

# Cloncurry Shire Council

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Our ref: WES:LT-TP10/19

7 May 2020

Richard Nancarrow  
c/- Brad Smith  
Cloncurry Constructions  
PO Box 6  
CLONCURRY QLD 4824  
Email: [brad@curryconstructions.com.au](mailto:brad@curryconstructions.com.au)

## REFERRAL AGENCY RESPONSE — SITING DISPENSATION FOR A SHADE STRUCTURE (GREEN HOUSE) AT 75 UHR STREET CLONCURRY (LOT 130 ON RP7033228) - APPROVAL (WITH CONDITIONS)

(Given under section 57 of the *Planning Act 2016*)

<i>Application reference number</i>	TP10/19
<i>Contact name</i>	Richard Nancarrow
<i>Contact number</i>	0428 985 111
<i>Notice date</i>	7 May 2020
<i>Applicant's name</i>	Richard Nancarrow
<i>Applicant's address</i>	75 Uhr Street CLONCURRY QLD 4824

I acknowledge receipt of the above application on 26 March 2020 and confirm the following:

**RE:** Development application to allow siting dispensation for a minimum setback – Shade Structure (green house).  
75 Uhr Street, CLONCURRY (Lot 130 on RP703328)

Dear Brad

I advise that, on 5 May 2020 the above development application was:

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

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

## 1. Details of the approval

This application is taken to have been approved under section 57 of the *Planning Act 2016*.

The following approvals are given:

	Planning Regulation 2017 reference	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Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work	N/A	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

## 2. Conditions

This approval is subject to the conditions in Attachment 1.

## 3. Properly made submissions

Not applicable. Public notification not required.

## 4. Referral agencies for the application

Not applicable.

## 5. Approved plans, specifications and drawings

Drawing/report title	Prepared by	Date	Reference no.	Version/issue
Site Plan – As existing transportable building and shade structure	Cloncurry Constructions	2019	–	–

## 6. Appeal rights

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For certain 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 out the applicant's appeal rights and the appeal rights of a submitter.

To stay informed about any appeal proceedings which may relate to this decision visit:  
<https://planning.dsdmip.qld.gov.au/planning/our-planning-system/dispute-resolution/pe-court-database>.

Should you have any questions or concerns in respect of this matter please contact Council's Planning and Development Officer, Larinda Turrell, at this office.

Yours faithfully



David Bezuidenhout  
Chief Executive Officer

Enc: **Attachment 1—Conditions of the approval**  
**Attachment 2—Extract on appeal rights**  
**Attachment 3 – Statement of Reasons**  
**Attachment 4 - Approved Plans**

## ATTACHMENT 1 - CONDITIONS OF APPROVAL

1. The development must generally comply with the plan(s) and supporting documentation referenced in the table below and attached as stamped "Approved Subject to Conditions" which forms part of this approval, unless otherwise specified by any condition of this approval.

Plan Name	Plan No.	Revision No.	Plan/Revision Date
Site Plan – As existing transportable building and shade structure	-	-	2019

2. Dispensation is valid for twelve (12) months.
3. Any stormwater runoff from the shade structure and adjoining transport building must be managed on the site so as not to adversely impact the adjoining property.
4. This Development Approval does not include an assessment of building work against the requirements of the *Building Act 1975* and does not permit building work to occur unless, prior to the commencement of any building work, a Development Permit to carry out assessable building work under the *Building Act 1975* has been issued.
5. Repair any damage to the existing kerb and channel, footpath or roadway (including removal of concrete slurry from footways, roads, kerb and channel and stormwater drains) and reinstate any existing traffic signs and pavement markings that have been removed or damaged during any works carried out in association with the approved development.
6. Shade cloth only is to be used; any other material will require reassessment by Council.

## ATTACHMENT 2 - STATEMENT OF REASONS – TP10/19

### **NOTICE ABOUT DECISION - STATEMENT OF REASONS**

The following information is provided in accordance with section 63(5) of the *Planning Act 2016*

Development application TP10/19 was received from the owner of 75 Uhr Street, Cloncurry also known as Lot 130 on RP703328, for a greenhouse and structure less than 1.5m from the southern side road boundary and 1.5m from the western side boundary.

The siting dispensation is for a greenhouse and structure 7.6m long, 8m wide and 4m at its highest point, from the required 1.5m boundaries.

On the 5 May 2020, the above development application was approved in full, with conditions.

#### **Reasons for the decision**

The greenhouse and structure are a single storey structure with a maximum height of 4 metres which will have minimal impact on the subject site and adjoining property. The extent of non-compliance with the minimum setback of 1.5m is assessed as being unlikely to impact on the adjoining property in terms of amenity and privacy.

The development has an appropriate level of privacy for occupants of adjoining properties and provides safe vehicle access and parking for residential use.

There is no objection to the proposal from a planning viewpoint.

#### **1. Assessment benchmarks**

The following are the benchmarks applying for this development:

<b>Benchmarks applying for the development</b>	<b>Benchmark reference</b>
<b>Queensland Development Code: P2 Buildings and structures –</b> (a) provide adequate daylight and ventilation to <i>habitable</i> rooms; and (b) allow adequate light and ventilation to <i>habitable</i> rooms of <i>buildings</i> on adjoining <i>lots</i> . (c) do not adversely impact on the amenity and privacy of residents on adjoining <i>lots</i> .	The greenhouse is an open area that is not considered to impact on access to natural light, sunlight and does not create overbearing development for the adjoining dwelling house on the southern and western boundaries nor their open space and does not impact on the amenity and privacy.

## 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.
- (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.
- (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 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—
  - (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.



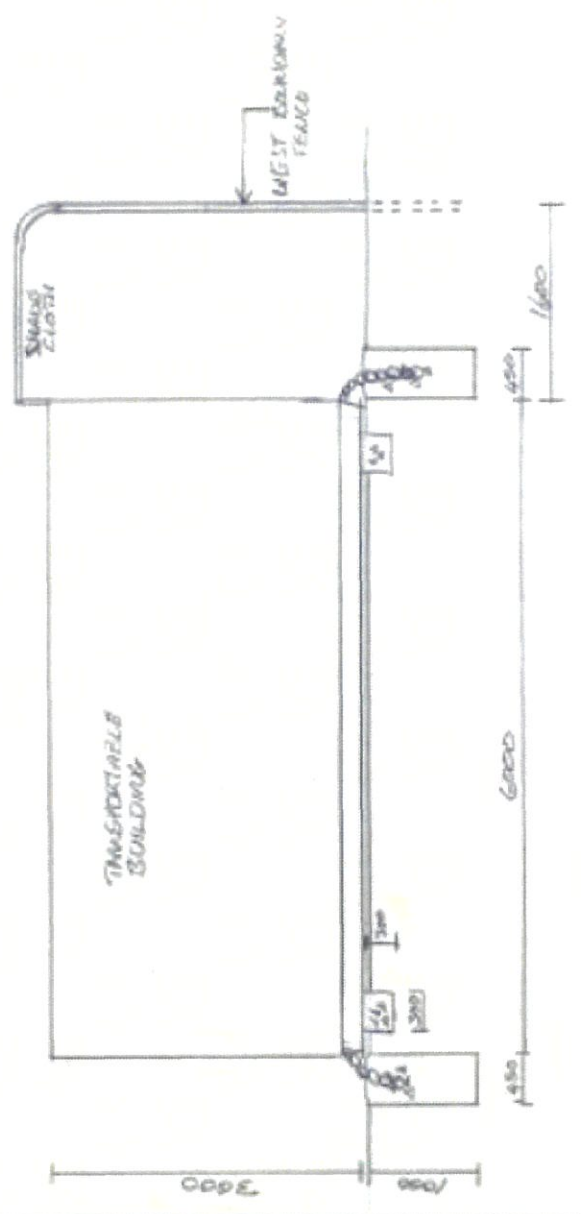
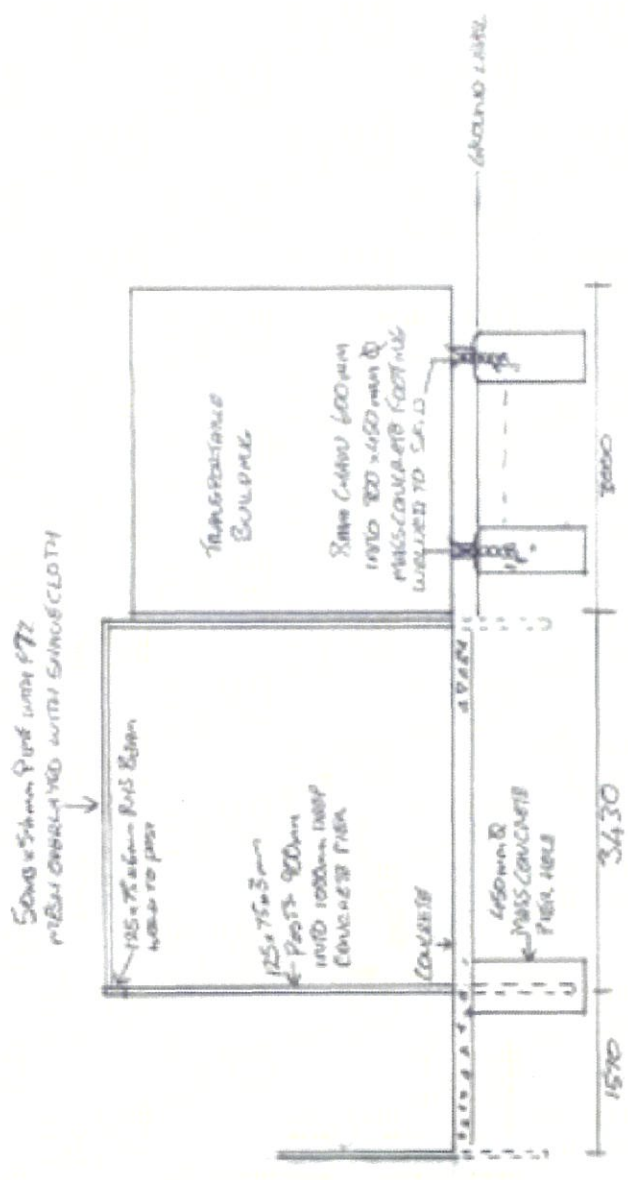
**ATTACHMENT 4 – APPROVED PLANS**

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3000  
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Cloncurry Shire Council  
Town Planning  
Approved with Conditions  
Approved Date: 5 MAY 2020  
TP 10 / 19

UHR ST  
EXISTING TRANSPARENT BUILDING AND SHEDS STRUCTURE FOR R.200 ZONING AT 76 UHR ST CLONCURRY LOT 150 ON TP 893/18 800M<sup>2</sup>  
DRAWING BASED ON INFORMATION PROVIDED 2019



ARCH ELECTRON