

4 June 2021

Enquiries: Rebecca Taranto
Our Ref: BW 2021_4154/1(Doc ID:1016411)
Your Ref: 20212210

Administration Office
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Alan Gordon & Natalie Jenkins
65 Morrish Rd
Julatten QLD 4871

Email:alcon@westnet.com.au

Dear Sir/Madam

**Concurrence Agency Response for Building Work Assessable Against the Planning
Scheme (Garage)
At 63 Old Forest Creek Road Forest Creek
On Land Described as Lot 2 on RP861014**

The referral agency material for the development application described below was properly referred to Douglas Shire Council on 28/05/2021.

Please quote Council's application number: BW 2021_4154/1 in all subsequent correspondence relating to this matter.

Should you require any clarification regarding this, please contact Rebecca Taranto on telephone 07 4099 9444.

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning

encl.

- Approved Drawing(s) and/or Document(s)
- Advice For Making Representations and Appeals



Concurrence Agency Response

Given under section 56 of the Planning Act 2016

Applicant Details

Name: Alan Jenkins & Natalie Gordon
Postal Address: 65 Morrish Rd
Julatten QLD 4871
Email:alcon@westnet.com.au

Assessment Manager

Name: GMA Certification Group Pty Ltd
Postal Address: PO Box 831
Port Douglas Qld 4877
Email:adminpd@gmacert.com.au

Property Details

Street Address: 63 Old Forest Creek Road Forest Creek
Real Property Description: Lot 2 on RP861014
Site Area: 14.07 hectares
Local Government Areas: Douglas Shire Council

Application Details

Proposed Development: Building Work Assessable Against the Planning Scheme (Garage)

Aspects of development and type of approval being sought

Development Permit for Building Work – *Referral trigger for concurrence agency response in accordance with section 1.7.4 of the 2018 Douglas Shire Planning Scheme version 1.0 for building work within the Hillslopes Overlay Area.*

Performance Criteria	Acceptable Solution	Proposal
The landscape character and visual amenity/quality of hillslopes areas is	Development is located on parts of the site that are not within the Hillslopes constraint subcategory as	The proposal seeks to construct a garage (8m x 14m) within an existing cleared area within an area affected by the Hillslopes overlay code. The exterior colour of the proposed garage

retained to protect the scenic backdrop to the region.	shown on the Hillslopes overlay Maps contained in schedule 2.	is consistent with the requirements of the Hillslopes overlay code.
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Decision

Date of Decision: 4 June 2021
Decision Details: Approved (subject to conditions)

Approved Drawing(s) and/or Document(s)

Copies of the following plans, specifications and/or drawings are enclosed.
The term 'approved drawing(s) and/or document(s) or other similar expressions means:

Drawing or Document	Reference	Date
Site Plan	Unauthored Drawing. Council Doc ID: 1015383	Submitted with application on 28 May 2021.

Concurrence Agency Conditions & Advices

In accordance with the *Planning Act 2016*, the following conditions are to attach to any development approval:

- The development is undertaken in accordance with the facts and circumstances set out in the development application referred to Council.

Building Colours

- Building colours must be non-reflective and must blend with the natural colours of the landscape to the satisfaction of the Chief Executive Officer.

Advice

- 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.
- This approval does not negate the requirement for compliance with all other relevant Council Local Laws and other statutory requirements.
- For information relating to the *Planning Act 2016* log on to <https://planning.dsdmip.qld.gov.au/>. To access the *FNQROC Regional Development Manual*, Local Laws, the Douglas Shire Planning Scheme and other applicable Policies log on to www.douglas.qld.gov.au.

Reasons for Decision

- The reasons for this decision are:
 - to ensure the development satisfies the Performance Criteria Criteria PO1 of the Hillslopes Overlay Code of the 2018 Douglas Shire Planning Scheme; and
 - conditions 1 and 2.

2. Findings on material questions of fact:
 - a. The development application was properly referred to the Douglas Shire Council on 3/06/2021 under Section 54 of the *Planning Act 2016* and Part 2 of the Development Assessment Rules; and
 - b. The development application contained a report that Council reviewed together with Council's own investigation in making its referral agency assessment.
3. Evidence or other material on which findings were based:
 - a. The development triggered referral agency assessment under Schedule 9, Part 3, Division 2, Table 3 of the *Planning Regulation 2017*; and
 - b. Council undertook an assessment in accordance with the provisions of sections 55 and 56 of the *Planning Act 2016*.

Relevant Period

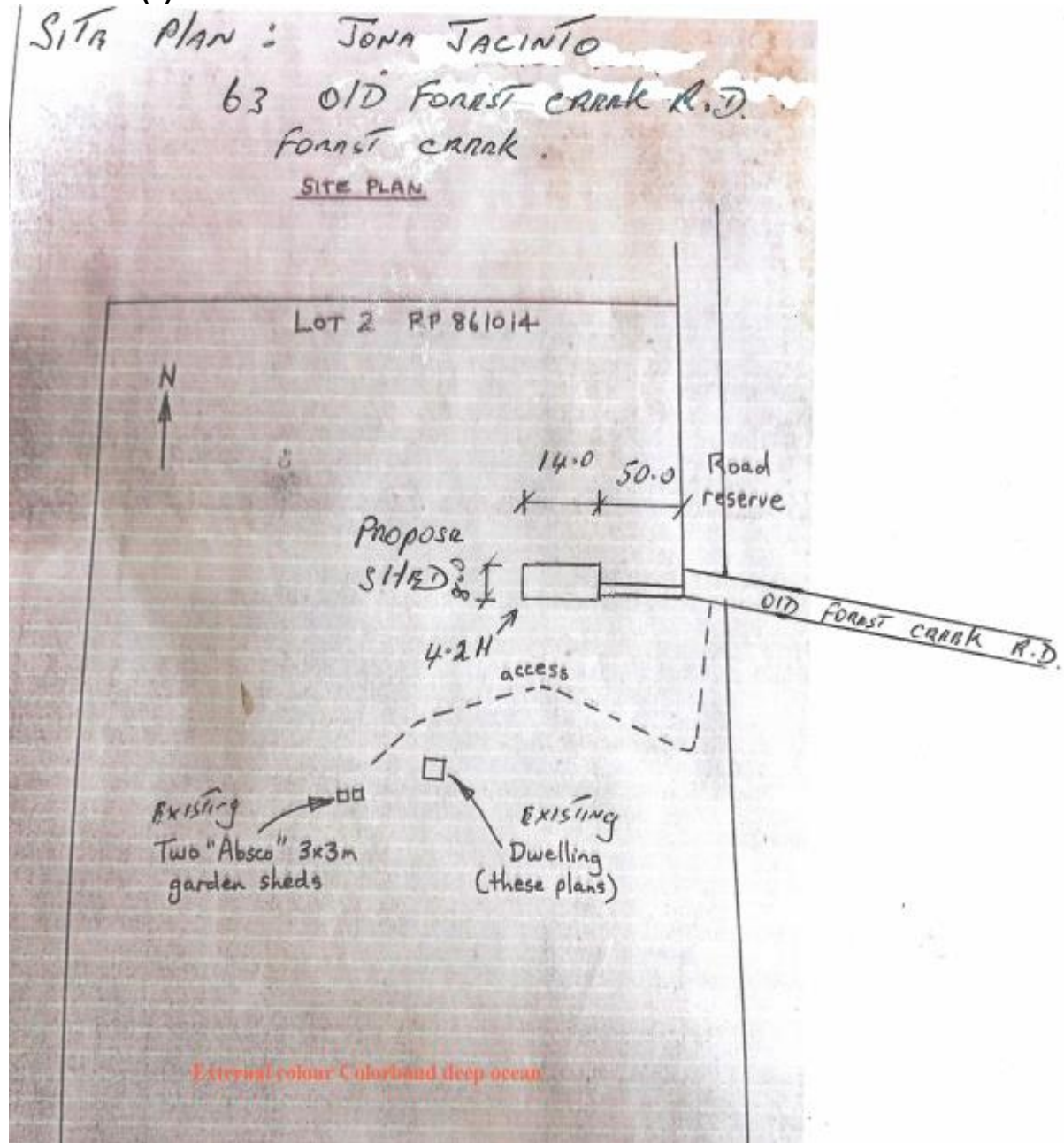
Under the *Planning Act 2016*, Council requires that the relevant period of approval for any development is to be six (6) years starting the day the approval takes effect.

Rights to make Representations & Rights of Appeal

The rights of applicants to make representations and rights 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*.

A copy of the relevant appeal provisions are attached.

Approved Drawing(s) and/or Document(s)



Part 7: Miscellaneous

29 Missed referral agency

- 29.1 This section applies if, at any time before the application is decided, an applicant has not referred the application to a referral agency referred to in section 55(1) of the Act or to another referral agency for all referral requirements under section 55(2) of the Act in the time provided to refer the application (a *missed referral agency*).²¹
- 29.2 A *party* to the application may, by notice given to each other party to the application, advise the parties that the applicant has not referred the application in accordance with section 54(1) of the Act.
- 29.3 Despite section 31.1(a) and subject to section 31.4 where notice has been given under section 29.2, the application does not lapse as a result of a missed referral agency.²²
- 29.4 The applicant must refer the application in accordance with section 5.1, as if ‘the day after part 1 has ended’ is ‘after the day the applicant gave or received notice about a missed referral agency’.
- 29.5 Part 2 and part 3 apply to the missed referral agency once action is taken under section 29.4.
- 29.6 Despite section 11.1, any referral agency referred the development application as a result of this section may make an information request.
- 29.7 If a notice about a missed referral agency is given before part 5 starts, then part 5 cannot start before part 2 has ended in relation to the missed referral agency.²³
- 29.8 If part 4 applies to the application, the giving of a notice under this section has no effect on any actions already undertaken under part 4.

30 Representations about a referral agency response

- 30.1 An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.²⁴

31 Lapsing of application

- 31.1 An application lapses if the applicant does not carry out the following actions in the prescribed period, including any further agreed period under the relevant section—
 - (a) give the referral agency material to each referral agency that is party to the application and advise the assessment manager when the referral agency material was given under section 5, section 27 or section 29, as relevant to the application;²⁵ or
 - (b) undertake the actions to publicly notify the application requiring public notification; or
 - (c) give a notice of compliance under section 18 to the assessment manager for the application requiring public notification.

²¹ As provided for under section 5.

²² As set out in section 31.4, this section has no effect where a missed referral notice has already been given about the missed referral agency.

²³ Section 23.2 describes the effect on the decision period if part 5 had already commenced before notice about the missed referral had been given.

²⁴ An applicant may elect, under section 32, to stop the assessment manager’s decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.

²⁵ This provision is subject to section 29.3.

Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016
Chapter 6 Dispute resolution

[s 229]

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

- (3) In this section—

conduct means an act or omission.

representative means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
(b) of an individual—an employee or agent of the individual.

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

- (a) knowledge, intention, opinion, belief or purpose; and
(b) reasons for the intention, opinion, belief or purpose.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
- (a) matters that may be appealed to—
- (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
- (b) the person—
- (i) who may appeal a matter (the *appellant*); and
 - (ii) who is a respondent in an appeal of the matter; and

Page 212

Current as at 1 October 2020

Authorised by the Parliamentary Counsel

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

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

Note—

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

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

230 Notice of appeal

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

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

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

231 Non-appealable decisions and matters

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

decision includes—

- (a) conduct engaged in for the purpose of making a decision; and
- (b) other conduct that relates to the making of a decision; and
- (c) the making of a decision or the failure to make a decision; and
- (d) a purported decision; and
- (e) a deemed refusal.

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

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

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

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

232 Rules of the P&E Court

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

Part 2 Development tribunal

Division 1 General

233 Appointment of referees

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