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Our Ref: 101811-24  
Your Ref: DA2021\_009

28 July 2021

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships  
C/- Black Planning  
8 Agate Street  
Bayview Heights QLD 4868

Attention: Storme Black

Dear Storme,

**Decision Notice – Approved in full with conditions**  
**Given under section 63 of the *Planning Act 2016***

The development application described below was properly made to Yarrabah Aboriginal Shire Council on 12 May 2021.

**Applicant details**

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Applicant name:	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships C/- Black Planning
Applicant contact details:	<a href="mailto:storme.black@outlook.com">storme.black@outlook.com</a> 0431 369 582

**Application details**

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Application number:	101811-24
Approval sought:	Development Permit for a Reconfiguring a Lot
Description of the development proposed:	Subdivide 1 Lot into 2 Lots

**Location details**

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Street address:	18-20 Stanley Street, Yarrabah
Real property description:	Lot 1 on SP167913

## Decision

Date of decision: 21 July 2021

Decision Details: Approved in full with conditions. These conditions are set out in **Attachment 1**.

## Details of the approval

Development Permit Reconfiguring a Lot (1 Lot into 2 Lots)

## Conditions

This approval is subject to the conditions in **Attachment 1**.

## Further development permits

Development Permit for Operational Works

## Properly made submissions

Not applicable - no part of the application required public notification.

## Other requirements under section 43 of the Planning Regulation

Not applicable

## Approved plans and specifications

Copies of the following plans are enclosed.

Drawing / report title	Prepared by	Date	Reference no.	Version / issue
<b>Aspect of development: Reconfiguring a Lot</b>				
Survey Plan showing proposed Lots 1 and 2 – Lease B in Lot 1 on SP167913	Black Planning	No date	Appendix 2 of the Development application – Page 16 of 69 Appendices Document	N/A

## Currency period for the approval

This approval, granted under the provisions of the Planning Act 2016, shall lapse **six (6)** years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act 2016*.

## Rights of appeal

The rights of applicants to appeal to a tribunal or the Planning and Environment court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may be also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

An applicant and/or submitter may appeal to the Planning and Environment Court or the Development tribunal against a number of matters (see Schedule 1 of the *Planning Act 2016*). A copy of the extracts of the sections of the *Planning Act 2016* are attached (**Attachment 2**).

#### **Other details**

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You are further advised that the truth and accuracy of the information provided in the application form and accompanying information is relied upon when assessing and deciding this application. If you find an inaccuracy in any of the information provided above or have a query or need to seek clarification about any of these details, please contact Yarrabah Aboriginal Shire Council on (07) 4056 9120.

For further information please contact Yarrabah Aboriginal Shire Council on (07) 4056 9120.

Yours sincerely,



Leon Yeatman  
Chief Executive Officer

Att: **Attachment 1** - *Conditions imposed by the assessment manager*  
**Attachment 2** - *Extract of Appeal Provisions (Chapter 6, Part 1 of the Planning Act 2016)*.

**ATTACHMENT 1 CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER****APPROVED PLANS**

The term 'approved drawing(s) and / or document(s)' or other similar expressions means:

Drawing or Document	Reference	Date
Survey Plan showing proposed Lots 1 and 2 – Lease B in Lot 1 on SP167913	Appendix 2 of the Development Application - Page 16 of 68 of Appendices Document	No date

**ASSESSMENT MANAGER CONDITIONS**

1. This approval, granted under the provisions of the Planning Act 2016, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act 2016*.
2. Carry out the approved development generally in accordance with the approved plan(s) and/or document(s), and in accordance with:
  - a. The specifications, facts and circumstances as set out in the application submitted to Council, including recommendations and findings confirmed within technical reports; and
  - b. The following conditions of approval and the requirements of Council's Planning Scheme.  
Except where modified by these conditions of approval.

**Damage to Infrastructure**

3. In the event that any part of Council's infrastructure is damaged as a result of work associated with the development, Council must be notified immediately of the affected infrastructure and have it repaired or replaced by Council, at no cost to Council. All works must be completed prior to the issue of a Compliance Certificate for the Plan of Survey.

**Lawful Point of Discharge**

4. All stormwater from each new lot must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer.

**Ponding and/or Concentration of Stormwater**

5. The proposed development must not create ponding nuisances and/or a concentration of stormwater flows to adjoining properties.

**Water Supply and Sewerage Works Internal**

6. Undertake the following water supply and sewerage works internal to the subject land:
  - a. Provide a single internal sewer connection to each lot in accordance with the FNQROC Development Manual; and

- b. Existing water connections and internal plumbing must be contained within the lot it serves. If not then the connection and internal plumbing must be relocated to within the lot service; or
- c. Provide easements having a nominal width of 3m over sewers which are on a non-standard alignment or not within the property it serves.

All the above works must be designed and constructed in accordance with the FNQROC Development Manual.

A plan of the works must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works.

All works must be carried out in accordance with the approved plans, to the requirements and satisfaction of the Chief Executive Officer prior to Council approval of the Plan of Survey.

### **Electricity**

7. Each lot must be provided with a separately metered electricity service prior to Council issuing a Compliance Certificate for the Plan of Survey

### **ADVICE**

1. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
2. For information relating to the Planning Act 2016 log on to <https://planning.dsdmip.qld.gov.au>. To access the FNQROC Development Manual log on to <https://www.fnqroc.qld.gov.au>. To access Local Laws and other applicable policies log on to the Yarrabah Aboriginal Shire Council website <https://www.yarrabah.qld.gov.au>.

### **DEFINITION**

In accordance with the *Planning Act 2016*, **Reconfiguring a lot means:**

- (a) **creating lots by subdividing another lot; or**
- (b) **amalgamating 2 or more lots; or**
- (c) **rearranging the boundaries of a lot by registering a plan of subdivision under the Land Act or Land Title Act; or**
- (d) **dividing land into parts by agreement rendering different parts of a lot immediately available for separate disposition or separate occupation, other than by an agreement that is—**
  - (i) **a lease for a term, including renewal options, not exceeding 10 years; or**
  - (ii) **an agreement for the exclusive use of part of the common property for a community titles scheme under the Body Corporate and Community Management Act 1997; or**
- (e) **creating an easement giving access to a lot from a constructed road.**

### **INFRASTRUCTURE CHARGES**

1. Yarrabah Aboriginal Shire Council does not levy infrastructure charges or impose conditions for trunk infrastructure.

## **APPEAL RIGHTS**

The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in chapter 6, part 1 of the Planning Act 2016. For particular applications, 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*).

A copy of the relevant appeal provisions is attached as **Attachment 2**.

## STATEMENT OF REASONS

The following information is provided in accordance with s63 of the *Planning Act 2016*.

### Reasons for Decision

The reasons for this decision are:

1. The proposed reconfiguration complies with the outcomes sought from the Low-medium density residential zone.
2. The proposed reconfiguration complies with the outcomes sought from the Reconfiguring a lot code.
3. The proposed reconfiguration does not change the function of the site, therefore maintains the onsite safety of people and property.

### Assessment Benchmarks

The site is in the Low-medium density residential Zone and the use is code assessable development.


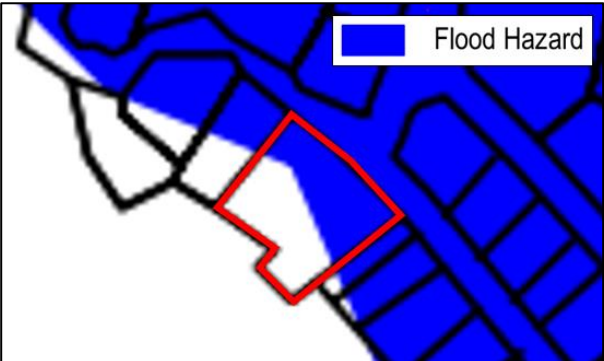
The proposed development was assessed against the following assessment benchmarks of the Yarrabah Aboriginal Shire Council Planning Scheme 2017:

<b>Assessment Benchmarks</b>	<b>Zone</b> <ul style="list-style-type: none"><li>• Low-medium density residential</li></ul>
	<b>Overlays</b> <ul style="list-style-type: none"><li>• Potential Acid Sulphate Soils</li><li>• Bushfire Hazard</li><li>• Airport Environs</li><li>• Flood Hazard</li><li>• Landslide Hazard</li></ul>
	<b>Development Codes</b> <ul style="list-style-type: none"><li>• Access, parking and servicing</li><li>• Filling and excavation</li><li>• Landscaping</li><li>• Protection of sensitive land uses</li><li>• Operational works</li><li>• Reconfiguring a lot</li><li>• Vegetation management</li></ul>

In considering the proposal against the relevant codes, there are Performance Outcomes and Acceptable Outcomes which are to be considered:

1. Assessable development must demonstrate that the Performance Outcomes can be achieved.
2. Acceptable Outcomes that are nominated in the Codes are just one means by which the Performance Outcomes may be achieved.

The full Town Planning assessment of the application – statement of reasons to support the application are as follows:

Assessment Benchmark	Reasons for the approval despite non-compliance with benchmark
<b>Bushfire hazard</b>	
<p><b>PO1</b> Residential lot layouts are designed to mitigate any potential bushfire hazard and provide safe sites for dwellings.</p>	<p>The site is mapped as having Very High Potential Intensity in the southern section of the lot.</p> <p>The bushfire mapping trigger for this site is in relation to a pixelated section of the Bushfire hazard mapping system in the most southern corner of the site and may be considered an error in the mapping.</p> <p>As the uses are existing and this application is formalising an existing situation there is no practical application of this provision.</p> <p>The reconfiguration does not result in a worsening effect for bushfire hazard.</p> 
<b>Flood hazard</b>	
<p><b>PO1</b> Development siting and layout responds to flooding potential and maintains personal safety at all times</p>	<p>The site is partially mapped as being in the Flood hazard area.</p> <p>The proposed reconfiguration formalises the existing Lease B to be located on Proposed Lot 1. Proposed Lot 2 will contain the existing 2 dwellings.</p> <p>The proposed reconfiguration does not change the layout of the existing buildings on the site, therefore not changing the flood potential to the site and not increasing the safety of personal onsite.</p> <p>The proposed development complies with the performance outcome.</p> 

## Landslide

### PO1

Development is located, designed, constructed and operates to ensure that the potential risk and impacts of landslide are minimised and can maintain the safety of people and property during and event.

Note – On land with a slope of 15% or greater, a site specific geotechnical analysis prepared by a registered professional engineer will be required to demonstrate that the site is not subject to landslide hazard on lots created.

The proposed reconfiguration formalises the existing Lease B to be located on Proposed Lot 1. Proposed Lot 2 will have 2 dwellings.

The proposed reconfiguration does not change the function of the site, therefore maintains the onsite safety of people and property.

The proposed development complies with the performance outcome.





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## 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—
  - (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.

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- (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.