



Decision Notice Approval (amended)

Planning Act Form 5 (version 1.2 effective 7 February 2020) made under Section 282 of the Planning Act 2016 for a decision notice (approval) under s83 (change application) Planning Act 2016

Application number:	D/73-2023	Contact:	Aidan Murray
Notice Date:	17 May 2024	Contact Number:	07 4936 8099

APPLICANT DETAILS

Name:	Bouldy Home Nursery		
Postal address:	C/- Gideon Town Planning PO BOX 450 ROCKHAMPTON QLD 4700		
Phone no:	07 4806 6959	Mobile no:	n/a
Email:	info@gideontownplanning.com.au		

I acknowledge receipt of the above change application on 22 March 2024 and confirm the following:

DEVELOPMENT APPROVAL

Development Permit for Material Change of Use for a Garden Centre and Operational Work for an Advertising Device (Freestanding Sign)

PROPERTY DESCRIPTION

Street address:	14 Kroombit Drive, Bouldercombe
Real property description:	Lot 22 on RP617396

Dear Bouldy Home Nursery

I advise that, on 14 May 2024 the above change 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.

CHANGES TO CONDITIONS

The conditions which have been changed or cancelled are as follows:

1)	Condition 1.10	Deleted	14 May 2024
2)	Condition 2.1 – Material Change of Use	Changed	14 May 2024
3)	Condition 2.1 – Operational Works	Changed	14 May 2024

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Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use - Operational work	<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
Operational Works	<i>Access and Parking Works</i>

4. SUBMISSIONS

Properly made submissions were made in relation to the application.

There were 455 properly made submissions received for application. The list of submitters is included in the attachments.

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>
Proposed Site Layout – Location Plan	Design + Architecture	28 February 2024	GG-C SK-001	E
Proposed Site Layout – Site Plan	Design + Architecture	28 February 2024	GG-C SK-002	E

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

- (a) For any part of the development approval relating to a material change of use – if the change of use does not happen within six (6) years after the approval starts to have effect, if not stated otherwise in the conditions of approval attached; and
- (b) For any other part of the development approval – if the development does not substantially start within six (6) years after the approval starts to have effect, if not stated otherwise in the conditions of approval attached.

8. STATEMENT OF REASONS

Description of the development
Material Change of Use for Garden Centre and Operational Work for Advertising Device (Freestanding Sign)
Reasons for Decision
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

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.

Assessment Benchmarks

The development was assessed against the following assessment benchmarks:

- Strategic Framework;
- Local Government Infrastructure Plan (LGIP);
- Rural Residential Zone Code;
- Biodiversity Overlay;
- Bushfire Hazard Overlay Code
- Flood Hazard Overlay Code
- Access, Parking and Transport Code;
- Advertising Devices 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
<p>Rural Residential Zone Code PO11 Overall Outcome (2) (c)</p>	<p>The proposal does not comply with outcomes sought for Performance Outcome (PO) 11 for non-residential development, which should only be located in the Rural Residential Zone when it can demonstrate that the development complies with the following provisions:</p> <ul style="list-style-type: none"> (a) It does not compromise the role and function of existing centres. (b) It does not compromise the rural residential character and existing amenity of the surrounding area in relation to lighting, noise, dust and odour. (c) It would not be more appropriately located in another zone. (d) It is small in scale. (e) It is consistent with the surrounding built form and streetscape. <p>As the proposed development is only partially consistent with PO11, specifically non-compliant with provision (c) above, consideration has also been given to the purpose and overall outcomes of the Rural Residential Zone.</p> <p>If managed effectively at a small intensity and scale that is ancillary to the primary use of the land for a dwelling house, it is possible that the garden centre can be operated so as to not compromise the surrounding built form and streetscape. The garden centre has limited hours of operations and conditions have been imposed to mitigate the potential for environmental nuisance.</p> <p>The garden centre can be operated at a small-scale and low intensity, subject to reasonable and relevant conditions. However, the proposed stage 2 greenhouse is not supported as this is considered to represent incremental expansion of the use in a way that threatens to expand commercial development beyond the existing centre</p>

	<p>and township zones. Ultimately, this may have a negative impact on the rural residential character of Kroombit Drive if allowed to grow and expand beyond the current operations.</p> <p>This would result in an undesirable outcome for the site, neighbouring properties and residents of Kroombit Drive. Should the commercial demand for the business continue to grow and expand, it is likely to outgrow the current rural residential property and may require relocation to a more suitable commercial site in future. The garden centre would be better suited to be established within a centre, industrial zone or township zone. Of these zone types, only township zone can be within the Bouldercombe locality, approximately 1.6km to the south of the subject site.</p> <p>Council officers consider that the existing development (Stage 1) can be operated in a manner that is generally consistent with the purpose of the Zone, subject to the implementation of reasonable and relevant conditions. On balance, this part of the proposed development does not compromise the purpose and overall outcomes of the Rural Residential Zone and the development can be approved in part (subject to conditions) despite non-compliance with part of PO11.</p>
<p>Access, Parking and Transport Code PO1</p>	<p>The development does not comply with Acceptable Outcome (AO) 1.1 as the existing access at the western end of the site is located within one metre (1m) of an electricity power pole. This access pre-exists the development and is an area of low-speed vehicle movements. Furthermore, the applicant has indicated that reflective strips will be placed on the power pole to increase visibility.</p> <p>These factors and measures are reasonable in mitigating potential risk and avoiding conflict in light of the pre-existing site conditions. The access, parking and vehicle manoeuvring areas can operate in a manner that is safe and efficient and is therefore considered to achieve the necessary Performance Outcome (PO) 1.</p>
<p>Access, Parking and Transport Code PO5</p>	<p>The development does not comply with Acceptable Outcome (AO) 5.1 as the on-site car parking is not provided at the rates set out in Table 9.3.1.3.2 of the Access, Parking and Transport Code.</p> <p>In accordance with Table 9.3.1.3.2, parking for a garden centre is to be provided at a rate of one space per 100m² of the total use area with a minimum of five spaces. The total approved use area for the development is 1,343m²; therefore, the development would require 13 parking spaces to comply with the prescribed rate.</p> <p>Based on the expected traffic volumes of the operation, it is considered unnecessary to enforce 13 parking spaces for the development. Furthermore, requiring construction of 13 formalised parking spaces is considered detrimental to retaining the rural residential character of Kroombit Drive.</p> <p>The Applicant proposed three (3) car parking spaces for customer use within the site. At Council's request, two (2) additional informal parking spaces will be provided to the west of the formal car parks. These parks will provide the necessary additional capacity during periods of increased demand and will not be impervious to drainage. Conditions have been imposed on the development to ensure that customer parking is catered for within the subject site and is clearly marked and signed for customer use. Delivery and commercial waste collection vehicles must also be unloaded within the site boundaries rather than in the road reserve.</p> <p>The above-mentioned provisions and imposed conditions are considered to be suitable in ensuring that on-site parking meets the likely demand of the development and avoids on-street parking that would adversely impact the safety and amenity of Kroombit Drive. Therefore, the development complies in part with AO 1.1 and with Performance Outcome (PO) 5 on the whole.</p>
<p>Relevant Matters</p>	
<p>The proposed development was not assessed against any relevant matters outside of the matters prescribed by regulation.</p>	
<p>Matters raised in submissions</p>	
<p>The proposal was the subject of public notification between 24 July 2023 and 11 August 2023, in</p>	

<p>accordance with the requirements of the Planning Act 2016 and the Development Assessment Rules.</p> <p>497 submissions were received, 494 of which were in support of the development and three (3) were in opposition. The matters raised by the opposing submissions have been summarised below.</p>	
Dust	<p>Submitters raised concern about the consistent use of blower vacuums and have claimed that this has resulted in nuisance as a result of dust and noise impacts off-site, particularly outside of operational hours. Conditions and advisory notes have been imposed on the development to mitigate potential environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke which is also regulated under the <i>Environmental Protection Act 1994</i> (EP Act). Furthermore, the EP Act regulates the times in which regulated devices may be used. Council officers consider these factors to be sufficient in ensuring that blowing and other related activities only occurs within the operating hours and does not result in environmental nuisance to neighbouring properties.</p>
Delivery times	<p>Submitters identified that the existing garden centre operations have involved delivery times occurring outside of the nominated operational hours (before 7am and after 7pm) and raised concerns that this will continue. A condition has been imposed to ensure that all deliveries only occur during operating hours.</p>
Use of chemicals	<p>Submitters raised concern about the use of chemicals (pesticides, fertilizers etc.) on the site and the potential releasing harmful fumes. In response, the Applicant has stated that chemicals are not used on site as part of the garden centre land use. Despite this, use of fertilisers and pesticides is reasonable for a garden centre (nursery) or a residential property when managed effectively to mitigate off-site impacts. Standard conditions and advisory notes are imposed on the development to ensure that no environmental nuisance is caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the development site.</p>
Flooding	<p>Submitters raised concern about flooding, runoff and erosion caused by an earthen wall at the rear boundary of the property as well as concerns that the stage 2 greenhouse will exacerbate these issues. The earthen wall at the rear boundary does not form part of the nursery. The wall also has two substantial cut-outs to allow for water flow. Council officers do not consider that localised flooding will impact operation of the nursery. The existing greenhouse (stage 1) is primarily a shade structure and will not significantly impact water runoff or overland flow. Furthermore, the proposed stage 2 greenhouse is not approved in relation to this application.</p>
Excessive water use	<p>Submitters stated that the Applicant excessively uses water day and night and that sprinklers are on all the time. In response, the Applicant has stated that most sprinklers on-site are on an automated system that ensures water use does not exceed what is required for the products. Kroombit Drive does not have access to reticulated water infrastructure and Council does not regulate the use of bore water.</p>
Burning of green waste	<p>Submitters claimed the Applicant constantly burns waste, causing nuisance to neighbouring properties. The Applicant has stated that green waste is not burned on-site. There is a 2m x 2m fire pit on the site, which the applicant claims is used for recreational purposes only and does not require a permit for use. Use of fires in a rural residential area (whether recreational or commercial) is not regulated under the <i>Planning Act 2016</i> and is managed through separate legislation. Conditions and advisory notes have been imposed on the development to mitigate potential environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke which is also regulated under the <i>Environmental Protection Act 1994</i> (EP Act).</p>
Increase in pests and vermin (e.g. rats and fire ants)	<p>Submitters believe that the development attracts pests and vermin to the site, including rodents and fire ants (through imported plants). The Applicant has stated that no products are used on site which would be likely to increase the presence of vermin and pests. The presence of rodents is not unusual for a rural residential area and the presence of cacti and other succulents is not considered likely to attract additional vermin. The spread of fire ants is a biosecurity matter and is not regulated by Council but rather the Queensland Government's Department of Agriculture and Fisheries (DAF).</p>

On-Site parking	Submitters highlighted that the existing operation has previously resulted in customer vehicles and delivery vehicles parking and loading/unloading in the road reserve. The original development proposal showed only three (3) car parks on site. Council requested the Applicant include an additional two (2) parking spaces in the development for overflow parking and that the site plan be amended to show these parking spaces. The Applicant amended the application to achieve this outcome as part of the response to Council's information request. This increases the on-site parking to comply with the minimum number of parking spaces prescribed by the Access, Parking and Transport Code. Signage must be implemented to clearly identify the overflow parking spaces.
Traffic safety and congestion	<p>Submitters raised concern for vehicular traffic and on-street parking congesting Kroombit Drive as well as the intersection of Kroombit Drive and the Burnett Highway. Council officers assessed the projected traffic numbers and have determined that the garden centre only attracts a small number of customers and vehicle movements in relation to the existing traffic on the Burnett Highway, which is a State-controlled road. Furthermore, the application did not trigger referral to the Department of Transport and Main Roads / State Assessment Referral Agency (DTMR / SARA) based on the State assessment referral triggers. Vehicle movements relating to the garden centre are not significantly more than that typically seen or expected for a home-based business.</p> <p>Conditions have been imposed on the development to ensure that customer parking is catered for within the subject site and is clearly marked and signed for customer use. Delivery and commercial waste collection vehicles must also be unloaded within the site boundaries rather than in the road reserve. The proposed construction of a second driveway allows for all customer and delivery vehicles to leave the site in a forward gear. These measures, as conditioned, reduce the number of vehicle movements and discourages parking within Kroombit Drive, mitigating potential safety risks as much as practicable.</p>
Matters prescribed by regulation	
<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. RIGHTS OF APPEAL

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*. 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*).

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 down 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. ORIGINAL DECISION ASSESSMENT MANAGER

Name: Amanda O'Mara <u>COORDINATOR</u> <u>DEVELOPMENT ASSESSMENT</u>	Date: 21 November 2023
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12. ASSESSMENT MANAGER

Name: Amanda O'Mara <u>COORDINATOR</u> <u>DEVELOPMENT ASSESSMENT</u>	Signature: 	Date: 17 May 2024
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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

Material Change of Use – Garden Centre

1.0 ADMINISTRATION

- 1.1 The owner, the owner's successors in title, and any occupier of the premises 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 must be undertaken, completed, and be accompanied by a certificate of compliance for any operational works required by this development approval:
- 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 Permit must be obtained prior to the commencement of any works associated with their purposes:
- 1.5.1 Operational Works:
 - (i) Access and Parking Works;
- 1.6 All Development Permits for Operational Works must be obtained prior to the issue of a Development Permit for Building Works.
- 1.7 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.
- 1.8 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.
- 1.9 All development conditions contained in this development approval about infrastructure under Chapter 4 of the *Planning Act 2016* should be read as being non-trunk infrastructure conditioned under section 145 of the *Planning Act 2016*, unless otherwise stated.
- 1.10 Deleted

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>
Proposed Site Layout – Location Plan	Design + Architecture	28 February 2024	GG-C SK-001	E
Proposed Site Layout – Site Plan	Design + Architecture	28 February 2024	GG-C SK-002	E

- 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 ACCESS AND PARKING WORKS
- 3.1 A Development Permit for Operational Works (access and parking works) must be obtained prior to the commencement of any access and parking works on the development site.
- 3.2 All access and parking works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines*, *Australian Standard AS2890 "Parking facilities"* and the provisions of a Development Permit for Operational Works (access and parking works).
- 3.3 All car parking and access areas must be paved or sealed to Council's satisfaction. Design and construction must be in accordance with the provisions of a Development Permit for Operational Works (access and parking works).
- 3.4 The existing access from Kroombit Drive to the development must be upgraded to comply with the requirements of the *Capricorn Municipal Development Guidelines*.
- 3.5 A new access to the development must be provided at the eastern end of the development site within six (6) months of this development permit taking effect.
- 3.6 All vehicles must ingress and egress the development in a forward gear.
- 3.7 Adequate sight distances must be provided for all ingress and egress movements at the access driveways in accordance with *Australian Standard AS2890.2 "Parking facilities - Off street commercial vehicle facilities"*.
- 3.8 A minimum of three (3) formal parking spaces and two (2) informal parking spaces must be provided on-site for the Garden Centre generally in accordance with the approved plans.
- 3.9 Signage that clearly identifies the location of the two (2) informal parking spaces on-site must be provided.
- 3.10 Parking spaces must be line-marked in accordance with the approved plans (refer to condition 2.1), except for the informal parking spaces, and in accordance with the *Australian Standard AS2890 "Parking facilities"* and the provisions of a Development Permit for Operational Works (access and parking works).
- 3.11 Any application for a Development Permit for Operational Works (access and parking works) must be accompanied by detailed and scaled plans, which demonstrate the turning movements/swept paths of the largest vehicle to access the development site including delivery vehicles and refuse collection vehicles.
- Note: the largest vehicle identified within the application material is Medium Rigid (MR). However, should Heavy Rigid (HR) vehicles attend the site for deliveries or waste collection, the Operational Works application should identify this and design accordingly.*
- 4.0 ROOF AND ALLOTMENT DRAINAGE WORKS
- 4.1 All roof and allotment runoff from the development must be directed to a lawful point of discharge and must not restrict, impair or change the natural flow of runoff water or cause a nuisance to surrounding land or infrastructure.
- 5.0 SITE WORKS
- 5.1 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.
- 6.0 BUILDING WORKS
- 6.1 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.
- 6.2 Structures must not be located within the on-site sewerage treatment and disposal area or conflict with the separation distances, in accordance with the *Queensland Plumbing and Wastewater Code*.
- 7.0 LANDSCAPING WORKS
- 7.1 Landscaping must be constructed and/or established, within six (6) months of this development approval taking effect, in all areas shown on the approved plans (refer to condition 2.1 – as indicated along the front property boundary).

- 7.2 Landscaping must be designed in accordance with the requirements of *Australian Standard AS 1428 – Design for access and mobility*.
- 7.3 Planting types used within the landscaping areas (refer to condition 2.1) must include either trees, shrubs or groundcovers, or any combination of these planting types. These plantings must be established and maintained generally at the following density rates:
- 7.3.1 trees at five (5) metre intervals;
 - 7.3.2 shrubs at two (2) metre intervals; and
 - 7.3.3 groundcovers at one (1) metre intervals.
- 7.4 At least fifty (50) per cent of all new plantings within the landscaping areas (refer to condition 2.1) must be locally native species with low water dependency and must comply with the following requirements:
- 7.4.1 Plant species are chosen from sources recommended in *Planning Scheme Policy SC6.12 – Landscape Design and Street Trees Planning Scheme Policy*; and
 - 7.4.2 Plant species must not include undesirable species identified in *Planning Scheme Policy SC6.12 – Landscape Design and Street Trees Planning Scheme Policy*.
- 7.5 Each shade tree must have a clean trunk with a minimum height of two (2) metres and must be provided within the car park at the following rates:
- 7.5.1 In single sided, angle or parallel bays – One (1) tree per three (3) car parks; and
 - 7.5.2 In double sided, angle or parallel bays – One (1) tree per six (6) car parks.
 - 7.5.3 Each shade tree is provided with a minimum planting area of 1.2 square metres with a minimum topsoil depth of 0.8 metres.
- 7.6 Landscaping is to be provided and maintained along the road boundary frontage of the site adjoining Kroombit Drive with a minimum width of four (4) metres, except where a driveway exists or is proposed.
- 8.0 ASSET MANAGEMENT
- 8.1 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.
- 8.2 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.
- 9.0 ENVIRONMENTAL
- 9.1 An Erosion Control and Stormwater Control Management Plan in accordance with the *Capricorn Municipal Design Guidelines*, must be implemented, monitored and maintained for the duration of the development works, and until all exposed soil areas are permanently stabilised (for example, turfed, hydromulched, concreted, landscaped). The plan must be available on-site for inspection by Council Officers whilst all works are being carried out.
- 10.0 OPERATING PROCEDURES
- 10.1 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 Kroombit Drive.
- 10.2 The hours of operations for the Garden Centre must be limited to:
- (i) 0900 hours to 1600 hours on Wednesdays and Fridays,
 - (ii) 0900 hours to 1400 hours on Thursdays, and
 - (iii) 0900 hours to 1500 hours on Saturdays,
- with no operations on Sundays, Mondays or Tuesdays.
- 10.3 The loading and/or unloading of delivery and commercial waste collection vehicles is limited to operating hours and must occur fully within the subject site (i.e. must not occur within the road reserve of Kroombit Drive).

- 10.4 Operations on the development site must have no significant impact as determined by Council on the amenity of adjoining premises or the surrounding area due to the emission of light, noise, odour or dust.
- 10.5 All waste storage areas must be:
- 10.5.1 kept in a clean and tidy condition; and
- 10.5.2 maintained in accordance with *Environmental Protection Regulation 2019*.

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. Infrastructure Charges Notice

This application is subject to infrastructure charges in accordance with Council policies. The charges are presented on an Infrastructure Charges Notice.

Operational Work for Advertising Device

1.0 ADMINISTRATION

- 1.1 The owner, the owner’s successors in title, and any occupier of the premises 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 of the Council may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
- 1.3 All conditions of this approval must be undertaken and completed to the satisfaction of Council, at no cost to Council.
- 1.4 The following further development permits are required prior to the commencement of any works on the site:
- 1.4.1 Building Works.
- 1.5 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.

2.0 APPROVED PLANS AND DOCUMENTS

- 2.1 The approved advertising device must be completed and maintained generally in accordance with the approved drawings and documents, except where amended by the conditions of this permit.

<u>Plan / Document Name</u>	<u>Prepared by</u>	<u>Date</u>	<u>Reference No.</u>	<u>Version / Issue</u>
Proposed Site Layout – Site Plan	Design + Architecture	28 February 2024	GG-C SK-002	E

- 2.2 Where there is any conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval must prevail.
- 3.0 OPERATING PROCEDURE
- 3.1 All advertising devices must only display or advertise a matter associated with the primary purpose for which the premises are used, or the purpose stated in this approval.
- 3.2 All text and images displayed on the approved advertising device:
- 3.2.1 must be static;
 - 3.2.2 must not imitate a traffic control device, move contrary to any traffic control device or include traffic instructions (for example 'stop'); and
 - 3.2.3 must not involve moving parts or flashing lights.
- 3.3 Any lighting devices associated with the advertising device, such as sensory lighting, must be positioned on the site and shielded so as not to cause glare or other nuisance to nearby residents or motorists. Night lighting must be designed, constructed and operated in accordance with '*Australian Standard AS4282 – Control of the obtrusive effects of outdoor lighting*' and '*Civil Aviation Safety Authority (CASA) Guidelines: Lighting in the vicinity of aerodromes: Advice to lighting designers*'.
- 4.0 BUILDING WORKS
- 4.1 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.
- 5.0 ASSET MANAGEMENT
- 5.1 Any damage to, or alterations necessary, to electricity, telephone, water mains, sewerage mains, stormwater drains, and/or public utility installations resulting from the development or in connection with the development, must be undertaken immediately, at no cost to Council, and completed within the following timeframes:
- 5.1.1 where damage causes a hazard to pedestrian/traffic safety or interrupts a community service, immediately; or
 - 5.1.2 as soon as reasonably possible as agreed with Council.
- 6.0 ADVERTISING DEVICE CONSTRUCTION AND MAINTENANCE
- 6.1 Council reserves the right for uninterrupted access to the site at all times during construction.
- 6.2 All Construction work and other associated activities are permitted only between 0630 hours and 1800 hours Monday to Saturday. No work is permitted on Sundays or public holidays. All requirements of the *Environmental Protection Act 1994* and the *Environmental Protection Regulation 2019* must be observed at all times, unless otherwise approved by Council in writing.
- 6.3 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the site.
- 6.4 Any proposed works within the vicinity (or zone of influence) of existing Council infrastructure will not adversely affect the integrity of the infrastructure. Any restoration works required on existing Council infrastructure as a result of proposed works will be at the developer's expense.
- 6.5 All conduits, wiring, switches or other control apparatus installed on an Advertising Device must be concealed from general view, with control apparatus secured in a manner to prevent unauthorised entry and display setting tampering.
- 6.6 All electrical services and systems must comply with *Australian and New Zealand Standard AS/NZS 3000:2007 – "Electrical Installations"*.
- 6.7 All advertising devices must be maintained at all times on the premises by the owner of the premises to the same standard as it was when it was installed, and be maintained in a safe, clean, condition that does not adversely impact the visual amenity of the site.

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.

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
4. Infrastructure charges notices An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds a) The notice involved an error relating to – (i) The application of the relevant adopted charge; or Examples of errors in applying an adopted charge – <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 <ul style="list-style-type: none"> (i) The working out of extra demands, for section 120; or (ii) An offset or refund; or b) The was no decision about an offset or refund; or c) If the infrastructure charges notice states a refund will be given – the timing for giving the refund; or d) The amount of the charge is so unreasonable that no reasonable relevant local government could have			

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
imposed the amount.			
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	-	-
5. Conversion applications An appeal may be made against— (a) the refusal of a conversion application; or (b) a deemed refusal of a conversion application.			
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	-	-
6. Enforcement notices An appeal may be made against the decision to give an enforcement notice.			
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			
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— (a) an error or mistake in law on the part of the tribunal; or (b) jurisdictional error.			
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	-	-
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.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)

Table 2 Appeals to the P&E Court only			
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—</p> <p>(a) any part of the development application or the change application, for the development approval, that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
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—</p> <p>(a) a decision under section 32 about a compensation claim; or</p> <p>(b) a decision under section 265 about a claim for compensation; or</p> <p>(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 An appeal may be made against a decision of the Minister under chapter 7, part 4.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 A person given a decision notice about the decision 2 If the decision is to register premises or	The Minister	-	If an owner or occupier starts the appeal – the owner of the registered premises

Table 2 Appeals to the P&E Court only			
renew the registration of premises—an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision			
<p>6. Local laws An appeal may be made against a decision of a local government, or conditions applied, under a local law about—</p> <p>(a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or</p> <p>(b) the erection of a building or other structure.</p>			
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			
<p>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.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A building advisory agency for the development application related to the approval	The assessment manager	The applicant	1 A concurrence agency for the development application related to the approval 2 A private certifier for the development application related to the approval
<p>3. Certain decisions under the Building Act and the Plumbing and Drainage Act An appeal may be made against a decision under—</p> <p>(a) the Building Act, other than a decision made by the Queensland Building and Construction Commission; or</p> <p>(b) the Plumbing and Drainage Act, part 4 or 5.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, 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	Column 4 Co-respondent by election

Table 3			
Appeals to the tribunal only			
		(if any)	(if any)
A person who was entitled to receive, notice of the decision	The local government to which the application was made	-	-