

In the Planning and Environment Court  
Held at: Brisbane

No. of 2020

Between: **GRAEME ASHLEY HOFFMANN AND CHUDA  
KAEWMONGKHON ATF HOFFMANN DRILLING PTY LTD  
SUPERANNUATION FUND 716 001 453**

Appellant

And: **GOLD COAST CITY COUNCIL**

Respondent

### NOTICE OF APPEAL

Filed on: 17 January 2020  
Filed By: Thynne + Macartney  
Solicitor: Tim Quirk  
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**GRAEME ASHLEY HOFFMANN AND CHUDA KAEWMONGKHON ATF HOFFMANN DRILLING PTY LTD SUPERANNUATION FUND 716 001 453** of c/- Thynne + Macartney, Level 32, 123 Eagle Street, Brisbane in the State of Queensland appeals to the Planning and Environment Court at Brisbane against the decision of the Respondent dated 12 December 2019 to refuse a development application made by the Appellant for a Development Permit for a Material Change of Use for Extractive Industry (Commercial groundwater extraction) ("*Development Application*") with respect to land located at 263 Repeater Station Road, Springbrook, more particularly described as Lot 36 on RP139816 ("*Land*") and seeks the following orders:

1. The appeal be allowed;
2. The Development Application be approved;
3. The Respondent pay the Appellant's costs of the appeal; and
4. Such further or other orders as this Honourable Court deems appropriate.

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#### NOTICE OF APPEAL

Filed on behalf of the Appellant

Form PEC-1

#### Thynne + Macartney

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Ref:TXQ:AVC:201382

**The grounds of appeal are:**

Land

1. The Land:
  - (a) is located at 263 Repeater Station Road, Springbrook;
  - (b) is more specifically described as Lot 36 on RP139816;
  - (c) has a frontage of approximately 136m to Repeater Station Road, Springbrook;
  - (d) slopes steeply from approximately A.H.D. 925m at the western boundary (frontage) to approximately A.H.D. 800m at the eastern boundary (rear boundary);
  - (e) is improved by three (3) existing water bores. The water bores and the proposed development are located within an area 50m from the Repeater Station Road frontage;
  - (f) has an area of approximately 41,520m<sup>2</sup>; and
  - (g) with respect to the Gold Coast City Plan, is included in the:
    - (i) Rural Zone – Rural Landscape and Environmental Precinct;
    - (ii) Bushfire Hazard Overlay;
    - (iii) Landslide Hazard Overlay;
    - (iv) Airport Environs Overlay;
    - (v) Environmental Significance Overlay; and
    - (vi) Water Catchments Areas Overlays.

Development Application

2. On 24 April 2018, the Appellant's town planning consultant lodged the Development Application with the Respondent.
3. The Development Application attracted 306 properly made submissions opposing the proposed development.
4. The Department of State Development, Manufacturing, Infrastructure and Planning was a referral agency.
5. On or about 12 December 2019, the Respondent issued a decision notice, refusing the Development Application for the following reasons:

- 1) *"The development does not support and promote the Strategic framework in that:*
  - (a) *The potential short and long term impacts associated with the proposed use have not been adequately demonstrated. Therefore, the potential for the proposed use to significantly impact upon the environmental features of this area and natural processes cannot be determined at this stage.*
  - (b) *The proposed use has the potential to impact upon the Springbrook Plateau as a major ecotourism destination due to potential impacts upon the significance environmental features of this area and additional regular truck movements.*
  - (c) *The proposal will result in clearing of protect in situ vegetation along the frontage of the site associated with achieving safe sight distances for vehicles exiting the site.*
  - (d) *The proposed use has the potential to impact upon the character of the surrounding area as a result of additional regular truck movements.*
  - (e) *The proposed development cannot provide sufficient sight distance as it would require the removal of vegetation (as opposed to trimming/maintenance) within a biodiversity area which must be retained in situ. As a result of a sufficient sight distance being unable to be attained, the access driveway is considered to compromise the safety, efficiency and function of the road network and also the safety of users.*
- 2) *The development does not achieve the Purpose, Overall outcomes and Performance outcomes of the Environmental significance overlay code in that:*
  - (a) *The proposed use does not comply with the Purpose 8.2.6.2(1) of the Environmental significance overlay code as it has not been adequately demonstrated that the proposed use will not impact upon matters of environmental significance.*
  - (b) *The proposed use does not comply with Overall outcome 8.2.6.2(2)(a)(i) and (ii) of the Environmental significance overlay code as it has not been adequately demonstrated that the proposed use will not impact upon matters of environmental significance within Hinterland core habitat systems and Hinterland to coast critical corridors. In addition the proposal will result in the removal of protected in situ vegetation.*
  - (c) *The proposed use does not comply with Overall outcome 8.2.6.2(2)(c) of the Environmental significance overlay code as the proposal will result in the removal of protected in situ vegetation.*
  - (d) *The proposed use does not comply with Performance outcome 1,3,4,9 and 19 of the Environmental significance overlay code as the extent of any potential impacts on matters of environmental significance within and surrounding the site have not been accurately established. In addition, the proposal will impact upon mapped vegetation within a biodiversity area as*

a result of works required to obtain safe sightlines for vehicles existing the site.

- (f) *The proposed use does not comply with Performance outcome 13 and 17 of the Environmental significance overlay code as the short and long term environmental impacts of the proposed groundwater extraction have been unable to be adequately established it is consequently unknown if the proposal will impact downstream environments including koala trees.*
- 3) *The development does not comply with P05 of the Water resource catchment overlay code. The potential impacts on environmental features and natural processes, including riparian vegetation, have not been adequately demonstrated. Therefore it cannot be determined that the proposal provides for the protection, maintenance, management and rehabilitation of riparian areas adjacent to waterways.*
  - 4) *The development does not achieve the Purpose, Overall outcomes and Performance outcomes of the Rural zone code in that:*
    - (a) *The proposed use does not comply with the purpose, section 6.2.20.2(a)(b), of the Rural zone code as the extent of short and long terms impacts associated with the proposed use have not been established. Therefore it is unknown if the proposed non-rural use will be compatible with the significant environmental features of the site and surrounding area.*
    - (b) *The proposed use does not comply with Overall outcome 6.2.20.2(3)(a) and (b) of the Rural zone code as the potential short and long term impacts associated with the proposal use are unknown. Therefore the potential impact upon matters of environmental significance and unknown and unable to be appropriately protected.*
    - (c) *The proposed use does not comply with Overall outcome 6.2.20.2(2)(v) as the proposed use does not directly relate to rural production and is considered to conflict with the existing rural amenity of the area. It is considered that the movement of up to eight trucks Monday to Friday, consisting of up to four truck movements to the site and up to four truck movements from the site and two truck movements on Saturday being one truck movement to the site and one truck movement from the site, will impact upon the existing rural amenity of the area.*
    - (d) *The proposed use does not comply with Performance outcome 5 of the Rural zone code as the proposal results in the clearing of vegetated areas along the frontage of the site for safe sight distances. As a result this clearing will impact on matters of environmental significance. In addition, the potential long and short term impact upon matters of environmental significance and unknown and unable to be appropriately protected.*
  - 5) *The development does not achieve the Purpose, Overall outcomes and Performance outcomes of the Transport code in that:*

- (a) *The proposed does not comply with Overall outcome 9.4.13.2(2)(a)(i) of the Transport Code as the proposal is not considered to result in a safe environment, given that compliant sight distances have not been demonstrated.*
  - (b) *The proposed development does not comply with Performance outcome 25.1 of the Transport code as a sufficient sight distance is unable to be provided as it would require the removal of vegetation (as opposed to trimming/maintenance) within a biodiversity area which must be retained in situ. As a result of a sufficient sight distance being unable to be attained, the access driveway is considered to compromise the safety, efficiency and function of the road network and also the safety of users.*
- 6) *The development does not achieve the Purpose, Overall outcomes and Performance outcomes of the Extractive industry development code in that:*
- (a) *The proposed use is not considered to comply with the purpose and performance outcome 1 of the Extractive industry use code. As the potential short and long term impacts of the proposed use on matters of environmental significance have been unable to be accurately established, it is unknown if the proposed use minimises environmental impacts on the site and surrounding areas.*
- 7) *The proposed development does not comply with the Overall outcomes and Performance outcomes of the General development provisions code in that:*
- (a) *The proposal is not considered to comply with overall outcome 9.4.4.2(2)(a) of the General development provisions code. The proposed increase in noise as result of truck movements throughout the area will not maintain the expected level of amenity of the surrounding rural area.*
  - (b) *The proposal is not considered to comply with P01 and P02 of the General development provisions code. As a result of truck movements, the proposal will impact upon the character of this rural area.*
- 8) *No other relevant matters to overcome the non-compliances are identified."*

#### Grounds of Appeal

6. The Development Application should be approved having regard to the following:
- (a) The proposed development complies with or can be conditioned to comply with the assessment benchmarks contained in the Respondent's decision notice set out in paragraph 5 of this Notice of Appeal;
  - (b) The proposed development is an appropriate use of the Land in circumstances where there will be no impacts (short term or long term) associated with the proposed use and:
    - (i) The development will maintain the rural amenity, character, environmental and landscape values of the area;

- (ii) The development area is designed and sited to be compatible with the rural character of the surrounding area and protect in situ vegetation; and
- (iii) The development will not impact upon matters of environmental significance and downstream environments including koala trees.

#### **Particulars**

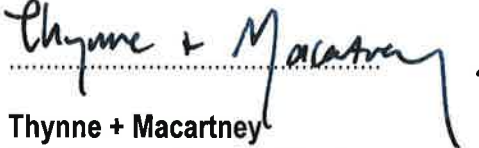
- (A) The Land is contained within an area that is rich in available groundwater;
- (B) The proposed development is located approximately 200m from a summer gully that flows through the property during rainfall events;
- (C) The Land is surrounded by:
  - (1) To the north:
    - (a) existing groundwater extraction developments located at 133 Repeater Station Road, Springbrook (Lot 9 on RP139815) (approximately 1.4 km) and 199 Repeater Station Road, Springbrook (Lot 246 on WD4567) (approximately 1.3 km); and
    - (b) rural properties, bushland and Springbrook Village (approximately 3.2 km);
  - (1) To the east, south and west, rural properties, bushland and agricultural uses;
- (B) The proposed development will be conducted through two existing bores in the western portion of the Land;
- (C) The proposed development does not involve the clearing of vegetation for implementation of the use and all vegetation on the Land will be protected;
- (D) The proposed development is not readily visible from the road frontage or adjoining properties;
- (E) The recorded rainfall near the Land was greater than 3,000 mm per year, and groundwater recharge from such rain fall would allow the proposed development to operate with an insignificant impact on the ground water system;
- (F) There is significant aquifer recharge from incident rainfall in this high rainfall area;
- (G) The proposed development limits traffic movements to four deliveries per day on a weekday and one trip on Saturdays, with trucks utilising the existing driveway;

- (H) Vehicles enter via the northern portion of the driveway and exit via the southern portion. Earthworks and tree clearing have previously taken place on site with the driveway, existing shed and building pads for the approved dwelling having been constructed;
- (I) Access to the proposed development will be utilised by long rigid trucks between 8.8m to 10m long via Repeater Station Road which has a pavement width of approximately 6.0 m;
- (J) The southern driveway provides over 100 metres sight distance viewing to the north and approximately 83 metres viewing to the south; and
- (K) It has been demonstrated that the proposed development will comply with the City of Gold Coast acoustic assessment criteria due to, amongst other things, physical screening, natural topography and distance separation and no additional acoustic treatments are required.

### Relevant Matters

7. The proposed development ought be approved having regard to the following relevant matters:
  - (a) Resource investigations that have been carried out on the Land reveal, amongst other things:
    - (i) the Land is contained within an area that is rich in available groundwater; and
    - (ii) the water quality is suitable to be provided to spring water suppliers;
  - (b) The Land recently received a development approval for a dwelling house and associated operational works (vegetation clearing & change to ground level). Vegetation clearing and earthmoving works have commenced, with internal driveways and a shed completed;
  - (c) The majority of the infrastructure (including vegetation clearing, the existing water bores and internal driveways) is already in place from previous operations;
  - (d) To the north, there are two existing groundwater extraction developments located at 133 Repeater Station Road, Springbrook which has been operating for over 25 years, and 199 Repeater Station Road, Springbrook (Lot 246 on WD4567);
  - (e) Due to topographical features and the ecological value of the Land, it is unsuitable for productive rural uses; and
  - (f) The proposed development appropriately protects and manages the significant natural resource (water).
8. The proposed development advances the purpose of the *Planning Act 2016* including satisfying sections 5(2)(a)(i), (c) and (g) of the *Planning Act 2016*.
9. In the premises:
  - (a) The appeal ought be allowed and the Development Application approved; and

- (b) The Respondent ought pay the Appellant's costs of the proceedings.



Thynne + Macartney  
Solicitors for the Appellant  
17 January 2020

**If you are named as respondent in this Notice of Appeal and wish to be heard in this appeal you must:**

- a) **Within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this Notice of Appeal was filed or where the court file is kept; and**
- b) **Serve a copy of the Entry of Appearance on each other party.**

**The Entry of Appearance should be in Form PEC-5 for the Planning and Environment Court.**

**If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:**

- a) **Within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and**
- b) **Serve a copy of the Notice of Election on each other party.**

**The Notice of Election should be in Form PEC-6 for the Planning and Environment Court.**

To the Respondent: The Chief Executive Officer, Gold Coast City Council