

23 January 2013

Katherine Berlin
Implementation & Assessment Branch, Nerang
(07) 5582 8866
1396-12-PC
PN307555/01/DA7
Application No: 201200768

Ms Projects Pty Ltd
C/- Gassman Development Perspectives
PO BOX 999
BRISBANE QLD 4000



Dear Sir/Madam

RESPONSE TO REQUEST FOR NEGOTIATED DECISION NOTICE

Application Type: MATERIAL CHANGE OF USE
Property Description: Lot 334 on SP193431
Property Location: 84 - 160 Christensen Road South, Stapylton

I wish to advise that on 23 January 2013 Gold Coast City Council did not agree with the representations made by the applicant seeking a Negotiated Decision Notice which sought to amend Conditions 22 to 29, 2aii, 21 and 30ai. The conditions of approval as notified by Council Decision Notice dated 19 December 2012 have therefore not been changed. This decision has been made based on the following information.

The southern-most area of Lot 334 SP193431, being the identified 40 metre ecological buffer area, is located within the Open Space Precinct 6 of the Yatala Enterprise Area Local Area Plan (LAP). The ecological buffer in question forms part of a critical ecological linkage with the existing Christensen Road Reserve (north-west) and surrounding open space area's dedicated to Council, as a result of previous and current development approvals.

As such, Council wish to maintain the ecological buffer area under public ownership due to the following reasons:

- Dedication of the 40 metre wide buffer as public open space is sought in accordance with the sites partial location within Precinct 6 - Open Space of the Yatala Enterprise Area LAP.
- The site is subject to a previous ROL approval (issued 10 December 2002 – Council Reference PN184435/02/DA1) which saw the subdivision of one (1) freehold allotment into four (4) freehold allotments and the dedication of a forty (40) metre wide ecological buffer from the top of high bank of Sandy Creek. To date, the sealing of plans for this specific subdivision approval has not occurred. The applicant was previously conditioned to submit an Open Space Management Plan (OSMP) addressing required rehabilitation works within the buffer area to Sandy Creek. To date, an OSMP has not been submitted and rehabilitation works have not

been carried out.

As such, the handover of the 40 metre buffer required to be dedicated to Council as public open space has not occurred. Council hold significant concern that should the subject development application be approved subject to no dedication requirements, that no opportunity presents to secure the required buffer to Sandy Creek as a result of any future development at the subject site.

- Dedication of the 40 metre wide buffer as public open space secures protection of the ecological buffer zone and associated natural waterway that traverses the southern portion of Lot 334 SP193431 under a public ownership management regime, to reflect that of adjacent/adjoining sites.

Secondly, dedication of part of Lot 334 as public open space also facilitates a logical connection and linkage to the public open space areas of adjoining sites.

Furthermore, the dedication of part of Lot 334 as a Conservation Area represents a logical future maintenance and management outcome for Council. Lot 334 will become a somewhat self-sustainable environmental reserve given its location amongst future planned and existing environmental reserve areas.

- From site inspection it was noted that there were areas within the waterway buffer and interface between the existing development and buffer, dominated by environmental weeds that have clearly not been managed to date by the landholder.

A consistent approach to the management of this waterway buffer by natural areas restoration specialists would be the preferred approach, particularly considering the high ecological value of the waterway buffer (both remnant communities supported within the buffer zone are highly restricted in distribution within the GCC whilst RE:12.3.11 is classified as an 'Of Concern' regional ecosystem under the *Vegetation Management Act 1999*).

- Previous development approvals have been issued by Council over the years to allotments immediately surrounding the subject site and have included such conditions as dedication of open space.

Therefore Council does not consider the conditions imposed on this approval to be onerous given that it is a requirement for all similar types of development within the area consistent with the landuse intent of the Yatala Enterprise Area LAP.

The applicant has the right of appeal to the Planning and Environment Court regarding this decision in accordance with [section 461 of the Sustainable Planning Act 2009](#). Please note that the balance of the appeal period restarts in accordance with [section 366 of the Sustainable Planning Act 2009](#).

Extracts from the [Sustainable Planning Act 2009](#), which detail your appeal rights, are attached for your information.

Contacting us

Should you wish to clarify any issues contained in this letter, please do not hesitate to contact Planning Assessment area on telephone (07) 5582 8866.

Yours faithfully

Roger Sharpe

EXECUTIVE COORDINATOR PLANNING ASSESSMENT

For the Chief Executive Officer

Tracking your application

You can view your development applications online and track their progress at goldcoastcity.com.au:

[Planning, Building & Environment > Planning & Development Online](#)

Sustainable Planning Act 2009

APPEAL RIGHTS FOR APPROVAL OR REFUSAL OF DEVELOPMENT APPLICATIONS FOR MATERIAL CHANGE OF USE, RECONFIGURATION OF A LOT OR OPERATIONAL WORKS APPLICATIONS.

461 Appeals by applicants

- (1) An applicant for a development application may appeal to the court against any of the following—
 - (a) the refusal, or the refusal in part, of the development application;
 - (b) any condition of a development approval, another matter stated in a development approval and the identification or inclusion of a code under section 242;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 341;
 - (e) a deemed refusal of the development application.
- (2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (the applicant's appeal period) after—
 - (a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or
 - (b) otherwise—the day a decision notice was required to be given to the applicant.
- (3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

366 Applicant may suspend applicant's appeal period

- (1) If the applicant needs more time to make the representations, the applicant may, by written notice given to the assessment manager, suspend the applicant's appeal period.
- (2) The applicant may act under subsection (1) only once.
- (3) If the representations are not made within 20 business days after the day written notice was given to the assessment manager, the balance of the applicant's appeal period restarts.

- (4) If the representations are made within 20 business days after the day written notice was given to the assessment manager—
 - (a) if the applicant gives the assessment manager a notice withdrawing the notice under subsection (1)—the balance of the applicant's appeal period restarts the day after the assessment manager receives the notice of withdrawal; or
 - (b) if the assessment manager gives the applicant a notice under section 363(5)—the balance of the applicant's appeal period restarts the day after the applicant receives the notice; or
 - (c) if the assessment manager gives the applicant a negotiated decision notice—the applicant's appeal period starts again the day after the applicant receives the negotiated decision notice.
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519 Appeal by applicant—particular development application for material change of use of premises

- (1) This section applies to a development application if the application is only for a material change of use of premises that involves the use of a prescribed building.
- (2) However, this section does not apply to the development application if any part of the application required impact assessment and any properly made submissions were received by the assessment manager for the application.
- (3) The applicant for the development application may appeal to a building and development committee against any of the following—
 - (a) the refusal, or the refusal in part, of the application;
 - (b) any condition of the development approval and another matter, other than the identification or inclusion of a code under section 242, stated in the development approval;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 341;
 - (e) a deemed refusal of the application.
- (4) An appeal under subsection (3)(a), (b), (c) or (d) must be started within 20 business days (the applicant's appeal period) after—
 - (a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or
 - (b) otherwise—the day a decision notice was required to be given to the applicant.
- (5) An appeal under subsection (3)(e) may be started at any time after the last day a decision on the matter should have been made.