

Subject Clearing of mature trees associated with approved development at 229-233 Jesmond Road, Fig Tree Pocket

Information needed for dot point brief:

- Residents of Fig Tree Pocket have contacted the Minister to express concerns with the development proposal approved by the Brisbane City Council at 229-233 Jesmond Road, Fig Tree Pocket.

Points of relevance

The development assessment process

- In order to carry out certain types of developments, an application may need to be made for a development permit.
- The *Planning Act 2016* mandates the framework and process for development assessment and also the basic requirements for an application.
- In most cases local government is the assessment manager for development proposed in its area, except in those cases where the State specifies that it has a particular interest through the planning regulation, and the State assesses those aspects of the development administered by State Assessment and Referral Agency (SARA) (which falls under DSDMIP) by using the State Development Assessment Provisions.
- In making decisions, local authorities must take into account their local planning schemes and related bylaws when considering impacts.

The development in question

- In the case of the residential development at 229-233 Jesmond Road, Fig Tree Pocket, the area described as Lot 7 on Plan RP 806355 was zoned as an emerging community area in City Plan 2014 signalling the intent to intensify the use of the land for urban purposes.
- Brisbane City Council issued development approval A004078868 on 26 November 2015 to allow five dwellings to be developed.
- Consideration of wildlife impacted as part of a proposed development including protected plants was not part of the approval process as the matter did not trigger any relevant state-interests as defined in the State Development Assessment Provisions.
- However, any destruction or movement of wildlife impacted by lawful, approved development requires separate approval (i.e. after the planning assessment/approval has occurred) under the *Nature Conservation Act 1992* (the Act).
- In Queensland, all plants that are native to Australia are regarded as 'protected plants' under the Act. A flora survey trigger map is prepared under the Act and identifies high-risk areas where individual plant species that are endangered, vulnerable or near threatened (EVNT) are present or likely to be present. It is a requirement before commencing any clearing that a copy of the flora survey trigger map on the Department of Environment and Science's (the department) website be obtained to determine whether any part of the area to be cleared is within a high-risk area.
- If the flora survey finds EVNT plants within the proposed clearing impact area, a clearing permit is required from the department before clearing can commence. If the flora survey does not find any such plants within the proposed clearing impact area – or the clearing can avoid such plants by at least 100 metres – a protected plants clearing permit is not required.
- In this case, the department has undertaken a search (**Attachment 1- Flora Survey Trigger Map**) and the subject property is within a high-risk area – therefore a clearing permit is required from the department before any clearing can occur (unless the clearing can avoid EVNT plants by at least 100 metres). Further information on the

protected plants framework is available on the department's website at <https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/>.

- The Nature Conservation (Wildlife Management) Regulation 2006 also prohibits tampering with a native animal breeding place except under specific conditions, which include the activity being part of a species management program (SMP) approved by the department.
- A SMP provides specific information on the species and habitat covered by the plan, identifies potential impacts on the species from the land clearing and sets out appropriate management actions to help avoid, mitigate and manage those potential impacts. Animal breeding places include obvious structures such as bird nests and tree hollows, as well as more obscure places such as amphibian or frog habitat where breeding takes place.
- If there are animal breeding places on the property, then the proponent may need to apply to the department for an SMP. Further information about SMPs is available on the department's website at www.ehp.qld.gov.au/licences-permits/plants-animals/species-management-program/.

Subject Clearing of mature trees associated with approved development at 229-233 Jesmond Road, Fig Tree Pocket

Information needed for dot point brief:

- Residents of Fig Tree Pocket have contacted the Minister to express concerns with the development proposal approved by the Brisbane City Council at 229-233 Jesmond Road, Fig Tree Pocket.

Points of relevance

The development assessment process

- In order to carry out certain types of developments, an application may need to be made for a development permit.
- The *Planning Act 2016* mandates the framework and process for development assessment and also the basic requirements for an application.
- In most cases local government is the assessment manager for development proposed in its area, except in those cases where the State specifies that it has a particular interest through the planning regulation, and the State assesses those aspects of the development administered by State Assessment and Referral Agency (SARA) (which falls under DSDMIP) by using the State Development Assessment Provisions.
- In making decisions, local authorities must take into account their local planning schemes and related bylaws when considering impacts.

The development in question

- In the case of the residential development at 229-233 Jesmond Road, Fig Tree Pocket, the area described as Lot 7 on Plan RP 806355 was zoned as an emerging community area in City Plan 2014 signalling the intent to intensify the use of the land for urban purposes.
- Brisbane City Council issued development approval A004078868 on 26 November 2015 to allow five dwellings to be developed.
- Consideration of wildlife impacted as part of a proposed development including protected plants was not part of the approval process as the matter did not trigger any relevant state-interests as defined in the State Development Assessment Provisions.
- However, any destruction or movement of wildlife impacted by lawful, approved development requires separate approval (i.e. after the planning assessment/approval has occurred) under the *Nature Conservation Act 1992* (the Act).
- In Queensland, all plants that are native to Australia are regarded as 'protected plants' under the Act. A flora survey trigger map is prepared under the Act and identifies high-risk areas where individual plant species that are endangered, vulnerable or near threatened (EVNT) are present or likely to be present. It is a requirement before commencing any clearing that a copy of the flora survey trigger map on the Department of Environment and Science's (the department) website be obtained to determine whether any part of the area to be cleared is within a high-risk area.
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- In this case, the department has undertaken a search (**Attachment 1- Flora Survey Trigger Map**) and the subject property is within a high-risk area – therefore a clearing permit is required from the department before any clearing can occur (unless the clearing can avoid EVNT plants by at least 100 metres). Further information on the

protected plants framework is available on the department's website at <https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/>.

- The Nature Conservation (Wildlife Management) Regulation 2006 also prohibits tampering with a native animal breeding place except under specific conditions, which include the activity being part of a species management program (SMP) approved by the department.
- An SMP provides specific information on the species and habitat covered by the plan, identifies potential impacts on the species from the land clearing and sets out appropriate management actions to help avoid, mitigate and manage those potential impacts. Animal breeding places include obvious structures such as bird nests and tree hollows, as well as more obscure places such as amphibian or frog habitat where breeding takes place.
- If there are animal breeding places on the property, then the proponent may need to apply to the department for an SMP. Further information about SMPs is available on the department's website at www.ehp.qld.gov.au/licences-permits/plants-animals/species-management-program/.

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- The department has subsequently determined that the developers had applied for and been issued with a clearing exemption.
- On further assessment, the department has determined that approval of the exemption was based on a protected flora survey report which stated that the Qld Herbarium had deemed a recorded protected plant recorded from the site to "not be in the wild".
- Due to the lack of additional evidence and documentation to support the proposal that the protected plant was "not in the wild", the department issued a non-immediate cancellation of the clearing exemption until such time as the developers provided further evidence to ensure that the near-threatened plant is not considered in the wild.
- This non-immediate cancellation was served electronically to Bernoth Pty Ltd (the authority holder) on Friday 19 October.
- The proponent (Bernoth) has until 20 November to respond to the department's non-immediate cancellation.
- DES Senior Wildlife Officer, Sam Dawes, has subsequently received correspondence from the fauna spotter engaged by Bernoth who has advised that animal breeding places may be present on the Jesmond Road site.
- The department has reiterated the position that the proponent will need to apply for a Species Management Program to justify any tampering (disturbance) with animal breeding places.
- To date, the department has not received any correspondence from either the proponent (Bernoth) with respect to the non-immediate cancellation or from the fauna spotter engaged by Bernoth.
- The department intends to have a Wildlife Officer conduct a drive-by inspection of the site to determine the status of works at the site.

Subject Clearing of mature trees associated with approved development at 229-233 Jesmond Road, Fig Tree Pocket

Information needed for dot point brief:

- Residents of Fig Tree Pocket have contacted the ~~Office of the Ministers Office~~ to express concerns with the development ~~proposal~~-approved by the Brisbane City Council at 229-233 Jesmond Road, Fig Tree Pocket.

Points of relevance

The development assessment process

- In order to carry out certain types of developments, an application for a development permit may need to be made.
- The *Planning Act 2016* mandates the framework and process for development assessment and also the basic requirements for an application.
- In most cases, local government is the assessment manager for development proposed in its area, except in those cases where the State specifies that it has a particular interest through the planning regulation, and the State assesses those aspects of the development administered by State Assessment and Referral Agency (SARA, within the Department of State Development, Manufacturing, Infrastructure and Planning) using the State Development Assessment Provisions.
- In making decisions, local authorities must take into account their local planning schemes and related bylaws when considering impacts.

The development in question

- In the case of the residential development at 229-233 Jesmond Road, Fig Tree Pocket, the area described as Lot 7 on Plan RP 806355 was zoned as an emerging community area in City Plan 2014 signalling the intent to intensify the use of the land for urban purposes.
- On 26 November 2015, Brisbane City Council issued development approval (A004078868) ~~on 26 November 2015~~ to allow five dwellings to be developed.
- Consideration of wildlife impacted as part of a proposed development including protected plants was not part of the approval process as the matter did not trigger any relevant State interests as defined in the State Development Assessment Provisions.
- However, any destruction or movement of wildlife impacted by lawful, approved development requires separate approval ~~(for example i.e. after the planning assessment/approval has occurred)~~ under the *Nature Conservation Act 1992* (the Act).
- Further, in Queensland, all plants that are native to Australia are regarded as 'protected plants' under the Act. A flora survey trigger map is prepared under the Act to identify high-risk areas where individual plant species that are endangered, vulnerable or near threatened (EVNT) are present or likely to be present. It is a requirement before commencing any clearing that a copy of the flora survey trigger map on the Department of Environment and Science's (the department) website be obtained to determine whether any part of the area to be cleared is within a high-risk area.
- If the flora survey finds EVNT plants within the proposed clearing impact area, a clearing permit is required from the department before clearing can commence. If the flora survey does not find any such plants within the proposed clearing impact area – or the clearing can avoid such plants by at least 100 metres – a protected plants clearing permit is not required.
- In this case, the department has undertaken a search (Attachment 1- Flora Survey Trigger Map) and the subject property is within a high-risk area – therefore a clearing permit is required from the department before any clearing can occur (unless the clearing can avoid EVNT plants by at least 100 metres, as usually determined by the undertaking of a flora survey by a qualified person). Further information on the protected plants framework is

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available on the department's website at <https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/>.

Field Code Changed

- The Nature Conservation (Wildlife Management) Regulation 2006 also prohibits tampering with a native animal breeding place except under specific conditions, which include the activity being part of a species management program (SMP) approved by the department.
- An SMP provides specific information on the species and habitat covered by the plan, identifies potential impacts on the species from the land clearing and sets out appropriate management actions to help avoid, mitigate and manage those potential impacts. Animal breeding places include obvious structures such as bird nests and tree hollows, as well as more obscure places such as amphibian or frog habitat where breeding takes place.
- If there are animal breeding places on the property, then the proponent may need to apply to the department for an SMP. Further information about SMPs is available on the department's website at www.ehp.qld.gov.au/licences-permits/plants-animals/species-management-program/.

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- Upon investigation of the circumstances of this development, the department has determined that the developers (having engaged a consultant to undertake a flora survey) proceeded on the basis of their exemption from the requirement to hold a clearing permit.
- On further assessment, the department has determined that the exemption was based on a protected flora survey report which stated that the Queensland Herbarium had deemed a recorded protected plant recorded to be "outside its natural range". On the basis of this, the developer assessed that the plant was "not in the wild" which qualifies the proposal for exemption.
- Due to the lack of additional evidence and documentation to support the proposal that the protected plant was "not in the wild", the department issued a non-immediate cancellation of the clearing exemption until such time as the developers provided further evidence to ensure that the near-threatened plant is not considered in the wild.
- ~~On Friday 19 October 2002~~18, ~~This~~the non-immediate cancellation was served electronically to Bernoth Pty Ltd (the holder of the protected plant clearing exemption). ~~on Friday 19 October 2018.~~
- The proponent (Bernoth) has until 20 November 2018 to respond to the department's non-immediate cancellation.
- In the meantime, the proponent must refrain from any clearing to avoid the clearing of the identified protected plants.
- ~~DES Senior Wildlife Officer, Sam Dawes~~The department has subsequently received correspondence from the fauna spotter engaged by Bernoth who has also advised that animal breeding places may be present on the Jesmond Road site.
- The department has therefore restated the requirement that the proponent will need to apply for a Species Management Program to justify any tampering (disturbance) with animal breeding places.
- To date, the department has not received any correspondence from either the proponent (Bernoth) with respect to the non-immediate cancellation or from the fauna spotter engaged by Bernoth.
- A Wildlife Officer will also conduct a drive-by inspection of the site to determine the status of works at the site during the week beginning 29 October 2018.

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Information needed for dot point brief:

- Member for Maiwar the Honourable Michael Berkman contacted the Minister to express concerns on behalf of constituents regarding the development proposal approved by the Brisbane City Council at 229-233 Jesmond Road, Fig Tree Pocket.
- The department provided a response to Michael Berkman on 23rd October 2018.

Points of relevance

The development assessment process

- In order to carry out certain types of developments, an application may need to be made for a development permit.
- The *Planning Act 2016* mandates the framework and process for development assessment and also the basic requirements for an application.
- In most cases local government is the assessment manager for development proposed in its area, except in those cases where the State specifies that it has a particular interest through the planning regulation, and the State assesses those aspects of the development administered by State Assessment and Referral Agency (SARA) (which falls under DSDMIP) by using the State Development Assessment Provisions.
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The development in question

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- Consideration of wildlife impacted as part of a proposed development including protected plants was not part of the approval process as the matter did not trigger any relevant state-interests as defined in the State Development Assessment Provisions.
- However, any destruction or movement of wildlife impacted by lawful, approved development requires separate approval (i.e. after the planning assessment/approval has occurred) under the *Nature Conservation Act 1992* (the Act).
- In Queensland, all plants that are native to Australia are regarded as 'protected plants' under the Act. A flora survey trigger map is prepared under the Act and identifies high-risk areas where individual plant species that are endangered, vulnerable or near threatened (EVNT) are present or likely to be present. It is a requirement before commencing any clearing that a copy of the flora survey trigger map on the Department of Environment and Science's (the department) website be obtained to determine whether any part of the area to be cleared is within a high-risk area.
- If the flora survey finds EVNT plants within the proposed clearing impact area, a clearing permit is required from the department before clearing can commence. If the flora survey does not find any such plants within the proposed clearing impact area – or the clearing can avoid such plants by at least 100 metres – a protected plants clearing permit is not required.
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- If there are animal breeding places on the property, then the proponent may need to apply to the department for an SMP. Further information about SMPs is available on the department's website at www.ehp.qld.gov.au/licences-permits/plants-animals/species-management-program/.

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- The department has subsequently determined that the developers had applied for and been issued with a clearing exemption;
- On further assessment the Department has determined that approval of the exemption was based on a protected flora survey report which stated that the Herbarium had deemed a recorded protected plant recorded from the site to “not be in the wild”;
- Due to the lack of additional evidence and documentation to support the proposal that the protected plant was “not in the wild” the Department issued a non-immediate cancellation of the clearing exemption until such time as the developers provided further evidence to ensure that near-threatened plant is not considered in the wild;
- This non-immediate cancellation was served electronically to Bernoth Pty Ltd (the authority holder) on Friday 19th October;
- The proponent (Bernoth) has until 20 November to respond to the department’s non-immediate cancellation.
- DES Senior Wildlife Officers Sam Dawes has subsequently received correspondence from the Fauna spotter engaged by Bernoth who has advised that animal breeding places may be present on the Jesmond Road site;
- The Department has reiterated the position that the proponent will need to apply for a Species Management Program to justify any tampering (disturbance) with animal breeding places;
- To date the Department has not received any correspondence from either the proponent (Bernoth) with respect to the non-immediate cancellation or from the fauna spotter engaged by Bernoth.
- The Department intends to have a Wildlife Officer conduct a drive-by inspection of the site to determine the status of works at the site.

TOPIC: APPROVED DEVELOPMENT at 229-233 JESMOND ROAD, FIG TREE POCKET

RESPONSE:

- Members of the public have raised concerns regarding the proposed residential development at 229-233 Jesmond Road, Fig Tree Pocket.
- The site was zoned as an emerging community area in Brisbane City Council approved City Plan 2014 signalling the intent to intensify the use of the land for urban purposes.
- Brisbane City Council subsequently issued a development approval on 26 November 2015 to allow five dwellings to be developed on the site.
- Consideration of wildlife impacted as part of a proposed development including protected plants was not part of the approval process as the matter did not trigger any relevant state-interests as defined in the State Development Assessment Provisions.
- However, separate approvals under the *Nature Conservation Act 1992* related to the lawful taking or management of wildlife impacted by the approved development were required following approval of the development.
- For example, a flora survey trigger map is prepared under the Act and identifies high-risk areas where individual plant species that are endangered, vulnerable or near threatened are present or likely to be present.
- It is a requirement before commencing any clearing that a copy of the flora survey trigger map on the Department of Environment and Science website be obtained to determine whether any part of the area to be cleared is within a high-risk area.
- If the flora survey finds endangered, vulnerable or near threatened plants within the proposed clearing impact area, a clearing permit is required from the department before clearing can commence.
- In this case, the department has undertaken a search and the subject property is within a high-risk area – therefore a clearing permit is required from the department before any clearing can occur.
- The Department can confirm that the proponent has applied for a clearing permit exemption and has provided the department with a Flora Survey Report.
- The Department continues to liaise with the proponent to ensure its statutory obligations are being met.

CONT'D: APPROVED DEVELOPMENT at 229-233 JESMOND ROAD, FIG TREE POCKET

Background

- The site (described as Lot 7 on Plan RP 806355) was zoned as an emerging community area in City Plan 2014.
- Brisbane City Council issued development approval A004078868 on 26 November 2015 to allow five dwellings to be developed.
- Consideration of wildlife impacted as part of a proposed development including protected plants was not part of the approval process as the matter did not trigger any relevant state-interests as defined in the State Development Assessment Provisions.
- However, any destruction or movement of wildlife impacted by lawful, approved development requires separate approval (i.e. after the planning assessment/approval has occurred) under the *Nature Conservation Act 1992* (the Act).
- In Queensland, all plants that are native to Australia are regarded as 'protected plants' under the Act. A flora survey trigger map is prepared under the Act and identifies high-risk areas where individual plant species that are endangered, vulnerable or near threatened (EVNT) are present or likely to be present. It is a requirement before commencing any clearing that a copy of the flora survey trigger map on the Department of Environment and Science's (the department) website be obtained to determine whether any part of the area to be cleared is within a high-risk area.
- If the flora survey finds EVNT plants within the proposed clearing impact area, a clearing permit is required from the department before clearing can commence. If the flora survey does not find any such plants within the proposed clearing impact area – or the clearing can avoid such plants by at least 100 metres – a protected plants clearing permit is not required.
- In this case, the department has undertaken a search and the subject property is within a high-risk area – therefore a clearing permit is required from the department before any clearing can occur (unless the clearing can avoid EVNT plants by at least 100 metres). Further information on the protected plants framework is available on the department's website at <https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/>.
- The Nature Conservation (Wildlife Management) Regulation 2006 also prohibits tampering with a native animal breeding place except under specific conditions, which include the activity being part of a species management program (SMP) approved by the department.
- A SMP provides specific information on the species and habitat covered by the plan, identifies potential impacts on the species from the land clearing and sets out appropriate management actions to help avoid, mitigate and manage those potential impacts. Animal breeding places include obvious structures such as bird nests and tree hollows, as well as more obscure places such as amphibian or frog habitat where breeding takes place.
- If there are animal breeding places on the property, then the proponent may need to apply to the department for an SMP. Further information about SMPs is available on the department's website at www.ehp.qld.gov.au/licences-permits/plants-animals/species-management-program/.

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- The department has subsequently determined that the developers had applied for and been granted a clearing exemption by the Permits and Licencing Management Unit.
- On further assessment the Department has determined that approval of the exemption was based on a protected flora survey report which stated that the Queensland Herbarium had

deemed a recorded protected plant recorded from the site to be “outside its natural range.” On the basis of this the developer assessed that the plant was not considered to be “in the wild”, which would qualify the proposal for exemption.

- Due to the lack of additional evidence and documentation to support the proposal that the protected plant was not “in the wild” the Department issued a non-immediate cancellation of the clearing exemption until such time as the developers provided further evidence to ensure that near-threatened plant is not considered to be “in the wild”.
- This non-immediate cancellation was served electronically to Bernoth Pty Ltd (the authority holder) on Friday 19 October.
- The proponent (Bernoth) has until 20 November to respond to the department’s non-immediate cancellation.
- In the meantime, the proponent must refrain from any clearing to avoid the clearing of the identified protected plants.
- DES Senior Wildlife Officer, Sam Dawes, has subsequently received correspondence from the Fauna spotter engaged by Bernoth who has advised that animal breeding places may be present on the site.
- The Department has reiterated the position that the proponent will need to apply for a Species Management Program to justify any tampering (disturbance) with animal breeding places.
- To date the Department has not received any correspondence from either the proponent (Bernoth) with respect to the non-immediate cancellation or from the fauna spotter engaged by Bernoth.
- A Wildlife Officer from the Department will conduct a drive-by inspection of the site during the week of 29 October 2018 to determine the status of works at the site.

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TOPIC: APPROVED DEVELOPMENT at 229-233 JESMOND ROAD, FIG TREE POCKET

Government Record

- Most development approval applications are assessed by local government.
- Consideration of wildlife impacted by a proposed development is only triggered for relevant state interests as defined in the State Development Assessment Provisions.
- However separate approvals under the *Nature Conservation Act 1992* related to the lawful taking or management of wildlife impacted by approved developments are still required.
- A protected plant clearing permit or exemption is required if a high-risk area is shown on a flora survey trigger map over the proposed development.
- A species management plan is required if the proposed development will interfere with animal breeding place.

Key Facts

- The site was zoned as an emerging community area in Brisbane City Council approved City Plan 2014 signalling the intent to intensify the use of the land for urban purposes.
- Brisbane City Council subsequently issued a development approval to allow five dwellings to be developed on the site.
- Consideration of wildlife impacted, including protected plants was not part of the of the approval process.
- The developer applied for a protected plant clearing exemption that was issued automatically through the online system.
- A non-immediate cancellation of the exemption was served due to concerns with the application.
- The proponent has until 20 November to respond.
- A species management plan will be required if animal breeding places are going to be impacted by the proposed development.
- The department is attempting to work with the proponent to ensure the correct approvals required under the *Nature Conservation Act 1992* are in place prior to further clearing on site.
- The proponent is currently not responding to communication from the department regarding the cancellation or requirement for a species management plan.

From: Chris Vernon [Chris.Vernon@ministerial.qld.gov.au]
Sent: Tuesday, 16 October 2018 1:41 PM
To: DLO DES
Subject: RE: Question: Fig Tree Pocket - Jesmond Road

Hi Peta,
Thanks for this. To corro refers to tree removal commencing tomorrow, so asap please.
Cheers
CV

Chris Vernon

Policy Advisor

Office of the Hon Leeanne Enoch MP

Minister for Environment and the Great Barrier Reef
Minister for Science and the Arts

M [6\) Personal info](#) | E chris.vernon@ministerial.qld.gov.au

1 William Street Brisbane QLD 4000 | GPO Box 5078 Brisbane QLD 4001

From: DLO DES
Sent: Tuesday, 16 October 2018 12:54 PM
To: Chris Vernon
Subject: FW: Question: Fig Tree Pocket - Jesmond Road

Hi Chris – the department already has a request for the below – ltr from the Member for Maiwar – response ltr and dot points are being prepared. It is due to ODG by 23/10 – is this ok?
thanks

Peta Johnston

Senior Departmental Liaison Officer
Office of the Director-General
Department of Environment and Science

Ph: 3087 8407

Peta.Johnston@des.qld.gov.au | Level 32, 1 William Street, Brisbane

We will make a difference - image

From: Chris Vernon <Chris.Vernon@ministerial.qld.gov.au>

Sent: Monday, 15 October 2018 5:22 PM

To: DLO DES

Subject: Fig Tree Pocket - Jesmond Road

Hi team,
We have started receiving correspondence from residents in Fig Tree Pocket regarding removal of trees associated with a proposed development. Can I please have some dot points urgently on this issue? If we have any existing documents regarding this matter, can I please have them?
Regards
Chris

Chris Vernon

Policy Advisor

Office of the Hon Leeanne Enoch MP

Minister for Environment and the Great Barrier Reef

Minister for Science and the Arts

M 6) Personal info E chris.vernon@ministerial.qld.gov.au

1 William Street Brisbane QLD 4000 | GPO Box 5078 Brisbane QLD 4001

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From: DLO DES [DLO.DES@des.qld.gov.au]
Sent: Tuesday, 16 October 2018 3:58 PM
To: Chris Vernon
CC: TRACEY Alena; 'TONES Peter (Peter.Tones@des.qld.gov.au)'
Subject: Question: Fig Tree Pocket - Jesmond Road
Attachments: Fig Tree Pocket development_Dot_Points_for_Minister (002).docx

Hi Chris,
As urgently requested, please find attached dot points on the proposed development at Fig Tree Pocket.
Kind regards,
Raylene

Raylene Orellana
Departmental Liaison Officer
Office of the Director-General
Department of Environment and Science



Ph: 3330 6271

raylene.orellana@des.qld.gov.au | Level 32, 1 William Street, Brisbane

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From: Chris Vernon <Chris.Vernon@ministerial.qld.gov.au>

Sent: Monday, 15 October 2018 5:22 PM

To: DLO DES

Subject: Fig Tree Pocket - Jesmond Road

Hi team,
We have started receiving correspondence from residents in Fig Tree Pocket regarding removal of trees associated with a proposed development. Can I please have some dot points urgently on this issue? If we have any existing documents regarding this matter, can I please have them?
Regards
Chris

Chris Vernon

Policy Advisor



Office of the Hon Leeanne Enoch MP

Minister for Environment and the Great Barrier Reef

Minister for Science and the Arts

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SECURITY CLASSIFICATION: UNCLASSIFIED

DOT POINT BRIEFING NOTE – MINISTER

Subject **Clearing of mature trees associated with approved development at 229-233 Jesmond Road, Fig Tree Pocket**

Information needed for dot point brief:

- Residents of Fig Tree Pocket have contacted the Minister to express concerns with the development proposal approved by the Brisbane City Council at 229-233 Jesmond Road, Fig Tree Pocket.

Points of relevance

The development assessment process

- In order to carry out certain types of developments, an application may need to be made for a development permit.
- The *Planning Act 2016* mandates the framework and process for development assessment and also the basic requirements for an application.
- In most cases local government is the assessment manager for development proposed in its area, except in those cases where the State specifies that it has a particular interest through the planning regulation, and the State assesses those aspects of the development administered by State Assessment and Referral Agency (SARA) (which falls under DSDMIP) by using the State Development Assessment Provisions.
- In making decisions, local authorities must take into account their local planning schemes and related bylaws when considering impacts.

The development in question

- In the case of the residential development at 229-233 Jesmond Road, Fig Tree Pocket, the area described as Lot 7 on Plan RP 806355 was zoned as an emerging community area in City Plan 2014 signalling the intent to intensify the use of the land for urban purposes.
- Brisbane City Council issued development approval A004078868 on 26 November 2015 to allow five dwellings to be developed.
- Consideration of wildlife impacted as part of a proposed development including protected plants was not part of the approval process as the matter did not trigger any relevant state-interests as defined in the State Development Assessment Provisions.
- However, any destruction or movement of wildlife impacted by lawful, approved development requires separate approval (i.e. after the planning assessment/approval has occurred) under the *Nature Conservation Act 1992* (the Act).
- In Queensland, all plants that are native to Australia are regarded as 'protected plants' under the Act. A flora survey trigger map is prepared under the Act and identifies high-risk areas where individual plant species that are endangered, vulnerable or near threatened (EVNT) are present or likely to be present. It is a requirement before commencing any clearing that a copy of the flora survey trigger map on the Department of Environment and Science's (the department) website be obtained to determine whether any part of the area to be cleared is within a high-risk area.
- If the flora survey finds EVNT plants within the proposed clearing impact area, a clearing permit is required from the department before clearing can commence. If the flora survey does not find any such plants within the proposed clearing impact area – or the clearing can avoid such plants by at least 100 metres – a protected plants clearing permit is not required.
- In this case, the department has undertaken a search (**Attachment 1- Flora Survey Trigger Map**) and the subject property is within a high-risk area – therefore a clearing permit is required from the department before any clearing can occur (unless the clearing can avoid EVNT plants by at least 100 metres). Further information on the

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DOT POINT BRIEFING NOTE – MINISTER

protected plants framework is available on the department's website at <https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/>.

- The Nature Conservation (Wildlife Management) Regulation 2006 also prohibits tampering with a native animal breeding place except under specific conditions, which include the activity being part of a species management program (SMP) approved by the department.
- A SMP provides specific information on the species and habitat covered by the plan, identifies potential impacts on the species from the land clearing and sets out appropriate management actions to help avoid, mitigate and manage those potential impacts. Animal breeding places include obvious structures such as bird nests and tree hollows, as well as more obscure places such as amphibian or frog habitat where breeding takes place.
- If there are animal breeding places on the property, then the proponent may need to apply to the department for an SMP. Further information about SMPs is available on the department's website at www.ehp.qld.gov.au/licences-permits/plants-animals/species-management-program/.

From: DLO DES [DLO.DES@des.qld.gov.au]

Sent: Monday, 29 October 2018 3:45 PM

To: Angus Sutherland

CC: TONES Peter

Subject: RE: Question: Fig Tree Pocket - Jesmond Road

Attachments: DMView_1540788604845_31496-18_1465002_Updated_background_dot_point_brief....docx;

Attachment 1 B3470L_EVNT Flora report_exempt clearing.pdf

Hi Angus,

Attached are updated dot points on the issue as requested.

Please let us know if there is anything further you require.

Kind regards,

Raylene



Raylene Orellana
Departmental Liaison Officer
Office of the Director-General
Department of Environment and Science

Ph: 3330 6271

raylene.orellana@des.qld.gov.au | Level 32, 1 William Street, Brisbane

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From: Angus Sutherland

Sent: Tuesday, 23 October 2018 5:32 PM

To: 'DLO DES' <DLO.DES@des.qld.gov.au>

Subject: FW: Question: Fig Tree Pocket - Jesmond Road

Hi

Can the department please advise whether a flora survey has been lodged or whether a clearing permit application has been lodge with respect to this development?

Cheers

A



Angus Sutherland

Senior Policy Advisor

Office of the Hon. Leeanne Enoch MP

Minister for Environment and the Great Barrier Reef,

Minister for Science and Minister for the Arts

P 3719 7155 E Angus.Sutherland@ministerial.qld.gov.au

From: Chris Vernon
Sent: Tuesday, 16 October 2018 4:14 PM
To: Angus Sutherland <Angus.Sutherland@ministerial.qld.gov.au>
Subject: Fwd: Question: Fig Tree Pocket - Jesmond Road

Hi Angus

Given the recent spate of corro regarding a a development in Jeanine Road in Fig Tree Pocket, which refers to tree felling commencing tomorrow, I asked for some urgent advice from the Dept (naively thinking it was a heritage matter - I'll be sure to check the register in future). Turns out to relate to fauna and habitat, not heritage. See attached. I presume this is actually in your remit?

Cheers

Chris

Sent from my iPhone

Begin forwarded message:

From: DLO DES <DLO.DES@des.qld.gov.au>
Date: 16 October 2018 at 3:58:23 pm AEST
To: Chris Vernon <Chris.Vernon@ministerial.qld.gov.au>
Cc: TRACEY Alena <Alena.Tracey@des.qld.gov.au>, TONES Peter <Peter.Tones@des.qld.gov.au>
Subject: Question: Fig Tree Pocket - Jesmond Road

Hi Chris,

As urgently requested, please find attached dot points on the proposed development at Fig Tree Pocket.

Kind regards,
Raylene

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DOT POINT BRIEFING NOTE – MINISTER

Subject Clearing of mature trees associated with approved development at 229-233
Jesmond Road, Fig Tree Pocket

Information needed for dot point brief:

- Residents of Fig Tree Pocket have contacted the ~~Office of the Ministers Office~~ to express concerns with the development ~~proposal~~ approved by the Brisbane City Council at 229-233 Jesmond Road, Fig Tree Pocket.

Points of relevance

The development assessment process

- In order to carry out certain types of developments, an application for a development permit may need to be made.
- The *Planning Act 2016* mandates the framework and process for development assessment and also the basic requirements for an application.
- In most cases, local government is the assessment manager for development proposed in its area, except in those cases where the State specifies that it has a particular interest through the planning regulation, and the State assesses those aspects of the development administered by State Assessment and Referral Agency (SARA, within the Department of State Development, Manufacturing, Infrastructure and Planning) using the State Development Assessment Provisions.
- In making decisions, local authorities must take into account their local planning schemes and related bylaws when considering impacts.

The development in question

- In the case of the residential development at 229-233 Jesmond Road, Fig Tree Pocket, the area described as Lot 7 on Plan RP 806355 was zoned as an emerging community area in City Plan 2014 signalling the intent to intensify the use of the land for urban purposes.
- On 26 November 2015, Brisbane City Council issued development approval (A004078868) ~~on 26 November 2015~~ to allow five dwellings to be developed.
- Consideration of wildlife impacted as part of a proposed development including protected plants was not part of the approval process as the matter did not trigger any relevant State interests as defined in the State Development Assessment Provisions.
- However, any destruction or movement of wildlife impacted by lawful, approved development requires separate approval (~~for example~~ after the planning assessment/approval has occurred) under the *Nature Conservation Act 1992* (the Act).
- Further, in Queensland, all plants that are native to Australia are regarded as 'protected plants' under the Act. A flora survey trigger map is prepared under the Act to identify high-risk areas where individual plant species that are endangered, vulnerable or near threatened (EVNT) are present or likely to be present. It is a requirement before commencing any clearing that a copy of the flora survey trigger map on the Department of Environment and Science's (the department) website be obtained to determine whether any part of the area to be cleared is within a high-risk area.
- If the flora survey finds EVNT plants within the proposed clearing impact area, a clearing permit is required from the department before clearing can commence. If the flora survey does not find any such plants within the proposed clearing impact area – or the clearing can avoid such plants by at least 100 metres – a protected plants clearing permit is not required.
- In this case, the department has undertaken a search (**Attachment 1- Flora Survey Trigger Map**) and the subject property is within a high-risk area – therefore a clearing permit is required from the department before any clearing can occur (unless the clearing can avoid EVNT plants by at least 100 metres, as usually determined by the undertaking of a flora survey by a qualified person). Further information on the protected plants framework is

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Contact: Geoff Lundie-Jenkins
Business unit: CSS
Telephone: 6) Personal Info

Endorsed: Nick Weinert, DDG CSS
Business area: CSS
Telephone: 3330 5017
Date Endorsed: 29 October 2018

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DOT POINT BRIEFING NOTE – MINISTER

available on the department's website at <https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/>.

Field Code Changed

- The Nature Conservation (Wildlife Management) Regulation 2006 also prohibits tampering with a native animal breeding place except under specific conditions, which include the activity being part of a species management program (SMP) approved by the department.
- An SMP provides specific information on the species and habitat covered by the plan, identifies potential impacts on the species from the land clearing and sets out appropriate management actions to help avoid, mitigate and manage those potential impacts. Animal breeding places include obvious structures such as bird nests and tree hollows, as well as more obscure places such as amphibian or frog habitat where breeding takes place.
- If there are animal breeding places on the property, then the proponent may need to apply to the department for an SMP. Further information about SMPs is available on the department's website at www.ehp.qld.gov.au/licences-permits/plants-animals/species-management-program/.

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- Upon investigation of the circumstances of this development, the department has determined that the developers (having engaged a consultant to undertake a flora survey) proceeded on the basis of their exemption from the requirement to hold a clearing permit.
- On further assessment, the department has determined that the exemption was based on a protected flora survey report which stated that the Queensland Herbarium had deemed a recorded protected plant recorded to be "outside its natural range". On the basis of this, the developer assessed that the plant was "not in the wild" which qualifies the proposal for exemption.
- Due to the lack of additional evidence and documentation to support the proposal that the protected plant was "not in the wild", the department issued a non-immediate cancellation of the clearing exemption until such time as the developers provided further evidence to ensure that the near-threatened plant is not considered in the wild.
- ~~On Friday 19 October 2018, the~~ non-immediate cancellation was served electronically to Bernoth Pty Ltd (the holder of the protected plant clearing exemption) ~~on Friday 19 October 2018.~~
- ~~The~~ proponent (Bernoth) has until 20 November 2018 to respond to the department's non-immediate cancellation.
- In the meantime, the proponent must refrain from any clearing to avoid the clearing of the identified protected plants.
- ~~DES Senior Wildlife Officer, Sam Dawes, The department~~ has subsequently received correspondence from the fauna spotter engaged by Bernoth who has also advised that animal breeding places may be present on the Jesmond Road site.
- The department has therefore restated the requirement that the proponent will need to apply for a Species Management Program to justify any tampering (disturbance) with animal breeding places.
- To date, the department has not received any correspondence from either the proponent (Bernoth) with respect to the non-immediate cancellation or from the fauna spotter engaged by Bernoth.
- A Wildlife Officer will also conduct a drive-by inspection of the site to determine the status of works at the site during the week beginning 29 October 2018.

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Contact: Geoff Lundie-Jenkins
Business unit: CSS
Telephone: [Personal In](#)

Endorsed: Nick Weinert, DDG CSS
Business area: CSS
Telephone: 3330 5017
Date Endorsed: 29 October 2018

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