



# TORRES SHIRE COUNCIL

*To lead, provide & facilitate a sustainable,  
safe & culturally vibrant community*

P O Box 171  
THURSDAY ISLAND 4875

Telephone (07) 4069 1336  
Facsimile (07) 4069 1845

Our Reference: IDAS 19/01  
Your Reference:

21 April 2021

Torres Shire Council  
PO Box 171  
THURSDAY ISLAND QLD 4875

Dear Madam

## **Decision Notice (Minor Change)** *Given under section 83 of the Planning Act 2016*

With reference to the abovementioned Development Application, please find attached the relevant Decision Notice, which was determined by Torres Shire Council at the Council Meeting dated 20 April 2021.

Details of the decision are as follows:

### **APPLICATION DETAILS**

Application No: IDAS 19/01  
Street Address: Wees Street, Horn Island  
Real Property Description: Lot 803 SP288915 & Lot 804 SP292840  
Planning Scheme: *Torres Shire Planning Scheme 2007 (Version Amendment 1 – 19 January 2016)*

### **DECISION DETAILS**

The original Decision Date was 21 May 2019 with the original Decision Notice dated 7 June 2019.

Council on 20 April 2021, decided to issue the following type of approval:

Minor Change to the Development Permit for Reconfiguration of a Lot – 2 lots into 26 lots and balance land

### **CURRENCY PERIOD OF APPROVAL**

The original currency period for this development approval applies.

### **ASSESSMENT MANAGER CONDITIONS**

This approval is subject to the conditions in Attachment 1.

### **REFERRAL AGENCIES**

Not applicable.

#### **FURTHER DEVELOPMENT PERMITS REQUIRED**

Please be advised that the following development permits are to be obtained before the development can be carried out:

1. Development Permit for Operational Works

#### **PROPERLY MADE SUBMISSIONS**

Not applicable.

#### **REASONS FOR THE DECISION**

1. The proposed changes reflect refinement of the bushfire hazard management measures and provide flexibility in vegetation management and replacement planting.

#### **OTHER REQUIREMENTS UNDER SECTION 43 OF THE *PLANNING REGULATION 2017***

Not applicable

#### **APPROVED PLANS AND SPECIFICATIONS**

The approved plans are attached to this Decision Notice.

#### **RIGHTS OF APPEAL**

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

For further information, please contact Torres Shire Council on (07) 4069 1336.

Yours faithfully



Dalassa Yorkston  
Chief Executive Officer

- Enc. **Attachment 1** – Conditions imposed by the Assessment Manager  
**Attachment 2** – Approved Plans  
**Attachment 3** – Notice about a Decision Notice  
**Attachment 4** – Extract of Appeal Provisions (Chapter 6, Part 1 and Schedule 1 of the *Planning Act 2016*).

**ATTACHMENT 1 – CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER**

<b>PLANNING</b>		<b>TIMING FOR COMPLIANCE</b>	
<p>1. The Plans of Development, as noted below are approved subject to any alterations. The applicant/owner must at all times during development carry out the development and construction of any building or operational works generally in accordance with:</p> <p>(a). The plans, specifications, facts and circumstances as set out in the application submitted to Council, as amended;</p> <p>(b) To ensure that the development complies in all respects with the following conditions of approval and the requirements of Council's Planning Scheme; and</p> <p>(c) Any alterations found necessary by Council at the time of examination of Engineering Plans or during construction of the development because of particular engineering requirements.</p> <p>Except for any variation required to comply with these conditions of approval.</p>		<p>Prior to commencement of the use and to be maintained at all times.</p>	
<b>Approved Plans</b>			
<p>2. The approved Plans and reports of Development are as follows: <del>and have been amended in red by Council as part of the decision:</del></p>		<p>Prior to any site works commencing, while the development occurs and to be maintained at all times.</p>	
<b>Plan/ report Description</b>	<b>Reference</b>	<b>Date</b>	
<del>Lot Plan prepared by RPS</del>	PR109503-75 C	29/11/2018	
<u>Horn Island Wees-Rattler Street</u>	<u>PR1488464-2 B</u>	<u>24/03/2021</u>	
<b>Environmental</b>			
<p>3. Machinery and construction and landscape materials brought from the mainland or from the Torres Strait Protected Zone must comply with the General Biosecurity Obligation (GBO) which requires that all persons who deal with biosecurity matter or a carrier, if they know or ought reasonably to know that it poses a biosecurity risk, to take all reasonable and practical measures to prevent or minimise the risk.</p>		<p>At all times</p>	
<p>4. Construction Noise and Dust Emissions Pursuant to the Environmental Protection Act 1994, all development involving the emission of noise and dust from building and/or construction activities, must ensure that the emissions are in accordance with the requirements of the Act. The Environmental Protection Act 1994 prescribes that:</p> <p><del>1. (a)</del> A person must not carry out building work in a way that makes an audible noise- - on a business day or Saturday, before 6.30a.m. or after 6.30p.m; or - on any other day, at any time.</p>		<p>While site works are occurring and to be maintained during all construction activities.</p>	

<u>PLANNING</u>	<u>TIMING FOR COMPLIANCE</u>
<p>2.-(b) The reference in subsection (1) to a person carrying out building work - includes a person carrying out building work under an owner builder permit; and - otherwise does not include a person carrying out building work at premises used by the person only for residential purposes.</p>	
<p><b><u>ENVIRONMENTAL OFFSET DELIVERY VEGETATION MANAGEMENT AND REPLACEMENT PLANTING</u></b></p>	
<p><del>5. Provide an environmental offset for the loss of local native species trees to be cleared as part of the project and is unavoidable. The offset is based on a ratio of 3:1 planting and is to be delivered in accordance with the provisions of the <i>Environmental Offsets Act 2014</i>.</del></p> <p><u>Where possible retain locally significant mature native species trees with a dbh of &gt;10cm and where retention is not possible provide replacement planting (on site or offsite). Details of the vegetation to be removed and replacement planting (including location, species, quantity etc.) is to be submitted to Council for approval.</u></p> <p>Note: a revised or updated vegetation management plan is required to be submitted to fulfil this condition. The report is to identify locally significant vegetation that is subject to clearing and is relevant to the assessment of the State Planning Policy. Only the vegetation identified as native is to be <u>replaced offset</u>, all weed species can be cleared.</p> <p>It is highlighted that an off-site <u>replacement planting offset approach</u> is supported by Council. Land to which replanting will apply should be council or state-controlled land.</p>	<p>Prior to operational works permits being granted or prior to survey plan endorsement.</p>
<p><b>BUSHFIRE</b></p>	

<b>PLANNING</b>	<b>TIMING FOR COMPLIANCE</b>
<p>Submit an updated Bushfire hazard management plan addressing the following:</p> <ul style="list-style-type: none"> <li>• <del>The report is to include a plan showing the recommended areas for asset protection zones on each lot affected by Bushfire attack level 19 or greater to inform future building standards;</del></li> <li>• <del>On site water storage for each lot affected by a BAL rating of 19 or higher, specifically for firefighting purposes and the required pumps (rural standard) necessary to use in the event of fire;</del></li> <li>• <del>Establish and maintain fire trails/ breaks necessary for any bushfire management;</del></li> <li>• <del>Any other recommended measures required by the amended bushfire hazard management plan to be submitted.</del></li> </ul> <p><del>The report must be prepared and signed by a BPAD level 5 accredited consultant.</del></p> <p><i>Note: no future houses or associated structures should be located within BAL 29 or higher.</i></p> <p><u>6. Carry out the development generally in accordance with the approved subdivision plan (Horn Island Wees – Rattler Street Proposed Lots 1-26 Cancelling Lot 803 on SP288915 and Lot 804 on SP292840, Drawing No. RP148464-B, Issue B, dated 24/03/2021 including the bushfire hazard management measures as annotated on the plan:</u></p> <p><u>(a) Bushfire management zones;</u></p> <p><u>(b) Minimum bushfire attack levels (BAL) for future dwellings;</u></p> <p><u>(c) Ongoing bushfire management requirements for all lots;</u></p> <p><u>(d) Minimum 5,000L water tank on each lot; and</u></p> <p><u>(e) Proposed lots 12 &amp; 15 to be held as vacant until Bushfire Management Regime allows for further development.</u></p>	<p>Prior to survey plan endorsement and to be maintained at all times</p>
<b>CULTURAL HERITAGE</b>	
<p>6.7. Aboriginal cultural heritage is protected under the Aboriginal Cultural Heritage Act 2003. This Act establishes a cultural heritage duty of care and in section 23(1) mandates that a person who carries out an activity must take all reasonable and practicable measures for ensuring activities are managed to avoid or minimise harm to Aboriginal cultural heritage. The Duty of Care Guidelines gazetted pursuant to the Aboriginal Cultural Heritage Act 2003 provide guidance on identifying and protecting Aboriginal cultural heritage to fulfil the duty of care.</p>	<p>Prior to any site works commencing and to be maintained at all times.</p>

<b>PLANNING</b>	<b>TIMING FOR COMPLIANCE</b>
<p>(a) provide a record of any approved CHMP for Council's file as relevant to this project. This document is to be made readily available to the public free of charge on request;</p> <p>(b) A copy of any agreed CHMP is to be made available on-site during construction works at any time.</p>	
<b>CONSTRUCTION MANAGEMENT</b>	
<p>8. (a) Submit a Construction Management Plan (CMP) prepared by a suitably qualified person. The CMP is required to ensure the development works (including all construction, demolition and excavation) do not adversely affect the health, safety, amenity, traffic or environment in the surrounding area. The plan is to include (but is not limited to) at least the following: • Proposed construction program; • Public safety, amenity and site security; • Operating Hours, Noise and Vibration Controls; • Air &amp; dust management; • Stormwater runoff, erosion &amp; sediment control; • Waste &amp; materials refuse management; • Traffic management; • Construction materials delivery &amp; storage; • Construction office accommodation; • Contractors vehicle parking arrangements; and • Extent of earthworks exposed on the site at any time</p> <p>(b) Obtain approval from Council for the Construction Management Plan.</p> <p>(c) Implement the approved Construction Management Plan and keep a copy of the CMP on site at all times during construction</p>	<p>Not less than two (2) weeks prior to any works commencing on site and then to be maintained while site/operational/building work is occurring</p>
<b>Engineering Certification</b>	
<p>7.9. A Registered Professional Engineer of Queensland shall certify engineering drawings and specifications for all engineering works, which shall be submitted in conjunction with an application for a Development Permit for Building Works and/or Operational Works.</p>	<p>Prior to the issuing of a Development Permit for Building Works or Operational works.</p>
<p>8.10. Submit to Council, an Operational Work application for all works that will become Council infrastructure and for earthworks, stormwater, and roadworks.</p> <p>Complete all works approved and works required by conditions of this development approval and/or any related approvals at no cost to Council, prior to Council's endorsement of the Survey Plan unless stated otherwise.</p>	<p>Prior to survey plan endorsement</p>
<p>9.11. Undertake Engineering designs and construction in accordance with the Planning Scheme, Council's requirements, Standard Drawings, and relevant design manuals.</p>	<p>Prior to operational works approval or survey plan endorsement</p>
<p>10.12. Be responsible for any alteration necessary to electricity, telephone, water mains, sewer mains, stormwater drainage systems or easements and/or other public utility installations resulting from the development or from road and drainage works required in connection with the development.</p>	<p>While site works are occurring and then to be maintained</p>
<p>13. Submit to Council, certification from a Registered Professional Engineer of Queensland (RPEQ-Civil) that all works authorised by this development approval and any</p>	<p>Prior to survey plan endorsement</p>

<b>PLANNING</b>	<b>TIMING FOR COMPLIANCE</b>
<p>related approval issued by Council have been designed and constructed in accordance with the requirements of the development approval:</p> <p>(a) submit a Design Certificate with the application; and</p> <p>(b) submit a Construction Supervision Certificate at completion of the approved works and prior to Council's acceptance of the works on-maintenance.</p>	
<b>Public Utilities</b>	
<p>41-14. Protect Existing Infrastructure Where there is existing infrastructure in the vicinity of the proposed work, the new work must not damage or compromise the working ability of the existing infrastructure. Where alterations to public utility mains, existing mains, services or installations are necessitated by the development, prior to alterations commencing, the developer must notify Council or the relevant infrastructure provider and obtain agreement to the alterations. The developer must meet the costs of the alterations.</p>	While site works are occurring and to be maintained
<p>42-15. Any damage caused to any public utility during the course of construction shall be repaired to ensure it conforms to the Councils Policies and Guidelines relevant to the infrastructure subject to damage.</p>	Prior to survey plan endorsement
<b>Stormwater</b>	
<p>43-16. All stormwater within or entering shall be controlled in such a manner so that it does not cause any public health or safety concerns and/or damage or loss to property and building on any future lot or downstream of the development site.</p>	At all times
<p>44-17. Stormwater design shall accord to the design and construction standards set down in FNQROC Manual and those of QUDM</p>	Prior to survey plan endorsement
<b>Erosion and Sediment Control</b>	
<p>45-18. The applicant/owner shall prevent erosion and sediment export from leaving the site. Site control measures such as silt fencing, controlled gravel access to the site and controlled disposal of waste, may be necessary.</p>	During Building and Operational Works and then to be maintained at all times.
<p>46-19. Plans detailing the methods of controlling erosion and sediment are to be submitted to Council for a Development Approval in accordance with Council's Policies and Guidelines.</p>	Prior to operational works approval

<b>ADVICE</b>
<p>The currency period for this development approval is stated in the Decision Notice.</p>
<p>No building materials or the like are to be stored on the footpath unless an appropriate approval from Council is obtained.</p>
<p>All building site managers must take all action necessary to ensure building materials and/or machinery on construction sites are secured immediately following the first potential cyclone warning and that relevant emergency telephone contacts are provided to Council Officers, prior to Commencement of Works.</p>
<p>In accordance with the Environmental Protection (Water) Policy 2009 (Water &amp; Wetland Biodiversity) Policy 2019, all sand, silt, mud, paint, cement, concrete, builders waste or rubbish shall not be permitted to enter or be placed where it could reasonably be expected to more into a roadside gutter, stormwater drain, watercourse or ocean. On the spot fines apply for such offences.</p>
<p>This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements. Any provisions contained in this approval relating to the enforcement of any of the conditions shall be in addition to all other rights, powers and privileges that the Council may</p>

**ADVICE**

possess or obtain, and nothing contained in these conditions shall be construed so as to prejudice, affect or otherwise derogate or limit these rights, powers and privileges of the Council.

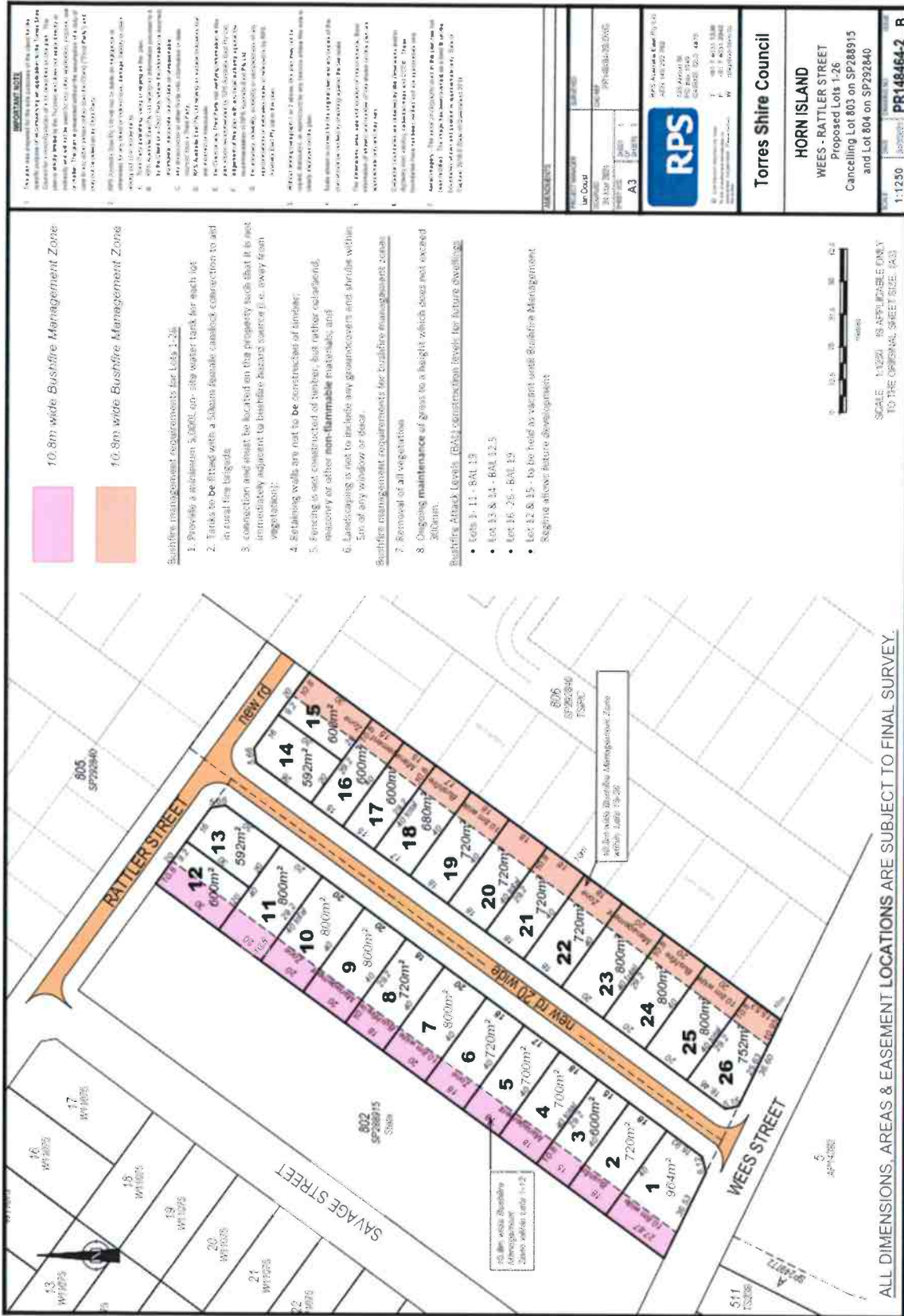
General environmental duty under the Environmental Protection Act 1994 and subordinate legislation prohibits unlawful environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the development site during all stages of the development including earthworks, construction and operation.

Infrastructure Charges Notice: Pursuant to the Planning Act 2016 and the State Planning Regulatory Provision (adopted charges) an Infrastructure Charges Notice **is not issued for this development permit and does not accompany this notice.**

This development approval does not authorise any activity that may harm Aboriginal and Torres Strait Islander cultural heritage. It is also advised that any land use activities must comply with the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Heritage Act 2003*.



**ATTACHMENT 2 – APPROVED PLANS**



**10.8m wide Bushfire Management Zone**

**10.8m wide Bushfire Management Zone**

**Bushfire management requirements for Lots 1-26**

1. Provide a minimum 5,000L on-site water tank for each lot
2. Tanks to be fitted with a 50mm igneous cast-iron connection to and in steel fire ligands
3. Connection and point to be located on the property such that it is not immediately adjacent to bunded fuel storage (i.e. away from vegetation)
4. Retaining walls are not to be constructed of timber
5. Fencing is not constructed of timber, but rather cast-iron, masonry or other **non-flammable** materials, and
6. Landscaping is not to include any grass-covered and shrubs within 5m of any window or door.

**Bushfire management requirements for bushfire management zones**

7. Removal of all vegetation
8. Ongoing **maintenance** of grass to a height which does not exceed 300mm.

**Bushfire Attack Levels (BAL) construction levels for future dwellings**

- Lots 1 - 11 - BAL 19
- Lot 13 & 14 - BAL 12.5
- Lot 16 - 26 - BAL 19
- Lot 22 & 25 - to be held as vacant until Bushfire Management Regime allows future development



**IMPORTANT NOTE**

The plans are prepared for the sole purpose of the client to use as a guide only. The client is responsible for ensuring that the plans are used in accordance with the relevant legislation and regulations. The client is advised that the plans are not to be used for any other purpose without the written consent of the relevant authority. The client is advised that the plans are not to be used for any other purpose without the written consent of the relevant authority. The client is advised that the plans are not to be used for any other purpose without the written consent of the relevant authority.

**RPS**  
 RPS Planning & Design  
 10/11000 Rattler Street  
 Wees Island  
 QLD 4875  
 Phone: 07 4933 8888  
 Fax: 07 4933 8888  
 Email: info@rps.com.au  
 Website: www.rps.com.au

**Torres Shire Council**  
**HORN ISLAND**  
**WEES - RATTLER STREET**  
 Proposed Lots 1-26  
 Cancelling Lot 803 on SP288915  
 and Lot 804 on SP292640

1:1250  
 PR148464-2 B

ALL DIMENSIONS, AREAS & EASEMENT LOCATIONS ARE SUBJECT TO FINAL SURVEY.

## ATTACHMENT 3 – NOTICE ABOUT A DECISION NOTICE

### NOTICE ABOUT A DECISION NOTICE

In accordance with section 83(9) of the *Planning Act*

#### DESCRIPTION OF THE DEVELOPMENT

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<b>Application number:</b>	IDAS 19/01
<b>Property description:</b>	Lot 803 SP288915 and Lot 804 SP292840
<b>Approval sought:</b>	Development Permit for Reconfiguration of a Lot
<b>Description of the development:</b>	2 lots into 26 lots and balance land
<b>Decision:</b>	Approved subject to conditions
<b>Decision date:</b>	20 April 2021

#### APPLICABLE ASSESSMENT BENCHMARKS

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<b>Planning Scheme:</b>	Torres Shire IPA Planning Scheme (17 July 2007) <ul style="list-style-type: none"><li>• Residential Zone Code</li></ul>
<b>State Planning Policy (SPP):</b>	State Planning Policy (July 2017)
<b>Planning Regulation 2017:</b>	The application did not trigger any matters prescribed by the regulation.

#### PUBLIC NOTIFICATION

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The application is code assessable therefore public notification was not required.

#### REASONS FOR THE DECISION

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The application is **approved** on the following grounds:

- The proposed changes reflect refinement of the bushfire hazard management measures and provide flexibility in vegetation management and replacement planting.

**ATTACHMENT 4 – EXTRACT OF APPEAL PROVISIONS**

Attached under separate cover. This page has been intentionally left blank.

(2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.

(3) In this section—

**conduct** means an act or omission.

**representative** means—

(a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

**state of mind**, of a person, includes the person's—

(a) knowledge, intention, opinion, belief or purpose; and

(b) reasons for the intention, opinion, belief or purpose.

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

(1) Schedule 1 states—

(a) matters that may be appealed to—

(i) either a tribunal or the P&E Court; or

(ii) only a tribunal; or

(iii) only the P&E Court; and

(b) the person—

(i) who may appeal a matter (the **appellant**); and

(ii) who is a respondent in an appeal of the matter; and

- (iii) who is a co-respondent in an appeal of the matter;  
and
  - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The ***appeal period*** is—
- (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
  - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
  - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
  - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  - (f) for an appeal relating to the *Plumbing and Drainage Act 2018*—
    - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
    - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or

- (iii) otherwise—20 business days after the day the notice is given; or
- (g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note—*

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
  - (a) the adopted charge itself; or
  - (b) for a decision about an offset or refund—
    - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
    - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

## **230 Notice of appeal**

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—

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- (a) the respondent for the appeal; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
  - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
  - (f) for an appeal to the P&E Court—the chief executive; and
  - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
  - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.

- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

## **231 Non-appealable decisions and matters**

- (1) Subject to this chapter, section 316(2), schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—  
*decision* includes—
  - (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision; and
  - (d) a purported decision; and
  - (e) a deemed refusal.

*non-appealable*, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise,



whether by the Supreme Court, another court, any tribunal or another entity; and

- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

## **232 Rules of the P&E Court**

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

# **Part 2 Development tribunal**

## **Division 1 General**

### **233 Appointment of referees**

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
  - (a) has the qualifications or experience prescribed by regulation; and
  - (b) has demonstrated an ability—
    - (i) to negotiate and mediate outcomes between parties to a proceeding; and
    - (ii) to apply the principles of natural justice; and
    - (iii) to analyse complex technical issues; and
    - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

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# Schedule 1 Appeals

## section 229

## 1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
  - (a) the P&E court; or
  - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
  - (a) the refusal, or deemed refusal of a development application, for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (b) a provision of a development approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (c) if a development permit was applied for—the decision to give a preliminary approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (d) a development condition if—
    - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and

- (ii) the building is, or is proposed to be, not more than 3 storeys; and
    - (iii) the proposed development is for not more than 60 sole-occupancy units; or
  - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
  - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
  - (g) a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
  - (h) a decision to give an enforcement notice—
    - (i) in relation to a matter under paragraphs (a) to (g); or
    - (ii) under the *Plumbing and Drainage Act 2018*; or
  - (i) an infrastructure charges notice; or
  - (j) the refusal, or deemed refusal, of a conversion application; or
  - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
    - (i) a development approval for which the development application required impact assessment; and
    - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
  - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.

- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
  - (a) column 1 states the appellant in the appeal; and
  - (b) column 2 states the respondent in the appeal; and
  - (c) column 3 states the co-respondent (if any) in the appeal; and
  - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.
- (8) In this section—  
*storey* see the Building Code, part A1.1.

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>
<p>1. Development applications</p> <p>For a development application other than an excluded application, an appeal may be made against—</p> <ul style="list-style-type: none"> <li>(a) the refusal of all or part of the development application; or</li> <li>(b) the deemed refusal of the development application; or</li> <li>(c) a provision of the development approval; or</li> <li>(d) if a development permit was applied for—the decision to give a preliminary approval.</li> </ul>

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	<p>1 A concurrence agency that is not a co-respondent</p> <p>2 If a chosen assessment manager is the respondent—the prescribed assessment manager</p> <p>3 Any eligible advice agency for the application</p> <p>4 Any eligible submitter for the application</p>
<p><b>2. Change applications</b></p> <p>For a change application other than an excluded application, an appeal may be made against—</p> <p>(a) the responsible entity's decision on the change application; or</p> <p>(b) a deemed refusal of the change application.</p>			

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 The applicant</p> <p>2 If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice</p>	<p>The responsible entity</p>	<p>If an affected entity starts the appeal—the applicant</p>	<p>1 A concurrence agency for the development application</p> <p>2 If a chosen assessment manager is the respondent—the prescribed assessment manager</p> <p>3 A private certifier for the development application</p> <p>4 Any eligible advice agency for the change application</p> <p>5 Any eligible submitter for the change application</p>
<p><b>3. Extension applications</b></p> <p>For an extension application other than an extension application called in by the Minister, an appeal may be made against—</p> <p>(a) the assessment manager’s decision on the extension application; or</p> <p>(b) a deemed refusal of the extension application.</p>			

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 For a matter other than a deemed refusal of an extension application—a concurrence agency, other than the chief executive, for the application	The assessment manager	If a concurrence agency starts the appeal—the applicant	If a chosen assessment manager is the respondent—the prescribed assessment manager
<p><b>4. Infrastructure charges notices</b></p> <p>An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds—</p> <p>(a) the notice involved an error relating to—</p> <p style="padding-left: 20px;">(i) the application of the relevant adopted charge; or</p> <p><i>Examples of errors in applying an adopted charge—</i></p> <ul style="list-style-type: none"> <li>• the incorrect application of gross floor area for a non-residential development</li> <li>• applying an incorrect ‘use category’, under a regulation, to the development</li> </ul> <p style="padding-left: 20px;">(ii) the working out of extra demand, for section 120; or</p> <p style="padding-left: 20px;">(iii) an offset or refund; or</p> <p>(b) there was no decision about an offset or refund; or</p> <p>(c) if the infrastructure charges notice states a refund will be given—the timing for giving the refund; or</p> <p>(d) for an appeal to the P&amp;E Court—the amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.</p>			

<b>Table 1</b>			
<b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the infrastructure charges notice	The local government that gave the infrastructure charges notice	—	—
<p><b>5. Conversion applications</b></p> <p>An appeal may be made against—</p> <p>(a) the refusal of a conversion application; or</p> <p>(b) a deemed refusal of a conversion application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The local government to which the conversion application was made	—	—
<p><b>6. Enforcement notices</b></p> <p>An appeal may be made against the decision to give an enforcement notice.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the enforcement notice	The enforcement authority	—	If the enforcement authority is not the local government for the premises in relation to which the offence is alleged to have happened—the local government



**Table 2  
Appeals to the P&E Court only**

<p>1. Appeals from tribunal</p> <p>An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of—</p> <p>(a) an error or mistake in law on the part of the tribunal; or</p> <p>(b) jurisdictional error.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A party to the proceedings for the decision	The other party to the proceedings for the decision	—	—
<p>2. Eligible submitter appeals</p> <p>For a development application or change application other than an excluded application, an appeal may be made against the decision to approve the application, to the extent the decision relates to—</p> <p>(a) any part of the development application or change application that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency’s referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>

**Table 2  
Appeals to the P&E Court only**

**3. Eligible submitter and eligible advice agency appeals**

For a development application or change application other than an excluded application, an appeal may be made against a provision of the development approval, or a failure to include a provision in the development approval, to the extent the matter relates to—

- (a) any part of the development application or change application that required impact assessment; or
- (b) a variation request.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p> <p>3 An eligible advice agency for the development application or change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency’s referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>

**4. Compensation claims**

An appeal may be made against—

- (a) a decision under section 32 about a compensation claim; or
- (b) a decision under section 265 about a claim for compensation; or
- (c) a deemed refusal of a claim under paragraph (a) or (b).

<b>Table 2 Appeals to the P&amp;E Court only</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	—	—
<p><b>5. Registered premises</b> An appeal may be made against a decision of the Minister under chapter 7, part 4.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 A person given a decision notice about the decision</p> <p>2 If the decision is to register premises or renew the registration of premises—an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision</p>	The Minister	—	If an owner or occupier starts the appeal—the owner of the registered premises
<p><b>6. Local laws</b> An appeal may be made against a decision of a local government, or conditions applied, under a local law about—</p> <p>(a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or</p> <p>(b) the erection of a building or other structure.</p>			

<b>Table 2 Appeals to the P&amp;E Court only</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who— (a) applied for the decision; and (b) is dissatisfied with the decision or conditions.	The local government	—	—

<b>Table 3 Appeals to a tribunal only</b>			
<p><b>1. Building advisory agency appeals</b></p> <p>An appeal may be made against giving a development approval for building work to the extent the building work required code assessment against the building assessment provisions.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A building advisory agency for the development application related to the approval	The assessment manager	The applicant	<p>1 A concurrence agency for the development application related to the approval</p> <p>2 A private certifier for the development application related to the approval</p>

<b>Table 3 Appeals to a tribunal only</b>			
<p><b>2. Inspection of building work</b> An appeal may be made against a decision of a building certifier or referral agency about the inspection of building work that is the subject of a building development approval under the Building Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant for the development approval	The person who made the decision	—	—
<p><b>3. Certain decisions under the Building Act and the <i>Plumbing and Drainage Act 2018</i></b> An appeal may be made against—</p> <p>(a) a decision under the Building Act, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act; or</p> <p>(b) a decision under the <i>Plumbing and Drainage Act 2018</i>, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, an information notice about the decision	The entity that made the decision	—	—
<p><b>4. Local government failure to decide application under the Building Act</b> An appeal may be made against a local government's failure to decide an application under the Building Act within the period required under that Act.</p>			

<b>Table 3 Appeals to a tribunal only</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive notice of the decision	The local government to which the application was made	—	—
<p>5. Failure to make a decision about an application or other matter under the <i>Plumbing and Drainage Act 2018</i></p> <p>An appeal may be made against a failure to make a decision under the <i>Plumbing and Drainage Act 2018</i>, other than a failure by the Queensland Building and Construction Commission to make a decision, within the period required under that Act, if an information notice about the decision was required to be given under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive an information notice about the decision	The entity that failed to make the decision	—	—