 January 2024.
18. The previous Applicant / Landowner for the subject site on 1 June 2023 requested a four (4) year extension to the currency period.
19. Council refused this request and communicated the refusal by letter dated 26 June 2023.
20. The grounds for refusal of the request contained in Council's decision notice dated 26 June 2023 (DA/28/2017) were:
 - *The approved development is deemed inconsistent with the current Planning Scheme and undermines the intent of the Industry Investigation Zone which is to identify and protect land that may be suitable for industrial activities in the future; and*
 - *There has been no record of relevant works which signify an attempt to substantially act on the development approval either through the Applicant obtaining the required Building and / or Plumbing Approvals.*
21. The Appellants purchased the land.
22. The Appellants sought to engage with Council regarding its refusal of the currency period.
23. By letter dated 2 January 2023 (lodged with Council on by email on 2 January 2024), the Appellants requested an extension to the currency period by at least 18 months to allow them to complete works required under the Approval.
24. In the Appellants' request for extension to the currency period, dated 2 January 2023 and lodged with Council on 2 January 2024, the Appellants advised Council that:
 - They had entered into the contract to purchase the property on 28 April 2023, and settled on the property on 16 June 2023;
 - After signing the contract, they had engaged a builder to advance construction of the dwelling house;
 - Following settlement, they arranged preparation of technical documents required to advance to construction, including:
 - Soil reporting
 - Waste water reporting
 - Landslide risk assessment report
 - Detail survey of the property
 - Bushfire dwelling assessment report;
 - Full architectural drawings for the proposed dwelling were received on 22 December 2023;
 - Complete construction had not been possible to achieve between settlement and the expiry date for DA/28/2017.
25. By letter dated 27 February 2024, Council confirmed its refusal of the requested extension.
26. The grounds for refusal of the request contained in Council's decision notice dated 27 February 2024 (DA/28/2017) were:

- *The approved development is deemed inconsistent with the current Planning Scheme and undermines the intent of the Industry Investigation Zone which is to identify and protect land that may be suitable for industrial activities in the future; and*
- *There has been no record of relevant works which signify an attempt to substantially act on the development approval either through the Applicant obtaining the required Building and / or Plumbing Approvals.*

27. On 26 March 2024, the Appellants filed an Appeal with the Tribunal.

Nearby developments

28. Land to the north-east of the subject site is used for National Park purposes (Lot 153 on NPW866).
29. Land east and south of the site is a large freehold property, extensively vegetated (Lot 20 on FD991).
30. Land to the immediate west of the subject site, described as Lot 29 on RP619598, is extensively vegetated, has similar topography to the subject site, and appears to have a number of structures in its central portion, accessed via driveway off Rocky Crossing Road.
31. Further west, 236 Rocky Crossing Road (Lot 30 on RP619598), is developed and utilised as a concrete batching facility, operating as Boral Concrete.
32. 220 Rocky Crossing Road (Lot 31 on RP619598), is developed for a residential dwelling and ancillary infrastructure and outbuildings. This land use appears to have initially been approved in 2016, but later changed in 2020 (DA/249/2016).
33. 216 Rocky Crossing Road (Lot 32 on RP619598) appears to be improved with a dwelling house and outbuildings.
34. Directly north of the subject land, across the road at 263 Rocky Crossing Road (Lot 20 on SP303304) there appears to be developed a large residential dwelling, outbuildings and a smaller secondary dwelling / informal residence. This site appears to be planted with trees and improved with a dam in its central portion.
35. To the north-east, 231 Rocky Crossing Road (Lot 21 on SP303304) is utilised for warehouse / storage purposes.
36. Lot 26 on RP619597, to the north and east of the subject site, appears vacant, improved by a water storage in its far northern extent, and extensively vegetated.
37. Further north-east, 181 Rocky Crossing Road (Lot 25 on RP619597) appears to be utilised for residential and related purposes, particularly in its southern portion adjacent to the road reserve.

Planning scheme provisions

Superseded Planning Scheme for Miriam Vale Shire

38. The subject site was included in the General Industrial Zone in its northern extent, and the Rural Zone in its southern extent.
39. The subject site was impacted by Bushfire Hazard, Good Quality Agricultural Land and Hillslopes Overlays.

40. Development for a Dwelling House on the Rural Zoned portion of the site was designated 'Self Assessable'; code assessment was required in this instance by virtue of non-compliance with Bushfire Hazard and Hillslopes Overlay codes.

Gladstone Regional Council Planning Scheme

41. This Scheme was adopted on 6 October 2015.
42. The current version of the Scheme – Version 2 – was amended and effective from 3 July 2017.
43. Section 1.5 of the Scheme confirms that:

1.5 Hierarchy of assessment benchmarks

- (1) Where there is inconsistency between provisions in the planning scheme, the following rules apply:*

- (a) the strategic framework prevails over all other components to the extent of the inconsistency for impact assessment*
- (b) relevant codes as specified in schedules 6 and 10 of the Regulation prevail over all other components to the extent of the inconsistency*
- (c) overlays prevail over all other components (other than the matters mentioned in (a) and (b)) to the extent of the inconsistency*
- (d) local plan codes prevail over zone codes, use codes and other development codes to the extent of the inconsistency*
- (e) zone codes prevail over use codes and other development codes to the extent of the inconsistency*
- (f) provisions of Part 10 may override any of the above.*

44. The site is not clearly designated for any particular purpose on Strategic Framework Map – Theme: Community Living and Building it Better – Our Urban Places.
45. The site appears to be included in a Strategic Environmental Corridor, and Area of Ecological Significance (High) on the Strategic Plan – Region – Theme: Our Environment and Heritage Map included within the Strategic Plan in Part 3 of the Scheme.
46. Agnes Water (broadly speaking) is designated an 'Urban Centre' on the Strategic Framework – Theme: Our Rural and Coastal Townships and Places map within the Strategic Plan in Part 3 of the Scheme.
47. Agnes Water is described as follows in Section 3.6.2 of the Strategic Framework within the Scheme:

Agnes Water

Agnes Water is one of the southern urban anchors of the Gladstone Region located in a stunning natural setting. It is a balanced and functional urban community with parks and recreational areas, community facilities, and local economic and employment opportunities.

There is a clearly identified urban footprint identified in the Emerging community zone which can adequately accommodate future population growth in new neighbourhoods for the life of the planning scheme and beyond.

Should population growth exceed the supply of residential land within the urban footprint of Agnes Water, there is the potential to plan for additional residential land and a future local centre in the locality near the intersection of Round Hill Road and the future Seventeen Seventy connector road. Interim land uses must not compromise the future role of this strategic location. A private high school to be located on Round Hill Road will serve the immediate communities of Agnes Water, Seventeen Seventy and surrounding smaller townships.

A structure plan has been prepared (Schedule 2) that identifies key connections, neighbourhood structure, centres detailed design and other elements in which to base the planning of new neighbourhoods for Agnes Water.

48. The Agnes Water & Seventeen Seventy Structure Plan, dated 30 January 2014, includes all of the subject site within the Structure Plan Boundary and includes the front (northern) portion of the subject site in a Future Industry designation. The rear (southern portion) of the site is not designated for any particular form of future development.
49. Within this Scheme the subject site is included within the Industry Investigation Area Zone.
50. Section 4.2.15 of the Scheme confirms the purpose of the Industry Investigation Area Zone as follows:

4.2.15.2 Purpose

- (1) *The purpose of the industry investigation zone code is to identify and protect land that may be suitable for industrial activities in the future. The immediate development of this land is generally inappropriate owing to one or more constraints. These constraints may include a lack of trunk infrastructure necessary to service industrial development and also resolving hydraulic issues in the locality. However, some low scale land uses may be appropriate where onsite services are provided.*

...

- (2) *The purpose of the zone will be achieved through the following overall outcomes:*
 - (a) *Land that is suitable for industrial purposes is only developed where suitable trunk or onsite infrastructure is provided to service the development.*
 - (b) *Where development proposes onsite infrastructure, land uses are of a scale and nature that do not compromise the future development potential of the area for industrial purposes.*
 - (c) *Land that is suitable for future industrial purposes is located to minimise impacts on non-industrial land.*

51. The subject site is mapped as being impacted by Biodiversity, Bushfire Hazard, Building Heights and Frontages, Scenic Amenity and Steep Land Overlays / designations.
52. Dwelling House is not a listed use within the Table 5.5.14-Industry investigation zone of the Scheme. As a result, development for a Dwelling House on the site requires an 'impact assessable' development application to be lodged with and approved by Council pursuant to this Scheme.

Jurisdiction

53. The Tribunal's jurisdiction to hear and determine this Appeal is confirmed within section 229 of the Act, as referenced within schedule 1, section 2(e) and table 1, Item 3(a).

Decision framework

54. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
55. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA)
56. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
57. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

58. The material considered in arriving at this decision was:
- (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 26 March 2024.
 - (b) Application submission prepared by Zone Planning and submitted via email to Gladstone Regional Council on 24 April 2017.
 - (c) Acknowledgement Notice issued by Gladstone Regional Council in respect of Development Application DA/28/2017 for Material Change of Use – Code – Dwelling House under Superseded Planning Scheme for Miriam Vale Shire 2009 ('the Application') on land at Rocky Crossing Road, Round Hill (Lot 28 on RP619598) ('the site') dated 26 April 2017.
 - (d) Information request issued by Gladstone Regional Council in respect of the Application dated 8 May 2017.
 - (e) Information request response reminder issued by Gladstone Regional Council in respect of the Application dated 11 October 2017.
 - (f) Response to Information Request submitted by Zone Planning Group on behalf of the Applicant by email on 1 November 2017.
 - (g) Officer Report to Council regarding the Application dated 20 November 2017.
 - (h) Decision Notice issued by Gladstone Regional Council dated 21 November 2017 confirming Approval subject to conditions for the Application.
 - (i) Adopted Infrastructure Charge Notice issued by Gladstone Regional Council regarding the Application dated 22 November 2017.
 - (j) Confirmation of suspension of Applicant Appeal Period in order to make representations issued by Gladstone Regional Council in respect of the Application dated 29 November 2017.
 - (k) Written representations regarding a decision notice issued by Zone Planning Group to Gladstone Regional Council in respect of the Application dated 11 December 2017.

- (l) Acknowledgement of Representations lodged issued by Gladstone Regional Council in respect of the Application dated 14 December 2017.
- (m) Negotiated Decision Notice dated 5 January 2018 issued by Gladstone Regional Council.
- (n) Request to Extend Currency Period submission lodged by Zone Planning Group, dated 1 June 2023, including cover email to Council of the same date.
- (o) Officer Report regarding Request for Extension of Currency Period for a Development Application 28/2017 for Material Change of Use for premises for Dwelling House under Superseded Planning Scheme for Miriam Vale Shire 2009 on Land at Lot 28 on RP619598, Rocky Crossing Road, Round Hill (Undated) – Understood to be in respect of Request for Extension submitted by the original Applicant c/- Zone Planning Group on 1 June 2023.
- (p) Email to Zone Planning from Abena Dankwa of Gladstone Regional Council attaching Decision on Request for Extension of Currency Period for DA/28/2017 dated 26 June 2023.
- (q) Decision on Request for Extension of Currency Period for DA/28/2017 issued by Gladstone Regional Council to Mr J Hargreaves on 26 June 2023.
- (r) Email to Gladstone Regional Council from Desley Dunn dated 12 July 2023.
- (s) Email to Desley Dunn from Abena Dankwa of Gladstone Regional Council dated 13 July 2023.
- (t) Letter sent by email to Gladstone City [sic] Council by Desley Dunn and Mitchell Fryk requesting an Extension to the Currency Period for DA/28/2017 for a period of 18 months and including grounds for the request dated 2 January 2023. [Typographical error - actually 2 January 2024]
- (u) Email to Desley Dunn from Jodie Clow of Gladstone Regional Council dated 3 January 2024.
- (v) Decision on Request for Extension of Currency Period for DA/28/2017 issued by Gladstone Regional Council to Ms DJ Dunn and Mr MG Fryk on 27 February 2024.
- (w) Gladstone Regional Council Planning Scheme – Our Place Our Plan, Version 2, effective on and from 3 July 2017.

Findings of fact

59. The tribunal makes the following findings of fact:

- (a) A Development Permit for Material Change of Use permitting construction of a dwelling house on the subject site was granted by Gladstone Regional Council under the provisions of the Superseded Planning Scheme for Miriam Vale Shire 2009 on 5 January 2018 (DA/28/2017).
- (b) The Approval had a stated currency period of four (4) years.
- (c) On 8 July 2020, the State issued a Declaration under section 275R of the Act, extending all currency periods for approvals across the State by six (6) months.
- (d) On 1 September 2021, the State issued a further Declaration under section 275R of the Act extending all currency periods for approvals across the State by six (6) months.

- (e) On 29 April 2022, the State issued another Declaration under section 275R of the Act extending currency periods for approvals across the State by twelve (12) months.
- (f) The Approval had a total currency period (original and with additional Declaration periods totalling two (2) years) of six (6) years, ending 5 January 2024.
- (g) A request for extension to currency period was submitted with Gladstone Regional Council under cover of letter dated 1 June 2023. This request sought an extension of four (4) years to the currency period.
- (h) An Officers Report to Council, authored by a Planning Officer and signed by the Principal Planning Lead (undated), completes an assessment of the extension requested, and completes an assessment pursuant to Section 87 of the Act.

The 'Summary' within the Officers Report advises that:

The request for an extension to the currency period for the approved Dwelling House would lead to an undermining of the purpose of the Industry Investigation Zone under the current Planning Scheme.

- (i) By letter dated 26 June 2023, Gladstone Regional Council refused a request for extension of currency period for DA/28/2017.
- (j) The Appellant sought to re-engage with Council and submitted a second request for extension to currency period with Council on 2 January 2024 for a period of 18 months.
- (k) No Officers Report regarding this further request for extension to currency period, supported by additional information and commentary regarding steps taken to advance the Approval, was prepared (per advice from Council during the conduct of Tribunal proceedings).
- (l) By letter dated 27 February 2024, Gladstone Regional Council refused a request for extension of currency period for DA/28/2017, on the following grounds:
 - *The approved development is deemed inconsistent with the current Planning Scheme and undermines the intent of the Industry Investigation Zone which is to identify and protect land that may be suitable for industrial activities in the future; and*
 - *There has been no record of relevant works which signify an attempt to substantially act on the development approval either through the Applicant obtaining the required Building and / or Plumbing Approvals.*

Reasons for the decision

60. Requests for extension to currency period for approvals granted or transitioned under the *Planning Act 2016* are assessed in accordance with Section 87 of that Act.

61. Section 87(1) of the Act provides:

'When assessing an extension application, the assessment manager may consider any matter that the assessment manager considers relevant, even if the matter was not relevant to assessing the development application.'

Relevant matters

62. The Tribunal takes into account the following relevant matters in its determination:

Change to Legislation and Standard Currency Periods

- (a) The Tribunal notes that the Application was assessed and determined pursuant to the *Sustainable Planning Act 2009*, which was repealed and replaced with the *Planning Act 2016* shortly after submission of the Application for Development Permit for Material Change of Use pursuant to a superseded planning scheme having been lodged with Council on 24 April 2017.
- (b) The applicant was required under section 99 of the *Sustainable Planning Act 2009* to lodge the application assessable against the superseded planning scheme within six (6) months of Council's decision of 24 September 2016 allowing consideration against the superseded planning scheme. The application was lodged on the last day of the six month period.
- (c) Development approvals for material change of use issued pursuant to the *Sustainable Planning Act 2009* had a 'standard' currency period (or relevant period) of four (4) years.
- (d) The *Planning Act 2016* came into effect on 3 July 2017.
- (e) Development approvals for material change of use issued pursuant to the *Planning Act 2016* have a 'standard' currency period of six (6) years.
- (f) Were the Application to have been lodged under the *Planning Act 2016*, it would have benefited from a six (6) year currency period.
- (g) During the years of 2020, 2021, 2022 and 2023, construction activity and capacity across the nation were impacted by the Covid 19 event. This impacted and continues to impact delivery timeframes and capacity within the construction and allied fields workforce.
- (h) The Covid 19 Declarations extending currency periods issued by the State Government in 2020, 2021 and 2022 provided a total two (2) year automatic extension to approvals in recognition of Covid 19 impacts on development and delivery timeframes for same. Were the original approval to have been sought two to three months later than it was, it would have benefited from a primary six (6) year currency period, extended automatically to eight (8) years by virtue of the Covid 19 extension declarations.

Covid 19 and Impacts on Construction and Development Delivery Timeframes

- (i) The State recognised the impact of Covid 19 on the delivery of development through 2020, 2021 and 2022, confirmed by extensions granted pursuant to Section 275R of the *Planning Act 2016*.
- (j) These impacts are a relevant matter in the assessment and determination of requests for extension to currency periods for development large and small throughout the State.

Strategic Framework Mapping

- (k) Whilst the site is zoned Industry Investigation within the current Gladstone Regional Council Planning Scheme, only part of the site is mapped as being subject to the Future Industry designation on the Agnes Water & Seventeen Seventy Structure Plan, referenced and given force and effect within the Strategic Framework in Part 3 of the Scheme.

- (l) The Dwelling House as previously approved, and for which this extension is requested, is within the portion of the site not mapped as being subject to the Future Industry designation on this Structure Plan.
63. Following the assessment of material available to Council in its original determination, and taking account of matters outlined above, the Tribunal in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) **replaces** Council's refusal of the extension request for Development Permit for Material Change of Use for a Dwelling House on land located at 286 Rocky Crossing Road, Round Hill (Lot 28 on RP619598) (Council Ref: DA/28/2017) with a decision to **approve** request for extension to currency period for an additional two (2) years from the date of this Tribunal decision, taking the currency period for the approval to **9 December 2026.**

Kristy Lee Gilvear
Development Tribunal Chair

Date: 9 December 2024

Appeal rights

Schedule 1, Table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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