



ABN 30 977 526 871

Your Ref: PR138584-1 LD2016 48
Our Ref Chynnai Kynuna / DA001-/2017

4 April 2018

Gunggandji PBC Aboriginal Corporation
13 Smith St
Yarrabah QLD 4871

Via email: contactperson@gpbcac.org
chairperson@gpbcac.org

Attention: Bettina Rosser

Dear Bettina,

Decision Notice under S63 Planning Act 2016

Development application:	DA001/2017
Property address:	Lot 40 SP289399 Back Beach Road, Yarrabah
Property description:	Lot 40 SP289399
Application proposal:	a. Reconfiguring a Lot: 1 lot into 2 lots b. Material Change of Use: Dwelling House

Council received and considered your submission in relation to the abovementioned Development Application, please find attached the relevant Decision Notice which was determined by Council at the Meeting of 27 March 2018.

The notice includes extracts from the Act with respect to making representations about conditions, negotiated decisions, suspension of the appeal period, and lodging an Appeal.

Infrastructure Charges do not apply to this development.

Should you have any enquires in relation to this Decision Notice, please contact Nikki Huddy, consultant planner on behalf of Council, on (07) 4041 0445.

Yours faithfully


Janelle Menzies
Chief Executive Officer

Att.

DECISION NOTICE

APPLICANT DETAILS

Chynnai Jynuna

C/- RPS Australia East Pty Ltd Via email: renee.weightman@rpsgroup.com.au

PO Box 977

Townsville QLD 4810

ADDRESS

Lot 40 SP289399 Back Beach Road, Yarrabah

REAL PROPERTY DESCRIPTION

Lot 40 SP289399

PROPOSAL

- a. Reconfiguring a Lot: 1 lot into 2 lots
- b. Material Change of Use: Dwelling House

DECISION

Approved in full subject to conditions (refer to approval package below).

DECISION DATE

27 March 2018

TYPE

Reconfiguring a Lot (Development Permit)

Material Change of Use (Development Permit)

PLANNING INSTRUMENT

Yarrabah Aboriginal Shire Council Planning scheme 2017

REFERRAL AGENCIES

None

SUBMISSIONS

There was 1 properly made submissions for this application.

FURTHER DEVELOPMENT PERMITS REQUIRED

Development Permit for Plumbing Works

Development Permit for Building Works

CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT

None

PART 1: APPROVED DRAWING/S AND DOCUMENT/S

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

Drawing or Document	Reference	Date
Cairns Quality Homes	3br dwelling approx. 12m x 14m and Specification	03/08/2017
Plan of Lots 40 & 41	RPS SP298399	24/04/2017

Approved drawings and documents are provided as **Appendix 1**.

PART 2: DEVELOPMENT CONDITIONS GENERAL

Assessment Manager Conditions

1. This Approval, granted under the provisions of the Planning Act 2016, shall lapse four (4) 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 drawing(s) and/or document(s),
 - a. The specifications, facts and circumstances as set out in the application submitted to Council;
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

Timing of Effect

3. The conditions of the Development Permit must be effected prior to Commencement of Use, except where specified otherwise in these conditions of approval.

Water Supply and Sewerage Works Internal

4. Undertake the following water supply and sewerage works internal to the subject land:
 - a. Provide a single internal water connection to the new Lot 41;
 - b. Provide a single internal sewerage connection to the new Lot 41.

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

All works must be carried out in accordance with the approved plans, to the requirements and satisfaction of the Chief Executive Officer prior to the commencement of the use.

Electricity

5. The new Lot 41 shall be connected to electricity to the standard of infrastructure normally associated with the particular use / activity in the area and in accordance with the requirements of the electricity provider.

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

All works must be carried out in accordance with the approved plans, to the requirements and satisfaction of the Chief Executive Officer prior to the commencement of the use.

Driveways and Crossovers

6. The new lot 41 shall be provided with a sealed driveway from the edge of the bitumen to the property boundary.

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

All works must be carried out in accordance with the approved plans, to the requirements and satisfaction of the Chief Executive Officer prior to the commencement of the use.

Minimum Fill and Floor Levels

7. All floor levels in all newly constructed buildings must be located a minimum of 300 mm above the Q100 flood immunity level. In the absence of detailed flood height information, the floor height shall be equal to or greater than the floor heights of existing residential development in Schreiber Street.
8. The development is to have a no-worsening drainage and flooding effect on surrounding properties.

Lawful Point of Discharge

9. All stormwater from the properties 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.

ADVICE

1. Development is of a type and scale that does not require a greater/higher standard of service for infrastructure identified by the Priority Infrastructure Plan.

2. The Applicant/owner is advised that this approval does not approve the construction of the building work. A Development Permit for Building Work must be obtained in order for construction to commence.
3. 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 cyclone watch and that relevant emergency telephone contacts are provided to Council Officers, prior to commencement of works.
4. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
5. For information relating to the Planning Act 2016 log on to www.dilgp.qld.gov.au. To access the FNQROC Development Manual, Local Laws and other applicable policies log on to www.cairns.qld.gov.au .

Land Use Definition

In accordance with Yarrabah Aboriginal Shire Council Planning Scheme, the approved land use of Dwelling House is defined as:

A residential use of premises for one household that contains a single dwelling. The use includes out-buildings and works normally associated with a dwelling and may include a secondary dwelling.

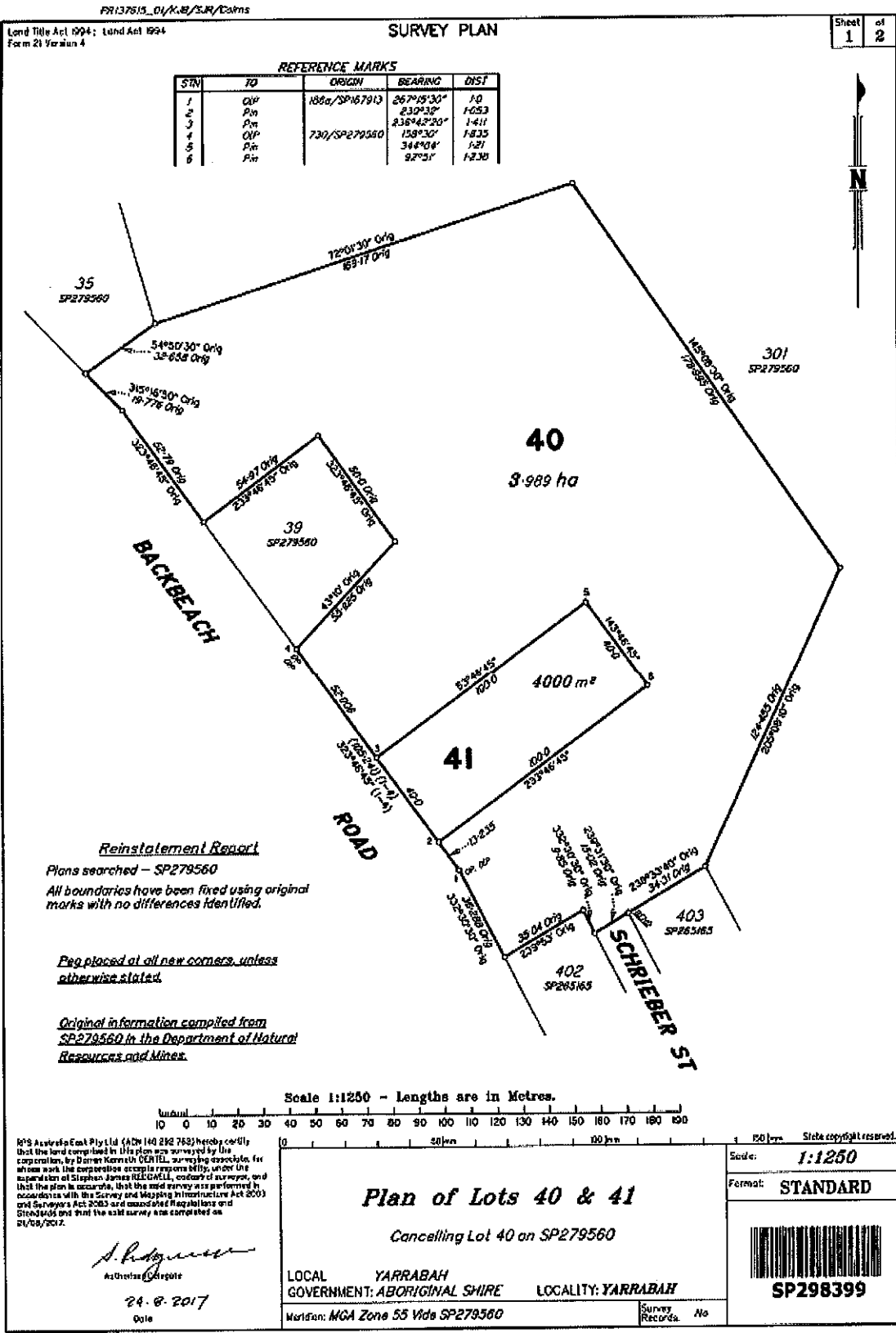
APPEAL RIGHTS

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 are attached as **Appendix 2**.

END OF DECISION NOTICE

APPENDIX 1. APPROVED DRAWINGS AND DOCUMENTS



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 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.*

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- (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).*
- (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.*

Statement of Reasons

The following information is provided in accordance with Section 63 of the *Planning Act 2016*.

Development application:	DA 001-2017
Property address:	Lot 40 Back Beach Road, Yarrabah
Property description:	Lot 40 SP289399
Application proposal:	a. Reconfiguring a Lot: 1 lot into 2 lots b. Material Change of Use: Dwelling House
Approved:	By Council
Approved on:	27 March 2018
Planning Scheme:	Yarrabah Aboriginal Shire Planning Scheme 2017

REASONS FOR DECISION

The reasons for this decision are:

Council is in receipt of a development application for Development Permit – Reconfiguring a Lot (1 into 2) and Material Change of Use for a dwelling house.

According to the 2011 census, Yarrabah has a population of approximately 2400 people. Currently there is insufficient houses for the number of residents. It is understood that there has been a rise from an average of 5.6 persons per household in 2011, to now potentially 15 persons per household. There is a need for more housing for the community.

This application is the first to be considered under the Yarrabah Aboriginal Shire Council Planning Scheme which commenced on 16 October 2017.

The application is Impact Assessable within the Emerging Community zone of the Planning Scheme 2017. The application received one submissions objecting to the development. No State referrals applied to the application. The proposed development complies with the assessment benchmarks and is recommended for approval, subject to conditions.

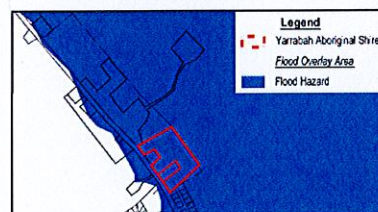
ASSESSMENT BENCHMARKS:

The proposed development was assessed against the following assessment

Planning Scheme 2017		Scheme Requirement
Strategic Framework	Theme 1 Settlement Pattern	<ol style="list-style-type: none"> 1. Development is co-ordinated, sequenced and appropriately planned and constructed to provide an efficient and cost effective pattern of development. 2. Residential development occurs within the services boundary as shown on Yarrabah Priority Infrastructure Area Map YPIP-001. Settlement expansion beyond this boundary does not occur due to physical land constraints or is out of sequence with infrastructure delivery and costs.
	Theme 2 –	<ol style="list-style-type: none"> 1. Infrastructure and services are provided to Yarrabah’s communities

	Infrastructure	<p>in a planned, timely, economical and efficient manner in order to support community needs.</p> <p>2. Development is appropriately co-ordinated and generally sequenced to ensure that activities are appropriately serviced by infrastructure to maximise the efficient use of transport, energy and water resources.</p>
Zone	Emerging Community	<p>The purpose of the Emerging community zone code includes to:</p> <ol style="list-style-type: none"> 1. manage the timely conversion of non-urban land to urban purposes 2. implement the policy direction set in the Strategic Framework, in particular <ol style="list-style-type: none"> i. Theme 1: Settlement Pattern, Element 3.4.3 Residential development, Element 3.4.4 Business and industry development. ii. Theme 2: Infrastructure Element 3.5.2 Urban infrastructure iii. Theme 4: Strong communities, Element 3.7.3 Healthy communities, Element 3.7.4 Housing diversity and choice, Element 3.7.5 Sense of community, place and identity.
Other Development Codes	Reconfiguring a lot	<p>The purpose of the code will be achieved through the following overall outcomes:</p> <ol style="list-style-type: none"> 1 development results in the creation of useable lots for their intended land use while not adversely impacting on environmental features, site constraints and the character and amenity of the area; 2 development results in appropriately sized, dimensioned and shaped lots to meet the outcomes of the respective zones; 3 road networks provide connectivity that is integrated with adjoining existing or planned development, while also catering for safe and efficient access for pedestrians and cyclists. 4 development is designed and constructed to integrate with existing and planned infrastructure and services to the extent that these are necessary to support the proposed development. <p>The approval contains conditions in this regard.</p>
	Operational Works	<p>The purpose of the code is to ensure that the standards of water supply, waste water treatment and disposal, stormwater drainage, local electricity supply, telecommunications, footpaths and road construction meet the needs of development and are safe and efficient.</p> <p>The approval contains conditions in this regard.</p>
Overlays	Acid Sulfate	<p>The purpose of the code will be achieved through the following overall</p>

	Soils	<p>outcomes:</p> <ol style="list-style-type: none"> 1. Development ensures that the release of any acid and associated metal contaminant is avoided by not disturbing acid sulfate soils when excavating, removing soil or extracting groundwater or filling land; 2. Development ensures that disturbed acid sulfate soils or drainage waters are treated and, if required, on-going management practices are adopted that minimise the potential for environmental harm from acid sulfate soil and protects corrodible assets from acid sulfate soil. <p>No conditions are required in this regard.</p>
	Biodiversity Areas	<p>The proposed development has triggered assessment against the Biodiversity Overlay for regulated vegetation. However the mapping is in error.</p> <p>No conditions are required in this regard.</p>
	Bushfire Risk	<p>The proposed development has triggered assessment against the Bushfire Overlay. However the site is in the impact buffer area and development is permitted in this location.</p> <p>No conditions are required in this regard.</p>
	Flood Hazard.	<p>The site is within the flood hazard area. This is typical of most coastal regions. The mapping is provided by the State Government and it fails to provide any detail as to the depth of the flooding over any properties in the Council Area.</p> <p>Accordingly, it is not possible to say if the site is likely to be inundated by 2cm or 2m of water.</p> <p>However, the likely floor height for the new dwelling can be calculated from the floor heights of the residential development in Schreiber Street.</p> <p>Conditions are provided in this regard.</p>



NON-COMPLIANCE WITH BENCHMARKS

A workshop was held on 16 February, 2018 with the future lease owner Chynna Kyunna, Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP), Indigenous Business Australia (IBA), Planz Town Planning (Consultant – Assessment Manager on behalf of Council), RPS Consultants on behalf of the applicants and the full Council.

At that workshop the history of the application was reviewed including the application for the lease from the DNRME as trustee for the land, the IBA loan for housing and the planning process. Chynna

Kyunna has obtained approval for a home loan from IBA, however IBA confirmed that the loan could not be issued without a title – i.e. the reconfiguring a lot / town planning application being finalised and DATSIP registering the new title (99 year lease).

While the subdivision is supported, discussion was had about the suitability of the dimensions of the lot which would result in new lot of 4,000m² (40m x 100m). The workshop considered and an amended lot of between 1,600m² to 2000m². It was discussed that:

1. The proposal sets the layout for the future development of the balance lot.
2. A 40m x 100m lot is not readily subdivided into further lots,
3. The 4000m² lot size in the Planning Scheme is for land that is not connected to sewer, as this is the minimum lot size to minimise any possible harm from onsite effluent disposal. This does not apply as the site.
4. A simple amendment to the plan at this stage would result in the ability to create more residential lots and would also provide certainty to the applicant for future development and allow lots for future family members and avoid frustration and expense in future applications.

However at the end of the workshop, it was agreed that the proposal as lodged would be sufficient having consideration for the IBA timeframes and the value of providing housing in Yarrabah and subject to final planning assessment and having regards to any submissions received.

RELEVANT MATTERS FOR IMPACT ASSESSABLE

The application is Impact Assessable within the Emerging Community zone of the Planning Scheme 2017. Public Notification was undertaken and pursuant to Part 4 of the Development Assessment Rules there were elements of non-compliance:

1. In accordance with Section 17.1 b) the public notice sign did not remain on site for the entire 15 business days as the sign was vandalised. RPS was notified of this on the 5 March 2018. That is the sign was on the site for a maximum of 5 days out of the required 15); and
2. Only one sign was erected on Back Beach Road, and a sign was not placed on Schreiber Street due to error; and
3. In accordance with Section 17.1 c) all letters were issued to the adjoining owners, with the omission on the letter to Council that did not state Lot 39 on SP279560.

One submission was received for the application.

Council determined to exercise discretion in accordance with Section 53 (3) of the Planning Act 2016, which states:

The assessment manager may assess and decide a development application even if some of the requirements of the development assessment rules about the notice have not been complied with, if the assessment manager considers any noncompliance has not—

- a. adversely affected the public's awareness of the existence and nature of the application; or
- b. restricted the public's opportunity to make properly made submissions about the application.

