



## **HINCHINBROOK SHIRE COUNCIL**

Our Ref: RFP:HJR SR18\0013

19 December 2018

I & S Brezinscak  
15 Sky Way  
CARRUM DOWNS VIC 3201

Email: [isabrez@bigpond.com](mailto:isabrez@bigpond.com)

Dear Sir/Madam

### **DECISION NOTICE** *Planning Act 2016*

In relation to your recent request for siting dispensation, Council have assessed your application and it was APPROVED SUBJECT TO CONDITIONS. The decision was made on Tuesday, 18 December 2018.

#### **APPLICATION DETAILS**

Application Number: SR18\0013  
Property ID Number: 106539

Applicant Details: Ivan & Sharon Brezinscak  
15 Sky Way  
CARRUM DOWNS VIC 3201

Owner Details: Ivan Brezinscak  
Sharon A Brezinscak  
15 Sky Way  
CARRUM DOWNS VIC 3201

Property Description: 7 Red Gum Court, Allingham, Queensland, 4850  
Lot 21 on SP181639, Parish of Cordelia

Proposal: Residential Siting Relaxation – Front Boundary Dispensation  
(6.0m building setback to 3m building setback)

Level of Assessment: Code Assessment

### DEEMED APPROVAL

The application has not deemed to be approved under s.64 of the *Planning Act 2016*.

### CONDITIONS OF APPROVAL

The conditions of this approval are set out in the Schedule of Conditions. The conditions are identified to indicate whether the Assessment Manager or a referral agency (if any) imposed them.

### REFERRAL AGENCIES

Not Applicable

### PROPERTY NOTES

Not Applicable

### FURTHER DEVELOPMENT PERMITS REQUIRED

This approval does not authorise any filling of land or building work, and a development permit for carrying out any filling of land and/or building work must be obtained.

This approval also does not authorise any works within Council's Road Reserve (e.g. new/additional access, repair/modifications to existing access or works to footpaths), or any filling of land permits.

If this is required the relevant application will need to be lodged with Council or other relevant authority.

### RIGHTS OF APPEAL

You may appeal against any matter stated in the Decision Notice. Chapter 6, Part 1 and Part 2 of the *Planning Act 2016* detail appeal rights afforded to the applicant and submitter/s (if any) to the Planning and Environment Court or Building and Development Dispute Resolution Committee. Attached are the relevant provisions of the *Planning Act 2016* relating to the Rights of Appeal.

### APPROVAL CURRENCY PERIOD

All building works to be completed within two (2) years, commencing the date the decision is made, unless otherwise stated in the conditions of approval.

### APPROVED PLANS & SPECIFICATIONS

In accordance with the *Planning Act 2016*, a copy of the approved plans and specifications (if relevant) are attached.

### FURTHER INFORMATION

The development must be carried out in accordance with the approved plans and specifications and the requirements of all relevant laws, and any deviation there from must have the prior approval of the Chief Executive Officer.



Should you have any questions or seek clarification with regard to any aspect of this notice, I encourage you to contact Council's Development, Planning and Environmental Services on telephone 4776 4609.

Yours sincerely



Rosemary Pennisi  
Executive Manager Development, Planning and Environmental Services

Enclosed:      Approved Plans/Documents  
                    Appeal Rights



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

### *PLANNING ACT 2016 & THE PLANNING REGULATION 2017*

This Notice is prepared in accordance with s.63(5) and s.83(7) of the *Planning Act 2016* to inform the public about a decision that has been made in relation to a development application. The purpose of the Notice is to enable a public understanding of the reasons for the planning decision, specifically having regard to:

- the relevant parts of the Planning Scheme and Assessment Benchmarks against which the application was assessed; and
- any other information, documents or other material Council was either required to, or able to, consider in its assessment.

All terms used in this Notice have the meanings given them in the *Planning Act 2016*.

### REASONS FOR THE DECISION

Council approve the front boundary siting relaxation from the permissible 6m to 3m for the construction of new dwelling on Lot 21 on SP181639 and located at 7 Red Gum Court, Allingham, subject to conditions.

The reasons for approval are:

- The structure (dwelling) will not obstruct daylight and ventilation to habitable rooms on the adjoining properties and will not impede on the privacy of neighbouring residences;
- The structure (dwelling) is to be sited of a sufficient distance from the road frontage as not to impede on traffic or pedestrian safety and visibility;
- The structure (dwelling) will not have an overshadowing effect on neighbouring residences;
- The structure (dwelling) will not negatively impact the amenity of the adjoining land or the residential character of the locality; and
- Both adjoining neighbours were notified of the proposal and one (1) has consented to the residential siting relaxation for the structure. The remaining adjoining owner failed to make a comment regarding the proposal.



**CONDITIONS OF APPROVAL**

Conditions	Compliance timing						
<b>Administration</b>							
<p>(1) The developer is responsible to carry out the approved development and comply with relevant requirements in accordance with:-</p> <ol style="list-style-type: none"> <li>The specifications, facts and circumstances as set out in the application submitted to Council, including recommendations and findings confirmed within the technical reports;</li> <li>The development must unless otherwise stated, be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards</li> <li>The conditions of approval, the requirements of Council's Planning Scheme and best practice engineering.</li> </ol>	At all times						
<b>Currency Period</b>							
<p>(2) The currency period applicable to this approval.</p> <ul style="list-style-type: none"> <li>Siting Relaxation – Two (2) years until 21 December 2020</li> </ul>	As per condition						
<b>Approved plans</b>							
<p>(3) The development of the site is to be generally in accordance with the following plans that are to be the approved Plans of Development, except as altered by any other condition of this approval:</p> <table border="1"> <thead> <tr> <th>Plan / Document Name</th> <th>Number</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>Site Plan - 7 Red Gum Court, Forrest Beach</td> <td>2018-17 DD01 P1</td> <td>October 2018</td> </tr> </tbody> </table>	Plan / Document Name	Number	Date	Site Plan - 7 Red Gum Court, Forrest Beach	2018-17 DD01 P1	October 2018	At all times
Plan / Document Name	Number	Date					
Site Plan - 7 Red Gum Court, Forrest Beach	2018-17 DD01 P1	October 2018					
<p>(4) 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.</p>	At all times						
<p>(5) Where conditions require the above plans or documents to be amended, the revised document(s) must be submitted for endorsement by Council prior to the submission of a Development Application for Operational Works</p>	As per condition						
<b>Lawful Point of Discharge</b>							
<p>(6) All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer.</p>	At all times						
<p>(7) The structure (dwelling) must include guttering which directs all stormwater to a legal point of discharge within the confines of the boundary to which the attached dwelling resides.</p>	At all times						



Conditions	Compliance timing
<p>(8) Where retaining walls, fences, buildings or other barriers, which would cause a “damming effect” and produce a concentrated flow at an outfall are constructed, a drainage system is installed to discharge the surface water such that it does not adversely affect surrounding properties or properties downstream from the development.</p>	At all times
<b>Building</b>	
<p>(9) The class 1a (dwelling) structure requires a development permit for building works.</p>	At all times
<p>(10) The Applicant is to seek and comply with all relevant building approvals to be issued by a qualified Building Certifier</p>	At all times
<p>(11) The class 1a (dwelling) structure requires compliance to relevant Fire Safety regulations as reflected in s.3.7.1.6 of the Building Code of Australia (Volume Two).</p>	At all times
<b>Construction and Operations</b>	
<p>(12) Any construction work associated with this development shall be carried out in accordance with sound engineering practice. In particular, no nuisance is to be caused to adjoining residents by way of smoke, dust, stormwater discharge or siltation of drains, at any time, including non-working hours. Where material is to be carted to or from the site, loads are to be covered to prevent dust or spillage. Where material is spilled or carried on to existing roads, it is to be removed forthwith so as to restrict dust nuisance and ensure traffic safety.</p>	At all times
<p>(13) Any construction work associated with the access arrangements to the property from the road reserve is subject to a Private Works in a Road Reserve application and approval.</p>	Prior to any construction work commencing
<b>Damage to Infrastructure</b>	
<p>(14) In the event that any part of Council’s existing sewer, water, channel and kerbing, or road infrastructure is damaged as a result of construction activities occurring on the site, including but not limited to, mobilisation of heavy earthmoving equipment, stripping and grubbing, the applicant/ owner must notify Council immediately of the affected infrastructure and have it repaired or replaced by Council, at the developer’s cost.</p>	At all times



For visual purposes only



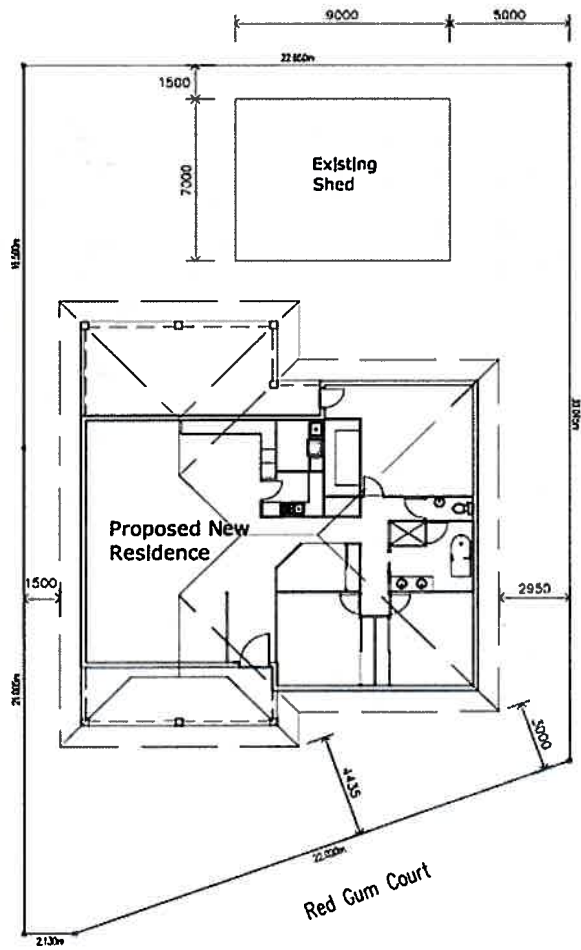
-  Proposed Dwelling  
255m<sup>2</sup>
-  Site Location



**Data Sources & Acknowledgements**  
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**Real Property Description**  
 Lot 21, SP 181639  
 Site Area : 780 SqM  
 Wind Classification : C2

**Site Plan**  
 Scale 1:200

**General Notes**

- Do not scale off drawing sheet or dimensions & lines on site before commencing work.
- Figured dimensions to line procedure over walls.
- Comply with all Local Authority & Building Code of Australia 2018 (as amended) regulations & all relevant Australian Standard Codes.
- Installation of all services to comply with Manufacturer's Specifications.
- This Drawing is based for Building Approval only.
- Confirm location of any underground services within the building area prior to commencing any work.
- Notwithstanding inspection by an Engineer or Building Certifier, it is the Builder's responsibility to ensure that all work is constructed in accordance with the Building Approval Documents.
- Substitution of any structural member, in violation to any of the drawings, will void any responsibility to Benson Building Designs for the performance of the building.
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No.	Revision/Issue	Date
1	Final/Issue	1

**benson building designs**  
 GARY BOWEN  
 100-111 New York,  
 Call | 0416 936 452  
 Q417 100 New York  
 100-111 New York  
 www.bensonbuildingdesigns.com.au

**Project Name and Address**  
**Proposed New Residence**  
 Ivan & Sharon Brazinska  
 7 Red Gum Court,  
 Forrest Beach, Qld.

Project No	Page No	Issue
2018-17	0001	P1
Date	Design	
October, 2018	CB	
Scale	Drawn	
1:200 @ A3	CB	

**HINCHINBROOK SHIRE COUNCIL**  
 Residential Siting Relaxation  
**APPROVED**

*Rosemary Pennisi*

Rosemary Pennisi  
 19 December 2018



**APPEAL RIGHTS***PLANNING ACT 2016 & THE PLANNING REGULATION 2017***Chapter 6 Dispute resolution****Part 1 Appeal rights****229 Appeals to tribunal or P&E Court**

- (1) Schedule 1 of the Planning Act 2016 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.

(Refer to Schedule 1 of the Planning Act 2016)

- (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 has 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.

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 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 the rules of the P&E Court.

