



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal number:</b>	25-041
<b>Appellant:</b>	Jason Brown
<b>Respondent/ Assessment manager:</b>	Kaine Tarlinton
<b>Co-respondent/ Concurrence agency:</b>	Gold Coast City Council
<b>Site address:</b>	391 Maudsland Road, Maudsland Qld 4210 and described as Lot 11 on RP161315 – the subject site

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### **Appeal**

Appeal under 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the refusal of a Development Application for Building Work for a Class 10a shade structure for a horse arena on a rural residential zoned site. The decision followed a referral agency response by the Gold Coast City Council directing refusal of the application on the grounds that the proposed structure does not comply, and cannot be conditioned to comply, with the provisions of Section 4.1 of Gold Coast City Council's Amenity and Aesthetics Declaration or relevant Environmental Significance overlays under the Gold Coast City Plan 2016.

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<b>Date and time of hearing:</b>	10 December 2025 at 1.00 pm
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Anthony Roberts—Chair Catherine Brouwer—Member
<b>Present:</b>	Jason Brown—Appellant Brandon Ferrigna—Town Planner for Appellant Tahlia Talbot—support for Appellant Roger Sharpe, Shane Weterings, Zack Richmond, Nathaniel Dallas—Council representatives

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the Assessment Manager, as directed by the Concurrence Agency, to refuse the application.

## Background

1. The subject site is:
  - a. An undulating selectively cleared 'bushland' allotment featuring a mature tree canopy and a creek;
  - b. 31,810m<sup>2</sup> in area containing a substantial dwelling house, tennis court, dams, substantial bitumen driveway/parking areas, large rock, boulder and/or stone-pitched retaining walls associated with re-shaping of the original ground level;
  - c. extensively landscaped with works including: rock lining of gully/creek lines; vegetation removal; terracing; and, turfing and plantings;
  - d. located in an established rural residential estate with good separation between neighbouring dwellings;
  - e. zoned Rural Residential – Rural Residential Environment and Landscape Precinct – under the Gold Coast City Plan 2016 and subject to numerous Environmental Significance overlays (which came into effect after acquisition of the site by the Appellant).
2. The proposed shade structure (to be used as a horse arena) is:
  - a. 60.0m long, 22m wide and 5.0m high with an area of 1,320m<sup>2</sup>;
  - b. sited to the rear of the property adjacent to the southern boundary with a setback of 1.0m;
  - c. steel and tin construction designed with a 5-degree pitched roof and open side bays;
  - d. set on a new (64m x 26m) cut and fill platform (requiring excavation between 0.5m and 5.5m in height), with retaining walls on all sides (with the wall along the southern cut length reaching over 5.5m in height and those along the northern and eastern fill sections at 0.25m to 1.5m).
3. Approval for a small (63m<sup>2</sup>) utility shed sited adjacent to the proposed structure was issued on 7 January 2025 – but it remained unconstructed at the time of the hearing. This shed was later completed (with the Tribunal provided with photos on 16 January 2026).
4. At the time of the hearing, compliance and enforcement action remained on foot in respect of alleged unlawful clearing across much of the previous understorey on the site.
5. As the location and design of the proposed structure does not comply with the Acceptable Outcomes set out in Council's Rural residential Zone Code and associated Amenity and Aesthetics Declaration in respect of siting, size and height, the Assessment Manager lodged with the Gold Coast Council on 1 October 2025 a Request for a Concurrence Agency Response pursuant to Schedule 9, Part 3, Division 2, Table 1 of the *Planning Regulation 2017*.
6. On 16 October 2025, Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for the reasons (as abbreviated) below:

*The detached class 10 building (shade building/horse arena) adversely impacts amenity of locality*

*The proposed shed is situated within an area that is heavily vegetated, as reflected in the*

*relevant environmental overlays that identify the site as intended to remain vegetated. The*

*shade building/horse arena, with a floor area of 1,320m<sup>2</sup>, together with the required clearance area, will result in a total disturbance of approximately 1,848m<sup>2</sup>. This level of vegetation removal and replacement with a substantial scale of built form represents a significant loss of existing vegetation and is expected to disrupt the vegetated character of the locality. The proposal is considered in stark contrast to the expected amenity and aesthetic outcomes of the locale and will also adversely impact on the amenity of adjoining properties.*

*The development will not protect native vegetation*

*The native vegetation in the location of the proposed shade structure/horse arena is identified on Environmental Significance overlay mapping as 'Biodiversity areas - Substantial Remnants' and 'Vegetation Management - Regulated Vegetation' in the City Plan, the combination of both, result in the vegetation being afforded in situ protection.*

*There is no location on site for a shade structure of the dimensions submitted (22m wide and 60m in length for a total of 1320m<sup>2</sup>) that can be located to avoid and protect the native*

*vegetation which has been afforded in situ protection. As such the proposed does not meet the requirements of Section 4.1 of the Amenity and Aesthetics Declaration and subsequently would provide a significant adverse impact upon the amenity and aesthetic of the locality.*

*The development on balance does not comply with S4 - Referral Agency Considerations of Council's Amenity and Aesthetics Declaration*

*The proposed Class 10 building may be considered an appropriate form and the use of the building may be consistent with a Class 10 building in this locale. However, the building poses a significant impact to matters of environmental significance in the proposed location, and there is no suitable location on site that the building can be relocated to without adversely impacting matters of environmental significance.*

*... Despite the form and use of the class 10 building being consistent with the size and use of similar buildings in the locale, the significant adverse impact that would occur upon matters of environmental significance holds significant weight for this location.*

7. The Assessment Manager subsequently issued a Decision Notice on 22 October 2025 refusing the proposed development based exclusively on the Referral Agency Response from Council directing refusal.

8. The hearing was held at the subject site on 10 December at 1.00 pm. The Tribunal had the opportunity to view the positioning of the proposed structure from the subject site, streetscape more generally and in relation to neighbouring dwellings.

### **Jurisdiction**

9. The Tribunal has jurisdiction to hear the appeal under the PA section 229(1)(a)(i) and schedule 1, sections 1(1)(b), 1(2)(g) and table 1, item 1(a) being an appeal by the Appellant against the refusal of the development application by the Assessment Manager on the direction of the Referral Agency.

### **Decision framework**

10. Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:
  - (2) *Generally, the appellant must establish the appeal should be upheld.*
  - (4) *The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.*
  - (5) *However, the tribunal may, but need not, consider— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.*
11. Section 254 of the PA deals with how an appeal such as this may be decided. The first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal and is not relevant here) are as follows:
  - (1) *This section applies to an appeal to a tribunal against a decision.*
  - (2) *The tribunal must decide the appeal by-*
    - (a) *confirming the decision; or*
    - (b) *changing the decision; or*
    - (c) *replacing the decision with another decision; or*
    - (d) *setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or*
    - (e) *[not relevant].*
  - (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*
12. As the development does not meet all the Acceptable Outcomes of Council's Rural Residential Code it must be assessed against the respective Performance Outcomes. For this development the applicable Acceptable Outcomes include: AO1 setbacks – 'side and rear boundary setbacks not less than 3m' and AO3 rural residential and environment precinct – 'development is confined only to previously cleared areas and site cover does

not exceed 15%'. The corresponding Performance Outcomes are PO1 and PO3 which are detailed in the Tribunal's assessment below.

13. As the development does not meet all the Acceptable Outcomes of the Environmental Significance Overlay Code it must be assessed against the respective Performance Outcomes. For this development the applicable Acceptable Outcomes are:
  - AO1 – 'proposed works do not impact on: (a) areas identified on environmental significance vegetation management overlay; (c) individual trees within areas mapped environmental significance priority species';
  - AO4 – 'No acceptable outcome provided';
  - AO6 – 'development does not impact on regulated vegetation';
  - AO7 – 'development avoids impact on regulated vegetation'.
14. The corresponding Performance Outcomes are PO1, PO4, PO6 and PO7 which are detailed in the Tribunal's assessment below.
15. In addition, under schedule 9, part 3, division 2, table 1, item 1 of the *Planning Regulation 2017* a local government can declare that building work that is assessable development for class 1 and 10 buildings and structures requires referral for assessment by Council. Such a declaration can be made where the development is in a locality, and of a form, for which the local government has, by resolution or in its planning scheme, declared that the form may— (i) have an extremely adverse effect on the amenity, or likely amenity, of the locality; or (ii) be in extreme conflict with the character of the locality.
16. Schedule 9 of the *Planning Regulation 2017* also sets out the matters a Referral Agency's assessment must be against as 'Whether the building or structure will impact on the amenity or aesthetics of the locality, including, for example, whether the building or structure complies with a matter stated in a local instrument that regulates impacts on amenity or aesthetics.'
17. Council made such a declaration (the Amenity and Aesthetics Declaration) effective on 1 February 2024.
18. Clause 3.1 of the Declaration sets out that Class 10 buildings (not attached to a Class 1 building) that exceed either a maximum height of 4.5m or a maximum building area corresponding to graduated lot sizes require referral. For allotments between 8001m<sup>2</sup> to 40,000m<sup>2</sup>, the maximum specified area is 150m<sup>2</sup>.
19. While the Declaration does not set out Performance Outcomes, section 4 of the Declaration does set out assessment criteria to be used. Relevant to this Appeal are clauses 4.1 and 4.2 of the Declaration. These assessment criteria are detailed in the Tribunal's assessment below.

### **Material considered**

20. The Tribunal considered the following material:
  - a. 'Form 10 – Appeal Notice', grounds for appeal and correspondence/attachments accompanying the appeal lodged with the Tribunals Registrar on 29 October 2025;

- b. The *Planning Act 2016* (PA);
- c. The *Planning Regulation 2017* (PR);
- d. The Queensland Development Code (QDC);
- e. The *Building Act 1975* (BA);
- f. The Building Regulation 2006 (BR);
- g. The Gold Coast City Plan 2016 (City Plan);
- h. The Rural Residential Zone Code under the City Plan;
- i. The Environmental Significance Overlay Code under the City Plan;
- j. Gold Coast City Council's 'Amenity and Aesthetics Declaration' of 1 February 2024 (the Declaration);
- k. 'Letter of Advice to Support Proposed Shade Structure' (Gassman Development Perspectives 8 December 2025);
- l. 'Execution of Warrant File Note' (7 December 2023) – provided by Council digitally and hard copy at the hearing;
- m. 'Memorandum – Environmental planner assessment' (15 October 2025) – provided by Council;
- n. Verbal submissions made by the parties at the hearing and site inspection;
- o. Post hearing material submitted including: Concept Site Plan (JCE 22/1/2026) - provided by the Appellant; 'Council Submission in Response to Matters Raised by Appellant for Tribunal Hearing' (undated) and 'Further Points for the Tribunal re S20A of the Planning Regulation' - provided by Council and received 29 January 2029.

### **Findings of fact**

- 21. The Tribunal makes the following findings of fact.
- 22. In relation to the grounds for refusal set out by Council, the Appellant contends that:
  - a. Council claims the area is 'heavily vegetated' but it is 'hardly vegetated at all - it's just shadows';
  - b. An ecologist's report on a property located nearby found no features of conservation significance present and the same environment applies to the subject property;
  - c. Council refers to compliance matters in relation to illegal tree clearing. All clearing has been undertaken legally (weeds have been removed and under a Level 5 Arborist's guidance and a firebreak established to protect a shed) and there is no intention for illegal clearing for the shade structure;

- d. The structure will not impact the mapped environmental overlays and is to be located in a mostly cleared area (only five mature trees are to be removed). Due to the site's topography and existing vegetation, it is not possible to avoid minimal clearing;
  - e. Further clearing for the structure is exempt development under the *Planning Regulation 2017* as a necessary firebreak to protect an approved shed;
  - f. There is precedent in the area for such structures at various sites in the vicinity – a significant consideration in purchasing the property was the ability to build such a structure, which many others have;
  - g. Rehabilitation of vegetation is already occurring on the site with over 1000 plants added under a landscape plan;
  - h. The horse arena will be for private use only.
23. In relation to the grounds for refusal, Council contends that:
- a. The site was heavily vegetated prior to unlawful clearing. Mapped vegetation that has already been unlawfully cleared is intended to be protected in situ under the Environmental Significance Overlay Code of the City Plan. Loss of this vegetation diminishes environmental values and amenity - the Amenity and Aesthetics Declaration seeks to avoid loss and protect these values;
  - b. The referenced ecologist's report for a property in the near vicinity is not relevant as that property differs significantly and the report was conducted post unlawful clearing;
  - c. The compliance and enforcement action in relation to the alleged unlawful clearing is still on foot with an Operational Works application still under consideration by Council;
  - d. There is nowhere on site that a structure of the size proposed can be located to avoid protected areas of environmental significance;
  - e. Council's assessment must consider the site's lawful state and intended environmental outcomes - not site conditions created by non-compliance;
  - f. The clearing needed for the structure is not exempt development under the *Planning Regulation 2017* as the previously approved shed is not built;
  - g. The significant removal of vegetation results in an extreme adverse effect on the character and intended amenity of the locality and is contrary to the intent of Council's Amenity and Aesthetics Declaration;
  - h. Approving the horse arena in this bushland location would set an undesirable precedent for all bushland lots. Other sites put forward as precedents are predominately cleared acreage lots rather than bushland lots subject to mapped environmental overlays;
  - i. The landscape plan and associated plantings appear intended to function as aesthetic landscaping improvements rather than a genuine ecological restoration strategy.

### Alleged unlawful previous clearing

24. Council alleges that aerial imagery and on-site inspections confirm substantial clearing occurred across the entire site between 2017 and 2023, consistent with unlawful removal of protected vegetation. Council considers that the mapped Environmental Values of the site have already been degraded as a result of the alleged unlawful clearing and that the further clearing required to fit a structure of the dimensions proposed on the site would result in further unacceptable degradation and is contrary to the provisions of the City Plan. The Appellant refutes the claim that the previous clearing is unlawful.
25. In relation to this matter, the Tribunal notes that the compliance and enforcement action taken by Council remains to be concluded and that an Operational Works application covering the clearing is still under consideration. Given this, the Tribunal does not wish to comment on the lawfulness of the clearing already undertaken on the site and will consider the current application as submitted to Council on its own merits independent of the compliance and enforcement matter.

### Is the proposed clearing exempt development?

26. A significant consideration raised by the Appellant is whether further clearing necessary for the proposed structure is 'exempt development' under the *Planning Regulation 2017* (Schedule 6, Part 3, Section 20A(a)) as a necessary firebreak to protect an approved shed. To this end, the Appellant relies on a report prepared by Gassman Development Perspectives (dated 8 December 2025) which asserts that only 5 five mature trees require removal and these trees are considered exempt under the *Planning Regulation 2017* as they are prohibited from being made assessable by any local categorising instrument (i.e. City Plan). The basis of this claim is that the clearing qualifies under the Regulation as operational work necessary for 'establishing or maintaining a necessary firebreak to protect infrastructure' and the clearing is on freehold land. Accordingly, the report states that the in-situ protections prescribed by the Environmental Significance Overlay Code are unlawful to apply in this instance.
27. Council refutes this assertion for the following reasons:
  - 'Whether clearing is 'necessary' is difficult to establish and requires an assessment of the subject area based on its own individual risks. The assessment likely requires expert input to establish what is necessary.
  - In addition to being necessary, the clearing must also be carried out to protect infrastructure. The Planning Regulation defines the term 'infrastructure' for schedule 6, part 3, section 20A to include **a building**, or other structure, **built, or used** for any purpose. By definition, infrastructure sought to be protected by section 20A has to be "built". Accordingly, the exemption provided by section 20A to clear native vegetation for the purpose of protecting infrastructure does not apply to infrastructure not yet 'built'.
28. The Tribunal notes that at least part of the proposed site sits within the High Potential Bushfire Intensity Overlay. However, the approved shed constituting the 'infrastructure' intended for firebreak protection was not in fact 'built' at the time Council considered the application nor at the time of the hearing – but has subsequently been constructed.
29. The Tribunal prefers the Council's interpretation of the Section 20A provisions of the Regulation that the infrastructure needs to be already existing in built form to trigger exempt development status for the proposed clearing under section 20A of the Regulation.

## Assessment against the Rural Residential Zone Code

### **PO1 - Side and rear boundary setbacks**

30. As the development, with a 1m boundary setback, does not comply with the 3m minimum side boundary setback requirement under Acceptable Outcome AO1 of the Code, it must meet the stipulations of Performance Outcome PO1. That is: provide privacy to adjacent dwellings; allow for access around the building; contribute to the semi-rural streetscape character; and, allow for on-site car parking.
31. In relation to these performance requirements, the Tribunal considers that a combination of the location of the proposed structure (distant and visually screened from neighbouring dwellings and the road) and the existence of adequate on-site parking allow it to meet the intent of PO1.

### **PO3 - rural residential and environment precinct**

32. As the development does not comply with one component of AO3 – requiring that development is confined only to previously cleared areas - it must meet the performance stipulation of PO3, namely ‘Site cover is very low to protect the identified matters of environmental significance and natural landscape values’.
33. The Tribunal notes that PO3 does not include any reference related to clearing, corresponding to the ‘confined only to previously cleared areas’ requirement in AO3. At 6% of the site the actual site cover of the proposed arena is considered ‘very low’ (and taken together with the existing house and other structures would not exceed the 15% maximum coverage required by AO3) and so satisfies PO3 as framed. However, the Tribunal acknowledges that although focused on site cover, the intent of PO3 is directed at protecting the identified matters of environmental significance and natural landscape values.

## Assessment against the Environmental Significance Overlay Code

34. The site of the proposed structure is subject to several Environmental Significance overlays including: biodiversity areas (Matters of Local environmental significance) - substantial remnants; priority species and koala habitat areas (Matters of State environmental significance); vegetation management (matters of State Environmental significance) – regulated vegetation; wetlands and waterways -distance from outer bank (Matters of Local environmental significance).
35. In terms of the post-clearing vegetation remaining within the proposed development site, the Tribunal notes that, contrary to the Appellant’s assertion that only five mature trees will be impacted, in fact at least nine mature trees will need to be removed in the immediate building footprint (as established by the detailed Concept Site Plan submitted post-hearing). Council estimates that whilst the structure has a footprint of 1320m<sup>2</sup>, it will result in a total disturbance of approximately 1,848m<sup>2</sup> at the site itself.
36. As the development does not meet Acceptable Outcomes AO1, AO4, AO6, and AO7 of the Environmental Significance Overlay Code, it must be assessed against the respective Performance Outcomes. For this development the applicable Performance Outcomes are:
  - PO1 - All matters of environmental significance on and adjacent to the development site are identified and protected;

- PO4 - Development within ... Substantial Remnant Areas as identified on the Environmental significance- biodiversity overlay is located and designed to:
    - protect in situ matters of environmental significance and associated buffers;
    - protect in situ vegetation identified on the Environmental significance – vegetation management overlay and habitat for native flora and fauna; and
    - allow for the rehabilitation of disturbed, cleared or modified areas;
  - PO6 - Regulated vegetation is protected in situ when it is:
    - identified on the Environmental significance – vegetation management overlay, and
    - within biodiversity areas as identified on the Environmental significance – biodiversity areas overlay;
  - PO7 - Development is designed to maintain regulated vegetation and minimise disturbance when it is:
    - identified on the Environmental significance – vegetation management overlay, and
    - within biodiversity areas as identified on the Environmental significance – biodiversity areas overlay.
37. The Tribunal considers that the combination of strong performance outcome statements across PO1, PO4, PO6 and PO7 including: ‘All matters of environmental significance on and adjacent to the development site are identified and protected’ (PO1); ‘protect in situ matters of environmental significance’/ ‘protect in situ vegetation’ (PO4); ‘regulated vegetation is protected in situ’ (PO6); and, ‘development is designed to maintain regulated vegetation and minimise disturbance’ (PO7) amount to an effective prohibition on removal of the trees within the development site.
38. In this light, the Tribunal concurs with Council that the remaining mature trees within the development site have in situ protection under the City Plan and must remain. Further, there is nowhere on the site the structure could be located that avoids and protects mapped areas of environmental significance.
39. Additionally, Council considers that the development would impact at least 710m<sup>2</sup> of core koala habitat as well as vegetation regulated by the State. The Tribunal understands that these impacts require referral to the State Assessment Referral Agency (SARA) for concurrence assessment. However, it appears that such referrals did not take place.

#### Assessment against the Amenity and Aesthetics Declaration

40. As noted above, the Declaration does not set out Performance Outcomes but rather sets out assessment criteria to be used. Relevant to this Appeal are Clauses 4.1 and 4.2 of the Declaration.
41. Referral application consideration Clause 4.1 ‘Location on the site for environmental impacts’ states: ‘The placement of the building and associated impacts within mapped

areas of Environmental significance and its appropriate relocation to avoid and protect the native vegetation, waterways and topography of the site. This includes areas identified as Matters of Environmental Significance by the City Plan’.

42. In respect of this assessment criterion, consistent with the Tribunal’s assessment against PO1, PO4, PO6 and PO7 of the Environmental Significance Overlay Code (above), it is considered that the proposed placement of the structure fails to avoid and protect native vegetation and that there is nowhere on the site the structure could be located that avoids and protects mapped areas of environmental significance.
43. The Tribunal has examined the various plans and reports provided and viewed the situation on site in relation to the vegetation to be removed. From this analysis it is considered that there are at least nine mature trees that need to be removed to accommodate the structure’s immediate footprint and potentially a further 4 trees likely needing to be removed (or subject to high impact) through the construction of the structure.
44. These trees are included in various overlays – significantly koala habitat and regulated vegetation – for their inherent environmental value. The 9 trees in the immediate footprint are either ‘koala primary’ (food trees) and ‘koala secondary’ (habitat/food trees) classed trees. The understorey together with the ground surface leaf-fall, perennial species and endemic grasses layer which was removed would likely have had complementary environmental value. The absence of this understorey could arguably enhance the residual value of the remaining vegetation.
45. Clause 4.1 considerations also include “the placement of the building ... to protect native vegetation, waterways and topography of the site”. The proposed arena with its cut and fill and retaining walls construction involves removal of mature native vegetation, substantial alteration of the topography of a sizeable area and the consequent alteration of overland flow over an area of native vegetation near a gully waterway.
46. Given the extent of these impacts, the proposed arena is considered not able to satisfactorily address assessment criterion 4.1 of the Amenity and Aesthetics Declaration.
47. Clause 4.2 ‘Form of building or structure’ assessment criteria include:
  - a. Visible aspects of the building, its bulk, shape or arrangement. Colours and non-reflective materials are to be commensurate with those used in the main dwelling;
  - b. Building bulk or height and lighting devices to be screened by landscaping to mitigate the effect upon the amenity of the neighbourhood. The use of existing vegetation for screening purposes is prioritised;
  - c. Built up appearance, that may affect the streetscape character;
  - d. Reduced privacy and amenity of neighbours.
48. In respect of this assessment criterion, the Tribunal considers that visual amenity and privacy considerations associated with the general design and siting of the structure are a matter of concern. This is due in the main to the building bulk and height having potential to be almost fully visible from the neighbouring 47 Holyrood Street, Maudsland and at least partly visible from 3 other adjoining properties (39 Holyrood, 81 Huntington Drive and 10 Shrewsbury Avenue).

49. In its Reasons for Refusal Council states, 'Despite the form and use of the class 10 building being consistent with the size and use of similar buildings in the locale, the significant adverse impact that would occur upon matters of environmental significance holds significant weight for this location'.
50. In respect of overall amenity and aesthetic considerations and assessment criteria, the Tribunal is of the view that while the proposed form and use of the structure may be acceptable in principle for rural residential property, the bulk and height, extent of earthworks and construction and the necessity to remove mature bushland in this instance would have an unacceptable impact on the overall bushland character and amenity of the locality. Further, there is no suitable location on site that the building can be relocated to without adversely impacting matters of environmental significance.

#### Undesirable precedent

51. While the Appellant argues that there is a precedent in the area for such structures at various sites in the vicinity, Council argues that this is not the case as other sites put forward as precedents are predominately cleared acreage lots rather than bushland lots subject to mapped environmental overlays.
52. The Tribunal considers the proposed form and use of the proposed structure is generally consistent with the rural residential character of the location. However, the Tribunal concurs with Council that such development requiring removal of bushland afforded in situ protection under the City Plan would represent an undesirable precedent.

#### Vegetation rehabilitation

53. The Appellant points out that rehabilitation of the site is progressing under a formal landscape plan suggesting that this could help compensate for vegetation loss from the site. Council rejects this suggestion on the basis that the landscape plan and associated plantings amount only to aesthetic landscaping improvements rather than a genuine ecological restoration strategy.
54. The Tribunal notes that under the Purpose of the Environmental Significance overlay Code one of the specified outcomes is that 'Degraded matters of environmental significance are protected and rehabilitated' – so rehabilitation of the site would be desirable. However, from the landscape plan provided and the site inspection the Tribunal can see no evidence of intentional targeted rehabilitation of the degraded site and rather only aesthetic landscape treatment. The Tribunal further notes that the (immature) vegetative buffer planted along the fenceline immediately adjoining the proposed structure would likely need to be removed to allow construction of the structure and the retaining walls.

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

55. In this appeal, the Tribunal considers the Appellant has not satisfied the onus to demonstrate the appeal should be upheld. Therefore, the Tribunal has determined to confirm the decision of the Assessment Manager, as directed by the Concurrence Agency, to refuse the application for the reasons identified below.
56. The Tribunal finds that the proposed development as sited is unable to satisfy (and unable to be conditioned to satisfy) Performance Outcomes PO1, PO4, PO6 and PO7 under the Environmental significance Overlay Code and Clauses 4.1 and 4.2 of the Amenity and Aesthetics Declaration due to the necessity to clear vegetation afforded in situ protection under the City Plan, to alter the ground levels in the root zone of mature bushland trees

and to alter overland drainage in proximity to a natural waterway. Further, there is nowhere on the site that could accommodate a structure of the size proposed without adversely impacting mapped matters of environmental significance.

57. The Tribunal concurs with Council's interpretation of the Section 20A provisions of the *Planning Regulation 2017* that the infrastructure needs to be already existing in built form to trigger exempt development status.

The Tribunal also finds that while the proposed form and use of the structure is appropriate to the Rural Residential (Rural Residential Environment and Landscape Precinct) zoning, the necessity to remove mature bushland would have an unacceptable impact on the overall bushland character and amenity of the locality and would potentially set an undesirable precedent for similar bushland allotments with equivalent Environmental Significance Overlays.

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**Anthony Roberts**  
**Development Tribunal Chair**  
**Date: 24 March 2026**

## Appeal rights

Schedule 1, Table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, 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.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

## Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals  
Department of Housing and Public Works  
GPO Box 2457  
Brisbane Qld 4001

Telephone 1800 804 833

**Email:** [registrar@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)