



Decision Notice Approval

Planning Act Form 1 (version 1.2 effective 7 February 2020) made under section 282 of the Planning Act 2016 for a decision notice (approval) under section 63(2) of the Planning Act 2016

Application number:	D/34-2022	Contact:	Kathy McDonald
Notice Date:	30 August 2022	Contact Number:	07 4936 8099

APPLICANT DETAILS

Name:	Stilmark Holdings Pty Ltd		
Postal address:			
Phone no:	Mobile no:	Email:	

I acknowledge receipt of the above application on 22 March 2022 and confirm the following:

DEVELOPMENT APPROVAL

Development Permit for Material Change of Use for a Telecommunications Facility

PROPERTY DESCRIPTION

Street address:	652-664 Norman Road, Norman Gardens
Real property description:	Lot 2 on RP801347, Parish of Murchison

Dear Stilmark Holdings Pty Ltd

I advise that, on 23 August 2022 the above development application was:

approved in full with conditions* (refer to the conditions contained in **Attachment 1**)

*Note: The conditions show which conditions have been imposed by the assessment manager and which conditions have been imposed by a referral agency.

1. DETAILS OF THE APPROVAL

The following approvals are given:

	Development Permit	Preliminary Approval
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use	<input checked="" type="checkbox"/>	<input type="checkbox"/>

2. CONDITIONS

This approval is subject to the conditions in Attachment 1.

3. FURTHER DEVELOPMENT PERMITS REQUIRED

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

Type of development permit required	Subject of the required development permit
Building Works	

4. SUBMISSIONS

Properly made submissions **were** /were not made in relation to the application.

There were 18 properly made submissions received from the following submitter(s);

Name of principal submitter	Residential or business address	Electronic address (if provided)
1. Cheryl Dolan	Not Stated	birthdayc@icloud.com
2. C.W.J Goodman	7 Lancewood Close Norman Gardens	Not Stated
3. P Goodman	7 Lancewood Close Norman Gardens	Not Stated
4. Michael Bennett	Not Stated	mickb123@bigpond.com
5. Ken Jarvey	Not Stated	jarfield@live.com.au
6. Frances Shanks	Unit 5/15 Parkside Place Norman Gardens	shanks_f_b@hotmail.com
7. Arthur Smith and Dianne Smith	Not Stated	dinmuz@bigpond.com >
8. Kathy Hines	81 Rosewood Drive Norman Gardens	kahines0132@gmail.com >
9. Neil and Carolyn Hinton	77 Rosewood Drive Norman Gardens	chinton@internode.on.net
10. Sandra Crew	79 Rosewood Drive Norman Gardens	turrew@bigpond.com
11. John and Shirley Buchanan	4 Lancewood Close Norman Gardens	jsbuchanan06@bigpond.com
12. Michelle and Brendan Ryan	N/A	rascalryans@gmail.com
13. A McCulloch and A McCulloch	1 Lancewood Close Norman Gardens	Not Stated
14. David and Lynette Morrison	3 Lancewood Close Norman Gardens	Not Stated
15. Michael & Lorelle McCabe	5 Lancewood Close Norman Gardens	Not Stated
16. Carmel & Ian Douglas	N/A	elric@live.com.au
17. Paul and Gabrielle Davis	9 Springfield Drive Norman Gardens	gtdavis77-@hotmail.com
18. Glenn Williams	72 Rosewood Drive Norman Gardens	Molluka1@optusnet.com.au

5. REFERRAL AGENCIES

NIL

6. THE APPROVED PLANS

The approved development must be completed and maintained generally in accordance with the approved drawings and documents:

<u>Plan/Document Name</u>	<u>Prepared by</u>	<u>Date</u>	<u>Reference No.</u>	<u>Version/Issue</u>
Site Plan	Stilmark	18 July 2022	AQ4701-001-P1	F-2
Site Setout Plan	Stilmark	18 July 2022	AQ4701-001-P2	F-2
Site Elevation	Stilmark	18 July 2022	AQ4701-001-P3	F-2

7. CURRENCY PERIOD FOR THE APPROVAL (s.85 of the *Planning Act*)

The standard currency periods stated in section 85 of *Planning Act 2016* apply to each aspect of development in this approval, if not stated in the conditions of approval attached.

8. STATEMENT OF REASONS

Description of the development	Material Change of Use for a Telecommunications Facility	
Reasons for Decision	<p>a) Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity; and</p> <p>b) On balance, the application should be approved because the circumstances favour Council exercising its discretion to approve the application even though the development does not comply with an aspect of the assessment benchmarks.</p>	
Assessment Benchmarks	<p>The development was assessed against the following assessment benchmarks:</p> <ul style="list-style-type: none"> • Strategic Framework; • Low Density Residential Zone Code; • Telecommunications Facilities and Utilities Code; • Airport Environs Overlay Code; • Access, Parking and Transport Code; • Landscape Code; • Stormwater Management Code; • Waste Management Code; and • Water and Sewer Code. 	
Compliance with assessment benchmarks	The development was assessed against all of the assessment benchmarks listed above and complies with all of these with the exceptions listed below.	
	Assessment Benchmark	Reasons for the approval despite non-compliance with benchmark
	Low Density Residential Zone Code	<p>PO1</p> <p>The development does not comply with Acceptable Outcome 1.1 (a) as the height of the telecommunications facility exceeds two (2) storeys and 8.5 metres above ground level. The Telecommunications Facility is a detached</p>

		<p>freestanding structure with a height of 30 metres.</p> <p>Despite the height of the proposed development exceeding 8.5m above ground level, it is unlikely to adversely impact on the urban form or significant scenic landscape features of the area for the following reasons:</p> <ul style="list-style-type: none"> • The tower is of a monopole design, which is a narrow structure; • Significant setbacks assists in reducing its perceived height and bulk. Located approximately 145 metres (west) to Norman Road, 140 metres (north), 157 metres (south) and 166 metres (east) to the nearest dwelling houses; • The established dense tree cover surrounding the proposed tower, which is of a similar height to the monopole structure assists in screening the development and softening the built form; and • Telecommunication towers are integral parts of a community's infrastructure network and form part of a normal urban landscape. <p>In the instance any conflicts are identified with PO1, regard to relevant matters relating to a planning need are considered to outweigh those conflicts.</p> <p><u>PO16</u></p> <p>The development may present low-level conflicts with (c), (d) and (h) of Performance Outcome 16, which relate to scale of non-residential development within the Zone and potential impacts on streetscape and local amenity.</p> <p>Once established, a telecommunications facility is a relatively passive land use. The facility is not anticipated to generate any noise, beyond what would normally be expected for a domestic air conditioning unit. The only part of the facility that generates noise is the cooling fans on the equipment located at ground level. The facility will not emit light, dust, heat, smoke or odour and in this sense is considered small scale. However, it is acknowledged the development is a detached freestanding structure with a height of 30 metres, which is in contrast to the prevailing built form in the surrounding area.</p> <p>Despite the height of the development, it is not considered to have adverse impacts on streetscape and local amenity for the reasons outlined in response to PO1 of the Low Density Residential Zone Code.</p> <p>Furthermore, the facility will not compromise the existing lawful use of the subject land or ability of the adjoining surrounding residential uses. The primary function is to service the needs of the immediate local community and ensures that existing and future development within the area</p>
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		<p>has access to appropriate standards of infrastructure and essential services.</p> <p>Therefore, on balance the development is considered to comply with the intent and overall outcomes of the Zone Code.</p>
	<p>Telecommunications Facilities and Utilities Code</p>	<p><u>PO1</u></p> <p>The development does not comply with Acceptable Outcome 1.1 as the telecommunications facility is located within a residential zone category.</p> <p>A site selection methodology was undertaken and determined the proposed facility needs to be close to where it is currently proposed to ensure the radio-frequency and network outcomes for the area can be achieved. Moving it well away from the residential area it is intending to serve is an unviable option and found the proposed site to be the most suitable.</p> <p>The subject site, whilst located in the Low Density Residential Zone provides the ability to minimise its impacts by way of acceptable setbacks, approximately 145 metres from Norman Road, west and 140 up to 166 metres to all residential uses to the north, east and south allotment boundaries.</p> <p>Existing dense vegetation on the subject site will provide further screening from all boundaries. Furthermore, as with all mobile telecommunications facilities in Australia, the proposed facility is required to comply at all times with the relevant Radiation Protection Standards.</p> <p>Therefore, it is not anticipated that the telecommunications facility will adversely impact on the amenity, health or visual character of a residential zone or other sensitive locations and the proposal generally complies with the Performance Outcome.</p> <p>In the instance any conflicts are identified with PO1, regard to relevant matters relating to a planning need are considered to outweigh those conflicts.</p> <p><u>PO2</u></p> <p>The development does not comply with Acceptable Outcome 2.1 as the height exceeds the height limits prescribed by the Airport Environs Overlay and is not collocated on an existing tower or building.</p> <p>To minimise its visual impact on the surrounding area the facility has been sited on a large lot, approximately 10 hectares in size. The facility looks to visually integrate with the surrounding dense vegetation on the subject site that is of a similar height and the monopole design which is a narrow structure will be finished with neutral, low contrast colours further minimising its visual impact.</p>

		<p>It is unlikely that any directly adjoining, or nearby residential property will have a clear view of the proposed facility. Any views available are more likely to be substantially obscured from existing dense vegetation and could not be described as unreasonable.</p> <p>In the instance any conflicts are identified with PO2, regard to relevant matters relating to a planning need are considered to outweigh those conflicts.</p> <p><u>PO5</u></p> <p>The proposed development does not comply with Acceptable Outcome 5.1 as it does not provide a minimum three (3) metre wide earth mounded landscape strip with dense landscaping.</p> <p>The applicant has not proposed any landscaping as part of the proposal. However, the outcome is effectively achieved by the significant separation distance from any local area, approximately 145 metres from Norman Road, west and 140 up to 166 metres to all residential uses to the north, east and south allotment boundaries.</p> <p>Further, the existing vegetation on the subject site already provides for a natural buffer and will screen the development from all adjoining boundaries.</p> <p>Therefore, the proposal is considered to achieve the performance outcome.</p> <p><u>PO7</u></p> <p>The proposed development does not comply with Acceptable Outcome 7.1 (b) as it does not achieve a minimum 150 metre setback from a dual occupancy, dwelling house or multiple dwelling.</p> <p>The nearest detached dwelling to the proposed facility is approximately 140 metres to the north, fronting Parkside Place and 157 metres to the southeast, fronting Lancewood Close.</p> <p>The facility will accommodate both 4G and 5G services and will be purposely designed and constructed to allow for collocation of up to three (3) carriers to occur minimising the number of such structures in the council area.</p> <p>The telecommunications facility may be visible from existing residential premises and other sensitive receiving environments, as identified by non-compliance with other assessment benchmarks. It will not, however, adversely impact on the health or safety of nearby residents.</p> <p>As part of the development application the Applicant submitted an Environmental EME Report, which provides a summary of levels of radiofrequency (RF) EME. RF EME levels were calculated using methodology developed by the Australian Radiation Protection and Nuclear</p>
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		<p>Safety Agency (ARPANSA). The maximum EME level calculated for the proposed development is 1.67% out of 100% of the public exposure limit that is deemed safe.</p> <p>Therefore, based on the reporting provided there is no known adverse health concerns that would result from the development and the proposal is considered to achieve the performance outcome.</p>
	<p>Airport Environs Overlay Code</p>	<p><u>PO1</u></p> <p>The proposal does not comply with Acceptable Outcome 1.1 which does not allow structures as identified on overlay map OM-2A: to penetrate the airport's operational airspace.</p> <p>Despite this, consultation has been undertaken with the Rockhampton Airport and determined the proposed telecommunications structure with a maximum height of 30 metres above ground level will not impact upon any air service operations.</p> <p>Therefore, the proposal is considered to achieve the performance outcome.</p>
	<p>Landscape Code</p>	<p><u>PO1</u></p> <p>The proposed development does not comply with Acceptable Outcome 1.1 as no landscaping is proposed as part of the development.</p> <p>The outcome is effectively achieved by the significant separation distance from any local area, approximately 145 metres from the west being Norman Road frontage, 140 metres from the north property boundary and over 157 metres from the east and south property boundaries.</p> <p>Further, the existing vegetation on the subject site already provides for a natural buffer and will screen the development from all adjoining boundaries.</p> <p>Therefore, the proposal is considered to achieve the performance outcome.</p>
<p>Relevant Matters</p>	<p>The proposed development was assessed against the following relevant matters:</p> <ul style="list-style-type: none"> • Telecommunication facilities are considered critical pieces of community infrastructure, similar to reticulated water and sewerage. • There is a growing demand and need for new telecommunications facilities as mobile usage continues to trend upward nationally. • COVID-19 has resulted in significant changes in how people use mobile data. Telecommunication providers have experienced exponential growth in data usage as more people spend time working from home. • Without new telecommunication facilities, similar to the one being proposed, users may experience difficulty connecting to the mobile network or experience call dropouts. The Applicant has demonstrated in order to practically meet user requirements, the proposed development and site are the most suitable. 	

Matters raised in submissions	Issue	How matter was dealt with
	Health concerns	<p>Submitters raised concerns regarding the potential health impacts of such facilities on nearby residents, aged care facility and the church on the subject land, particularly because of 'electromagnetic radiation', also commonly referred to as 'electromagnetic energy' (EME).</p> <p>As part of a further advice request the applicant submitted an Environmental EME Report, which provided a summary of levels of radiofrequency (RF) and electromagnetic energy (EME) around the proposed base station at 652-664 Norman Road, Norman Gardens. The RF, EME levels were calculated using methodology developed by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). The maximum EME level calculated for the proposed development is 1.67% out of 100% of the public exposure limit that is deemed safe.</p> <p>As with all mobile telecommunications facilities in Australia, the proposed facility is required to comply at all times with the relevant Radiation Protection Standard and once operational must have this compliance certified by an accredited person.</p> <p>Therefore, based on the reporting provided there is no known adverse health concerns that would result from the development.</p>
	Devaluing of nearby properties	<p>Submitters raised concerns the proposal would devalue their properties. Property value is not a matter Council may or must have regard to under the <i>Planning Act 2016</i> when assessing and deciding a development application. Notwithstanding, there is no evidence that the installation of these facilities has had any adverse and direct impact upon property values. Access to essential telecommunications services, particularly in developing areas, is increasingly seen as not only beneficial but necessary.</p>
	Poor public consultation / notification	<p>Submitters raised concerns about the lack of public awareness of the proposed development. Particularly, why residents in the surrounding area were not more widely consulted.</p> <p>The Applicant undertook public notification in accordance with the mandatory requirements of the <i>Planning Act 2016</i>. This included:</p> <ul style="list-style-type: none"> • Notifying adjoining landowners with a <u>common boundary</u> by post. • Placing a notice in a newspaper circulating in the locality. • Two (2) notice signs were placed on the Norman Road frontage of the site for 15 business days.

		<p>There is no requirement for the Applicant or Assessment Manager (Council) to consult with or undertake public notification beyond that required by the <i>Planning Act 2016</i>.</p> <p>Furthermore, a Council Officer attended the site following concerns that the public notification sign had fallen over along Norman Road on the thirteenth (13) day of notification. It was concluded the sign had been placed upright against a tree. As there were two (2) notice signs placed along the Norman Road frontage and only one (1) required, it was deemed to not adversely affect the public's awareness of the existence and nature of the application or restrict the public's opportunity to make properly made submissions about the application.</p>
	Visual Impact	<p>Submitters raised concerns regarding visual impacts to the subject site and surrounding area. Siting of the proposed facility allows for significant setbacks and screening by existing tree cover. The closest residential property is approximately 140 metres to the north, and it is unlikely that any directly adjoining, or nearby residential property will have a clear view of the proposed facility. Any views available are more likely to be substantially obscured and could not be described as unreasonable or dominant. Furthermore, it has been conditioned that the monopole, headframe and antennas are to be painted and finished in a non-competing colour that will further minimise its visual impact.</p>
	Wildlife	<p>Submitters raised concerns regarding the potential impacts on the surrounding habitat of existing wildlife. The subject site is not mapped as containing matters of state or local environmental significance. Existing studies by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) on the effects of low-level RF and EME exposure on plants and animals indicate that the exposure limits set within the Standard are adequate in providing protection to the environment. Furthermore, no vegetation is proposed to be removed as part of the development.</p>
	Alternate Locations	<p>Submitters made comment to the relocation of the telecommunications tower on other potential sites, however provided no viable alternative suggestions.</p> <p>The need for the telecommunications facility has arisen as a result of increased demand on the network in the Norman Gardens area, particularly east of Yaamba Road. A site selection methodology was undertaken and first sought to assess the suitability of existing facilities for upgrade or collocation, before moving to new sites where existing facilities were not appropriate. The methodology took into account proximity to residential areas, impacts on visual amenity and benefit to the network.</p>

		<p>The investigations determined the proposed facility needs to be close to where it is currently proposed to ensure the radio-frequency and network outcomes for the area can be achieved. Moving it well away from the residential area it is intending to serve is an unviable option and found the proposed site to be the most suitable.</p> <p>The subject site, whilst located in the Low Density Residential Zone provides the ability to minimise its impacts by way of acceptable setbacks from allotment boundaries and screening available from existing dense vegetation.</p>
<p>Matters prescribed by regulation</p>	<ul style="list-style-type: none"> • The <i>Rockhampton Region Planning Scheme 2015</i> (version 2.2); and • The common material, being the material submitted with the application. 	

9. APPEAL RIGHTS

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. There may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

Appeal by an eligible submitter

An eligible submitter for a development application may appeal to the Planning and Environment Court against the decision to approve the application, to the extent the decision relates to:

- any part of the development application that required impact assessment
- a variation request.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*.

Attachment 2 is an extract from the *Planning Act 2016* that sets out the applicant's appeal rights and the appeal rights of a submitter.

10. WHEN THE DEVELOPMENT APPROVAL TAKES EFFECT

This development approval takes effect:

- From the time the decision notice is given – if there is no submitter and the applicant does not appeal the decision to the court.

Or

- When the submitter's appeal period ends – if there is a submitter and the applicant does not appeal the decision to the court.

Or

- Subject to the decision of the court, when the appeal is finally decided – if an appeal is made to the court.

11. ASSESSMENT MANAGER

Name: Amanda O'Mara COORDINATOR <u>DEVELOPMENT ASSESSMENT</u>	Signature:	Date: 30 August 2022
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Attachment 1 – Conditions of the approval

Part 1 – Conditions imposed by the assessment manager [Note: where a condition is imposed about infrastructure under Chapter 4 of the Planning Act 2016, the relevant provision of the Act under which this condition was imposed must be specified.]

Attachment 2—Extract on appeal rights



Attachment 1 – Part 1

Rockhampton Regional Council Conditions

Planning Act 2016

1.0 ADMINISTRATION

- 1.1 The Developer and their employee, agent, contractor or invitee is responsible for ensuring compliance with the conditions of this development approval.
- 1.2 Where these Conditions refer to “Council” in relation to requiring Council to approve or to be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
- 1.3 All conditions, works, or requirements of this development approval must be undertaken and completed:
- 1.3.1 to Council’s satisfaction;
 - 1.3.2 at no cost to Council; and
 - 1.3.3 prior to the commencement of the use,
- unless otherwise stated.
- 1.4 Infrastructure requirements of this development approval must be contributed to the relevant authorities, where applicable, at no cost to Council, prior to the commencement of the use, unless otherwise stated.
- 1.5 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:
- 1.5.1 Building Works.
- 1.6 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.
- 1.7 All engineering drawings/specifications, design and construction works must be in accordance with the requirements of the relevant *Australian Standards* and must be approved, supervised and certified by a Registered Professional Engineer of Queensland.

2.0 APPROVED PLANS AND DOCUMENTS

- 2.1 The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by any condition of this development approval:

<u>Plan/Document Name</u>	<u>Prepared by</u>	<u>Date</u>	<u>Reference No.</u>	<u>Version/Issue</u>
Site Plan	Stilmark	18 July 2022	AQ4701-001-P1	F-2
Site Setout Plan	Stilmark	18 July 2022	AQ4701-001-P2	F-2
Site Elevation	Stilmark	18 July 2022	AQ4701-001-P3	F-2

- 2.2 Where there is any conflict between the conditions of this development approval and the details shown on the approved plans and documents, the conditions of this development approval must prevail.

3.0 STORMWATER WORKS

- 3.1 All stormwater must drain to a demonstrated lawful point of discharge and must not adversely affect surrounding land or infrastructure in comparison to the pre-development

conditions, including but not limited to blocking, altering or diverting existing stormwater runoff patterns or having the potential to cause damage to other infrastructure.

4.0 SITE WORKS

4.1 Site works must be constructed such that they do not, at any time, in any way restrict, impair or change the natural flow of runoff water, or cause a nuisance or worsening to surrounding land or infrastructure.

5.0 BUILDING WORKS

5.1 A Development Permit for Building Works assessable under the Building Assessment Provisions must be obtained prior to the commencement of any building works on the site.

5.2 All external elements, such as cooling fans and associated equipment, must be adequately screened from public view to Council's satisfaction.

5.3 A 2.4 metre high security fence is to be provided around the telecommunications facility compound. All fencing must be maintained to the satisfaction of Council.

5.4 The telecommunications tower must be built out of non-reflective dark green or grey material in order to reduce any nuisance (glare) to surrounding sensitive land uses.

6.0 ELECTRICITY

6.1 Electricity services must be provided to the development in accordance with the standards and requirements of the relevant service provider.

7.0 ASSET MANAGEMENT

7.1 Any alteration necessary to electricity, telephone, water mains, sewerage mains, and/or public utility installations resulting from the development or in connection with the development, must be undertaken and completed at no cost to Council.

7.2 Any damage to existing stormwater, water supply and sewerage infrastructure, kerb and channel, pathway or roadway (including removal of concrete slurry from public land and Council infrastructure), that occurs while any works are being carried out in association with this development approval must be repaired at full cost to the developer. This includes the reinstatement of any existing traffic signs or pavement markings that may have been removed or damaged.

8.0 ENVIRONMENTAL HEALTH

8.1 Any lighting devices associated with the development, such as sensory lighting, must be positioned on the development site and shielded so as not to cause glare or other nuisance to nearby residents and motorists. Night lighting must be designed, constructed and operated in accordance with *Australian Standard AS4282 "Control of the obtrusive effects of outdoor lighting"*.

8.2 Operations on the site must have no significant impact on the amenity of adjoining premises or the surrounding area due to the emission of light, noise or dust.

9.0 OPERATING PROCEDURES

9.1 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the development site. Storage of materials or parking of construction machinery or contractors' vehicles must not occur within Norman Road.

9.2 Submit to and have approved by Council a 'Tree Protection Zone/s' plan, prior to the issue of a Development Permit for Building Works. Once approved, the 'Tree Protection Zone/s' plan will form part of the approved plans in Condition 2.1. A property note to this effect will be entered against Lot 2 on RP801347.

9.3 The 'Tree Protection Zone/s' plan must show the location of existing established trees on the subject site that must be retained.

ADVISORY NOTES

NOTE 1. Aboriginal Cultural Heritage

It is advised that under section 23 of the *Aboriginal Cultural Heritage Act 2003*, a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the “cultural heritage duty of care”). Maximum penalties for breaching the duty of care are listed in the Aboriginal cultural heritage legislation. The information on Aboriginal cultural heritage is available on the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships website www.dsdsatsip.qld.gov.au.

NOTE 2. General Environmental Duty

General environmental duty under the *Environmental Protection Act 1994* 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.

NOTE 3. General Safety Of Public During Construction

The *Work Health and Safety Act 2011* and *Manual of Uniform Traffic Control Devices* must be complied with in carrying out any construction works, and to ensure safe traffic control and safe public access in respect of works being constructed on a road.

NOTE 4. Property Note (Building Works)

Submit to and have approved by Council a ‘Tree Protection Zone/s’ plan, prior to the issue of a Development Permit for Building Works.

The ‘Tree Protection Zone/s’ plan must show the location of existing established trees on the subject site that must be retained.

The following is an extract from the *Planning Act 2016* (Chapter 6)

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 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—

- (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, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); 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) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, 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, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a 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.

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—
 - (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
 - (ii) the Plumbing and Drainage Act, part 4 or 5; or
 - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
 - (i) a decision to give an infrastructure charges notice; or
 - (j) the refusal, or deemed refusal, of a conversion application; or
 - (k) a matter that, under another Act, may be appealed to the tribunal; 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.

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval.			
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	1 A concurrence agency that is not a co-respondent

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

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
<p>4. Infrastructure charges notices 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>(i) The application of the relevant adopted charge; or</p> <p>Examples of errors in applying an adopted charge –</p> <ul style="list-style-type: none"> • The incorrect application of gross floor area for a non-residential development • Applying an incorrect ‘use category’, under a regulation, to the development <p>(i) The working out of extra demands, for section 120; or</p> <p>(ii) 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) The amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.</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 Infrastructure charges notice	The local government that gave the infrastructure charges notice	-	-
<p>5. Conversion applications 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>6. Enforcement notices 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 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	-	-

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

<p>2. Eligible submitter appeals An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to— (a) any part of the development application for the development approval that required impact assessment; or (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)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
<p>3. Eligible submitter and eligible advice agency appeals An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to— (a) any part of the development application or the change application, for the development approval, that required impact assessment; or (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)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	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).</p>			
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>5. Registered premises</p>			

Table 2 Appeals to the P&E Court only			
An appeal may be made against a decision of the Minister under chapter 7, part 4.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 A person given a decision notice about the decision 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	The Minister	-	If an owner or occupier starts the appeal – the owner of the registered premises
6. Local laws An appeal may be made against a decision of a local government, or conditions applied, under a local law about— (a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or (b) the erection of a building or other structure.			
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	-	-

Table 3 Appeals to the tribunal only			
1. Building advisory agency appeals 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.			
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	1 A concurrence agency for the development application related to the approval 2 A private certifier for the development application related to the approval
3. Certain decisions under the Building Act and the Plumbing and Drainage Act An appeal may be made against a decision under— (a) the Building Act, other than a decision made by the Queensland Building and Construction Commission; or (b) the Plumbing and Drainage Act, part 4 or 5.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)

**Table 3
Appeals to the tribunal only**

A person who received, or was entitled to receive, notice of the decision	The person who made the decision	-	-
<p>4. Local government failure to decide application under the Building Act 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>			
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	-	-