

19 September 2019

Our Ref: 19/09 R3090 1279742

File Ref: 05/APP/02

Enquiries: Prue Miller

Jamie William Franks  
PO Box 1194  
**CHARTERS TOWERS QLD 4820**

Sent via email: [jwfranks@bigpond.com](mailto:jwfranks@bigpond.com)

Dear Mr Franks

**Decision Notice – Approval**  
(Given under Section 63 of the *Planning Act 2016*)

The assessment manager acknowledges receipt of development application BWAP19/88 on 8 July 2019 and wishes to advise that Council resolved to approve the application at the 18 September 2019 General Meeting despite the Officer's recommendation of a refusal. The approval is subject to reasonable and relevant conditions and supported by a notice of reasons as detailed below.

**Applicant details**

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Applicant name: Jamie William Franks

**Location details**

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Street address: 6 Plummer Street, RICHMOND HILL QLD 4820  
Real property description: Lot 1 on MPH1117  
Current lawful use: Dwelling house  
Local government area: Charters Towers Regional Council

**Application details**

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Application number: BWAP19/88  
Approval type: Preliminary Approval  
Development type: Building Works Assessable  
Category of assessment: Impact Assessment  
Description of development: Removal of Category 2: Local Character Place under the Heritage Overlay  
Categorising instrument: Aligned Charters Towers Planning Scheme 2011

**1. Details of the approval**

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Details of the approval are listed below in accordance with the *Planning Regulation 2017*.



	Planning Regulation 2017 reference	Development Permit	Preliminary Approval
Development assessable under the planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval		<input type="checkbox"/>	<input checked="" type="checkbox"/>

## 2. Conditions of approval

Conditions of this approval are included within **Attachment 1**.

## 3. Approved plans and documents

The approved plans and/or documents for this development approval are listed below:

Drawing Title:	Author:	Date:	Reference:	Revision:
Site Plan	Joann Chivers	24 July 2019	N/A	N/A

The approved plans in relation to this approval are included within **Attachment 2**.

## 4. Currency period for the development application approval

In accordance with section 85 of the *Planning Act 2016*, this approval has a currency period of two years.

## 5. Further development permits

Please be advised that the following development permits are required to be obtained before the development can be carried out:

1. Building Works – Demolition 1a Dwelling House
2. Plumbing and Drainage Works – Capping of infrastructure

## 6. Referral agencies

There are no referral agencies for this application.

## 7. Submission(s)

Properly made submissions were made in relation this development. The details of these submissions are included below:

Name:	Address:	Electronic Address
Charters Towers Regional Heritage Network	PO Box 1224 CHARTERS TOWERS QLD 4820	<a href="mailto:charterstowersheritage@gmail.com">charterstowersheritage@gmail.com</a>





## 8. Notice of reasons

This notice is prepared in accordance with Section 63(5) of the *Planning Act 2016* to inform the public about a decision that has been made in relation to a development application.

<b>Description of the development:</b>	The Development Application seeks a Preliminary Approval for Building Works Assessable against the Planning Scheme for the removal of a Category 2: Local Character Place under the Heritage Overlay.	
<b>Assessment benchmarks:</b>	The proposal was assessed against the assessment benchmarks of the State Planning Policy – July 2017 and the Aligned Charters Towers Planning Scheme 2011 including the: 1) Desired Environmental Outcomes; and 2) Heritage Overlay Code.	
<b>Relevant matters:</b>	Not applicable	
<b>Matters raised in submissions:</b>	<b>Submission Point:</b>	<b>Council Response:</b>
	Concerns raised regarding the removal of the Dwelling House creating another void within the built-up environment near the Central Business District. This detracts from the character of the City which is already evident in Plummer Street where a vacant block has existed for the past eight (8) years.	As per the common material, the reason for the proposal is to relocate the Dwelling House to another property so alternative owners can undertake the repair works at their cost. Council is unable to consider this as part of its assessment. The provisions of the Desired Environmental Outcomes and the Heritage Overlay Code of the Aligned Charters Towers Planning Scheme 2011 require that development retains and protects places of character or cultural heritage significance. As the proposal seeks to remove a Category 2: Local Character which is located amongst other Category 2: Local Character Places, the proposal is unable to comply in this instance.
	Concerns raised regarding an increased level of demand and potential financial burden on Council infrastructure and services associated with the relocation of the Dwelling House to a lot located outside of the city's urban area.	The matters raised by the submitter are not considered by the Aligned Charters Towers Planning Scheme 2011. Provided the relocation of the Dwelling House was located to a suitable lot for residential purposes, this would be supported.
	Concerns raised relating to the level of damage sustained by the Dwelling House and whether repairs can be undertaken without the cost of removal as proposed.	The matters raised by the submitter are not considered by the Aligned Charters Towers Planning Scheme 2011. This noted, a site investigation was undertaken on 21 August 2019 to verify the level of damage sustained by the Dwelling House in an internal domestic house fire. Upon completion of the inspection, Council's Building Certifier was of the opinion that the Dwelling House could be repaired, and the damage was not to an extent that the structural integrity of the building was irreversibly beyond repair.





	Concerns relating to the cleanliness of the site should the Dwelling House be removed given the numerous other structures on-site.	The matters raised by the submitter are not considered by the Aligned Charters Towers Planning Scheme 2011. Overgrown and unsightly allotments are regulated by Local Law No. 3 (Community and Environmental Management).
<b>Reasons for decision:</b>	<p>The reasons for the decision are as follows:</p> <ol style="list-style-type: none"> <li>1) The proposal does not comply with the Desired Environmental Outcome - A Sustainable Community and Sustainable Landscapes as the proposal seeks the removal of a Category 2: Local Character Place which does not recognise the importance nor maintain the heritage and historic character values of the City.</li> <li>2) The proposal does not comply with Overall Outcome (a) and (b) of the Heritage Overlay Code as the proposed removal does not protect the place's heritage significance for the benefit of future generations.</li> <li>3) The proposal does not comply with Acceptable and Probable Solutions S1, S5 and S7 or Specific Outcomes A1, A4, A5, A7.1 and A7.2 of the Heritage Overlay Code as the proposed removal does not respect and reinforce the historic character of the City. The proposal also does not retain or protect the Category Two: Local Character Place which is made up on a consistent streetscape of other Category Two: Local Character Places.</li> </ol> <p>Whilst the Officer's recommendation was a refusal, Council at the 18 September 2019 General Meeting resolved to approve the application despite the above noncompliance.</p>	

## 9. Other requirements under section 43 of the *Planning Regulation 2017*

There are no other requirements.

## 10. Appeal rights

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision are set out in Chapter 6, Part 1 of the *Planning Act 2016*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see Chapter 6, Part 2 of the *Planning Act 2016*). Information about how to proceed with an appeal to the Planning and Environment Court may be found on the Court's website: <http://www.courts.qld.gov.au/courts/planning-and-environment-court>.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*. The timeframes for starting an appeal in the Planning and Environment Court are set out in Section 229 and Schedule 1 of the *Planning Act 2016*.

Should you wish to discuss this matter, please contact Prue Miller, Planner on (07) 4761 5300.

Yours faithfully



Cameron Scott  
**A/Chief Executive Officer**





## Attachment 1—Conditions of the approval

Condition Number	Condition	Timing										
Approved Plan												
1.	Development is to be carried out generally in accordance with the submitted application including the following plan except where amendments are required to satisfy the conditions of this approval: <table><tr><td>Drawing Title:</td><td>Author:</td><td>Date:</td><td>Reference:</td><td>Revision:</td></tr><tr><td>Site Plan</td><td>Joann Chivers</td><td>24 July 2019</td><td>N/A</td><td>N/A</td></tr></table>	Drawing Title:	Author:	Date:	Reference:	Revision:	Site Plan	Joann Chivers	24 July 2019	N/A	N/A	At all times
Drawing Title:	Author:	Date:	Reference:	Revision:								
Site Plan	Joann Chivers	24 July 2019	N/A	N/A								
General												
2.	The applicant is to comply with all the conditions of this development permit, undertake and meet the cost of all works reasonably associated with the development including any necessary alteration, relocation or damage of services, public utility mains and installation costs.	At all times										
3.	Where discrepancy or conflict exists between the conditions of this development permit and the approved plan, the requirements of the condition(s) will prevail.	At all times										
4.	The applicant is to repair any damage to existing kerb and channel, footpath, roadway or other infrastructure that may occur during any works carried out in association with the development.	As part of construction works										
5.	Any relocation and/or alteration to any public utility installation required because of any works carried out about this development must be carried out by the applicant and at no cost to Council in accordance with the relevant Council policy and/or Australian Standard.	As part of construction works										
Environmental												
6.	The applicant is to ensure that erosion and sedimentation control management is undertaken and maintained to prevent soil erosion and sedimentation runoff to watercourses and Council's storm water drainage system. Erosion and sediment control is to be in accordance with <i>International Erosion Control Association – Best Practice Erosion &amp; Sediment Control guidelines</i> and the <i>Queensland Urban Drainage Manual 2017</i> .	As part of construction works and thereafter										
7.	The construction of the development must be limited to 0630—1830 Monday to Sunday and not at all on Sunday and public holidays, unless otherwise approved by Council. Noise generated from construction must be within the limits set by the <i>Environmental Protection Act 1994</i> and the <i>Environmental Protection (Noise) Policy 2019</i> .	As part of construction works										
8.	The applicant is to ensure that construction works occur so they do not cause unreasonable interference with the amenity of adjoining premises because of noise, vibration, electrical or electronic interference, smell, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise.	As part of construction works and thereafter										
9.	The applicant is to ensure that the site including the adjoining Council controlled road reserve are kept in a safe, clean and tidy state.	As part of construction works and thereafter										
10.	All construction materials, wastes, waste skips, machinery and contractor's vehicles must be located and stored or parked within the site.	As part of construction works										





Condition Number	Condition	Timing
<b>Building Works</b>		
11.	The applicant is required to obtain a Development Permit and Building Final for Building Works in accordance with the <i>Planning Act 2016</i> for the removal of the existing structure. The removal of the structure is to occur prior to any Building Works for the approved Development.	Prior construction works to
12.	The applicant is required to obtain a Development Permit for Plumbing and Drainage Works and Plumbing and Drainage Final in accordance with the <i>Planning Act 2016</i> for the capping of sewer services. Construction is to comply with the <i>Plumbing and Drainage Act 2002</i> and the requirements of other relevant authorities.	Prior construction to

#### Advisory Notes

##### Aboriginal and Cultural Heritage

- A. The *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* requires anyone who carries out a land-use activity to exercise a duty of care. Land users must take all reasonable and practicable measures to ensure their activity does not harm Aboriginal or Torres Strait Islander cultural heritage. Prior to carrying out works, it is advised that you contact the Department of Aboriginal and Torres Strait Islander Partnerships on (07) 4799 7470 or by post at PO Box 5620 TOWNSVILLE QLD 4810. For further information on cultural heritage duty of care please visit: <https://www.datsip.qld.gov.au/people-communities/aboriginal-torres-strait-islander-cultural-heritage/cultural-heritage-duty-care>

##### Workplace Health and Safety

- B. Ensure compliance with the *Work Health and Safety Act 2011*. It states that the project manager/applicant is obliged to ensure construction work is planned and managed in a way that prevents or minimises risks to the health and safety of members of the public at or near the workplace during construction work. It is the principal contractor's responsibility to ensure compliance with the *Work Health and Safety Act 2011*. It states that the principal contractor is obliged on a construction workplace to ensure that work activities at the workplace prevent or minimise risks to the health and safety of the public at or near the workplace during the work. It is the responsibility of the person in control of the workplace to ensure compliance with the *Work Health and Safety Act 2011*. It states that the person in control of the workplace is obliged to ensure there is appropriate, safe access to and from the workplace for persons other than the person's workers.

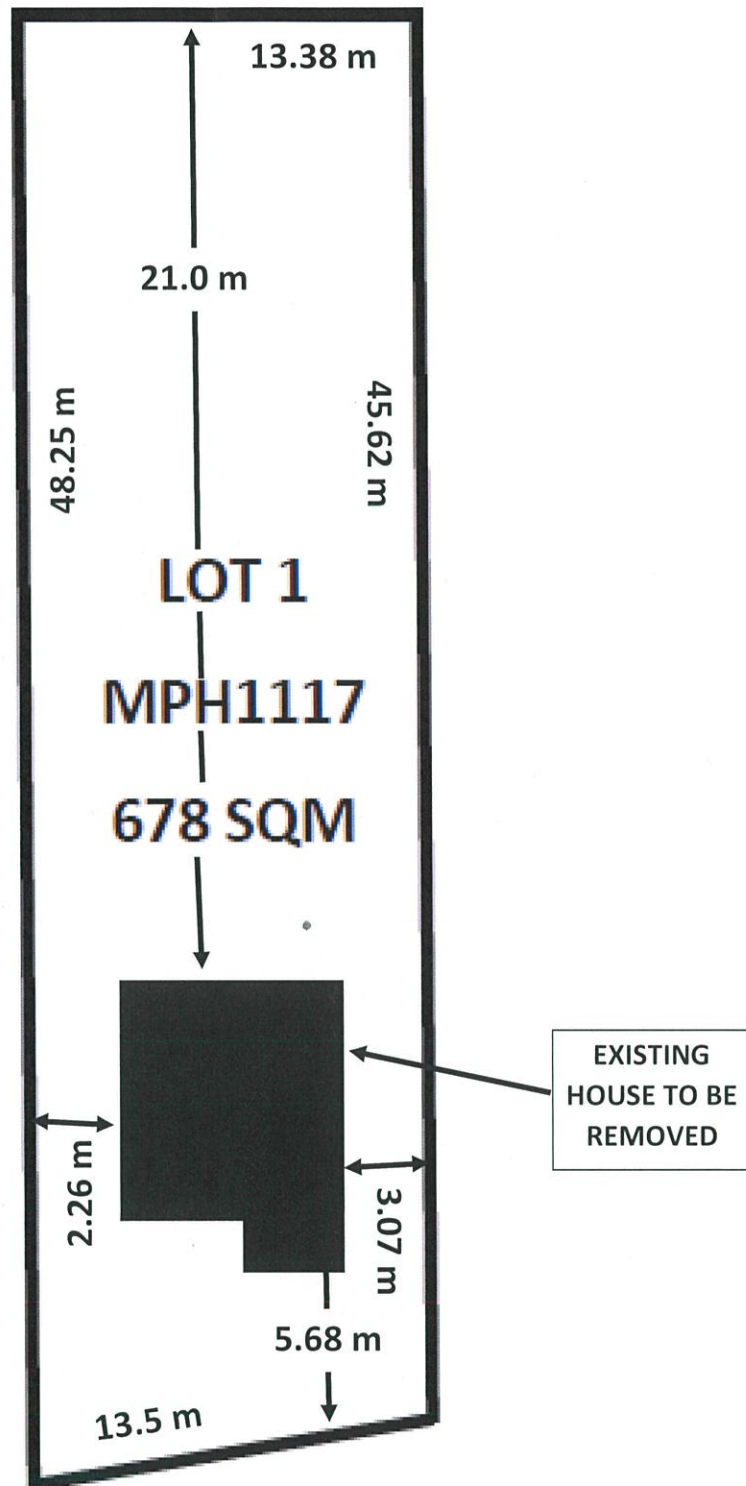
##### Environmental nuisance

- C. Ensure compliance with the *Environmental Protection Act 1994*. It states that a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm. Environmental harm includes environmental nuisance. In this regard persons and entities, involved in the civil, earthworks and construction phases of this development, are to adhere to their "general environmental duty" to minimise the risk of causing environmental harm.

Environmental harm is defined by the Act as any adverse effect, or potential adverse effect whether temporary or permanent and of whatever magnitude, duration or frequency on an environmental value and includes environmental nuisance. Therefore, no person should cause any interference with the environment or amenity of the area because of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, sediment, oil or otherwise, or cause hazards likely in the opinion of the Council to cause undue disturbance or annoyance to persons or affect property.



# SELLHEIM STREET



# PLUMMER STREET