



# Decision Notice Approval

Planning Act Form 2 (version 1.1 effective 22 June 2018) made under Section 282 of the Planning Act 2016 for a decision notice (approval) under s63(2) Planning Act 2016

Application number:	D/25-2018	Contact:	Brandon Diplock
Notice Date:	13 May 2019	Contact Number:	1300 22 55 77

## APPLICANT DETAILS

Name:	LYNP Projects & Constructions Pty Ltd		
Postal address:	C/- Emerge Planning & Development		
Phone no:	Mobile no:	Email:	

I acknowledge receipt of the above application on 20 March 2018 and confirm the following:

## DEVELOPMENT APPROVAL

**Development Permit for a Material Change of Use for Four Shops and a Multiple Dwelling (8 Units)**

## PROPERTY DESCRIPTION

Street address:	78 High Street, Berserker
Real property description:	Lot 8 on RP604534, Parish of Archer

## OWNER DETAILS

Name:	R Sarafian
Postal address:	
<b>Dear LYNP Projects &amp; Constructions Pty Ltd</b>	
I advise that, on 7 May 2019 the above development application was:	
<input checked="" type="checkbox"/> approved in full with conditions* (refer to the conditions contained in <b>Attachment 1</b> )	
*Note: The conditions show which conditions have been imposed by the assessment manager and which conditions have been imposed by a referral agency.	

## 1. DETAILS OF THE APPROVAL

The following approvals are given:

	Development Permit	Preliminary Approval
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## 2. CONDITIONS

This approval is subject to the conditions in Attachment 1.

## 3. FURTHER DEVELOPMENT PERMITS REQUIRED

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

Type of development permit required	Subject of the required development permit
Operational Works	<i>Access and Parking Works</i> <i>Roof and Allotment Drainage Works</i>
Building Works	<i>Demolition Works</i> <i>Building Works</i>
Plumbing and Drainage Works	

## 4. SUBMISSIONS

Properly made submissions **were** made in relation to the application.

There was 1 properly made submissions received from the following submitter(s);

Name of principal submitter	Residential or business address	Electronic address (if provided)
1. C P O'Reilly		

## 5. REFERRAL AGENCIES

NIL

## 6. THE APPROVED PLANS

The approved development must be completed and maintained generally in accordance with the approved drawings and documents:

<u>Plan/Document Name</u>	<u>Plan/Document Reference</u>	<u>Dated</u>
Stormwater Management Plan	201801smpA, Rev A	02 March 2019
Locality Map & Schedule of Drawings	2018018-C00 A, Rev B	22 March 2019
Proposed Carpark Layout Plan	2018018-C02 A, Rev B	22 March 2019
Proposed B85 Turning Plan	2018018-C03 A, Rev B	22 March 2019
Proposed WCV Turning & Collection Plan	2018018-C04 A, Rev B	22 March 2019
Proposed Stormwater Layout Plan	2018018-C05 A, Rev B	22 March 2019
Sight Distances Plan	2018018-C06 A, Rev B	22 March 2019
Site Plan	2018.10, Sheet 01	19 March 2019
Ground Floor Plan	2018.10, Sheet 02	19 March 2019
2 <sup>nd</sup> / 3 <sup>rd</sup> Floor Plan	2018.10, Sheet 03	19 March 2019
Roof Plan	2018.10, Sheet 04	19 March 2019
North Elevation	2018.10, Sheet 05	19 March 2019

<u>Plan/Document Name</u>	<u>Plan/Document Reference</u>	<u>Dated</u>
East Elevation	2018.10, Sheet 06	19 March 2019
West Elevation	2018.10, Sheet 07	19 March 2019
South Elevation	2018.10, Sheet 08	19 March 2019

## 7. CURRENCY PERIOD FOR THE APPROVAL (s.85 of the *Planning Act*)

The standard currency periods stated in section 85 of *Planning Act 2016* apply to each aspect of development in this approval, if not stated in the conditions of approval attached.

## 8. STATEMENT OF REASONS

<b>Description of the development</b>	The proposed development is for Material Change of Use - Four Shops and a Multiple Dwelling (8 Units)	
<b>Reasons for Decision</b>	<p>a) The proposal is for a low-medium rise built form that does not compromise the residential character and existing amenity of the surrounding area.</p> <p>b) The proposal will create an attractive streetscape that is integrated with the nearby centres whilst offering an affordable and convenient living option.</p> <p>c) The commercial component of the development is subordinate to the residential units and, given the sites location, represents an infill of commercial uses rather than an expansion.</p> <p>d) The proposed use does not compromise the strategic framework in the <i>Rockhampton Region Planning Scheme 2015</i>;</p> <p>e) Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity;</p> <p>f) The proposed development does not compromise the relevant State Planning Policy; and</p> <p>g) On balance, the application should be approved because the circumstances favour Council exercising its discretion to approve the application even though the development does not comply with an aspect of the assessment benchmarks.</p>	
<b>Assessment Benchmarks</b>	<p>The proposed development was assessed against the following assessment benchmarks:</p> <ul style="list-style-type: none"> <li>• Low-Medium Density Residential Zone;</li> <li>• Landscape Code;</li> <li>• Access, Parking and Transport Code;</li> <li>• Stormwater Management Code;</li> <li>• Waste Management Code; and</li> <li>• Water and Sewer Code.</li> </ul>	
<b>Compliance with assessment benchmarks</b>	The development was assessed against all of the assessment benchmarks listed above and complies with all of these with the exception(s) listed below.	
	<b>Assessment Benchmark</b>	<b>Reasons for the approval despite non-compliance with benchmark</b>
	Low-Medium Density	The proposal has taken into consideration the surrounding land uses and has incorporated a

	Residential Zone Code	design that meets the boundary setback requirements, height, site cover, orientation, pedestrian access and general street presentation requirements. The proposal is of a scale and purpose envisaged within the Low-Medium Density Residential Zone and all exterior walls will incorporate variation in materials, colour and glazing to ensure an attractive built form. The proposed open space and landscaping is considered appropriate for a development of this nature that incorporates both residential and commercial aspects.
	Landscape Code	Landscaping has been provided at the front of the proposed development and the entire length of the eastern boundary. Given the orientation of the building and positioning of the car parks behind and under the building, this is considered significant to ensure the car park is not visually dominant and does not create glare/heat islands.
	Access, Parking and Transport Code	The proposed development can comply with the required number of parking spaces for the residential component; however, will have a minor shortfall of three (3) car parking spaces for the commercial component. This minor shortfall is considered acceptable given that the site has access to public transport and is within close proximity to a number of shopping and commercial centres which encourage walkability. The nature of High Street including its width, speed and volume allows for on-street car parking which already exists within the area. It is expected that any overflow of car parking may utilise on-street parking options without unduly impacting on the safety or capacity of the road network or local amenity.
<b>Matters raised in submissions</b>	<b>Issue</b>	<b>How matter was dealt with</b>
	Increased Traffic	The proposal has considered access, parking and traffic arrangements and included a design prepared by an engineering consultant that allows for the safe ingress and egress of vehicles from the site. In response to information requested by Council, the applicant has decided to incorporate a single crossover on the western side of the allotment that achieves good line of sight and sufficient clearance from existing infrastructure.
	Car Parking	The proposal falls slightly short of the required parking provisions outlined within the Planning Scheme, however, the applicant has provided significant justification to demonstrate that the shortfall in parking spaces will not result in

		<p>detrimental impacts to the development or the safety or capacity of the road network or local amenity. The nature of High Street including its width, speed and volume allows for on-street car parking which already exists within the area. It is expected that any overflow of car parking may utilise on-street parking options without unduly impacting on the safety or capacity of the road network or local amenity.</p> <p>The site is within close proximity to a number of shopping and commercial centres which provides a high level of walkability and access to public transport routes.</p>
	Design and Bulk of building	The proposal has been appropriately designed to ensure it maintains a high level of street appeal. In addition, the proposal is generally consistent with the requirements of the planning scheme given that the scale, height, sight cover and density of the proposed building is commensurate with the built form intended within the Low-Medium Density Residential Zone and cannot be considered an over development of the site.
	Noise throughout demolition phase	The development has been appropriately conditioned to ensure all measures are undertaken to reduce noise throughout the construction phase of the development.
	Stormwater	The development is supported by a detailed stormwater management plan prepared by a suitably qualified Registered Professional Engineer of Queensland. All stormwater runoff generated by the development will be appropriately directed to a lawful point of discharge.
	Landscaping	Additional landscaping has been incorporated, including a one (1) metre wide deep planting buffer along the eastern boundary. The proposed landscaping is considered sufficient for the purpose intended which is to soften the appearance of the building and hard finishes/surfaces to the street and adjoining neighbours, along with providing additional shading and general aesthetic contribution to the development.
<b>Matters prescribed by regulation</b>	<ul style="list-style-type: none"> <li>• The <i>State Planning Policy – Part E</i>;</li> <li>• The <i>Central Queensland Regional Plan</i>;</li> <li>• The <i>Rockhampton Region Planning Scheme 2015</i>;</li> <li>• Surrounding use of adjacent premises in terms of commensurate and consistent development form; and</li> </ul>	

	<ul style="list-style-type: none"> <li>The common material, being the material submitted with the application.</li> </ul>
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**9. APPEAL RIGHTS**

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. 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*).

Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

Appeal by an eligible submitter

An eligible submitter for a development application may appeal to the Planning and Environment Court against the decision to approve the application, to the extent the decision relates to:

- any part of the development application that required impact assessment
- a variation request.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*.

**Attachment 2** is an extract from the *Planning Act 2016* that sets out the applicant's appeal rights and the appeal rights of a submitter.

**10. WHEN THE DEVELOPMENT APPROVAL TAKES EFFECT**

This development approval takes effect:

- From the time the decision notice is given – if there is no submitter and the applicant does not appeal the decision to the court.

Or

- When the submitter's appeal period ends – if there is a submitter and the applicant does not appeal the decision to the court.

Or

- Subject to the decision of the court, when the appeal is finally decided – if an appeal is made to the court.

**11. ASSESSMENT MANAGER**

Name:	<b>Tarnya Fitzgibbon</b> <b>COORDINATOR</b> <b>DEVELOPMENT ASSESSMENT</b>	Signature:	Date: 13 May 2019
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**Attachment 1 – Conditions of the approval**

**Part 1 – Conditions imposed by the assessment manager** [Note: where a condition is imposed about infrastructure under Chapter 4 of the *Planning Act 2016*, the relevant provision of the Act under which this condition was imposed must be specified.]

**Attachment 2—Extract on appeal rights**



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## Attachment 1 – Part 1 Rockhampton Regional Council Conditions

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Planning Act 2016

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### ADMINISTRATION

- 1.1 The Developer and his employee, agent, contractor or invitee is responsible for ensuring compliance with the conditions of this development approval.
- 1.2 Where these Conditions refer to “Council” in relation to requiring Council to approve or to be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
- 1.3 All conditions, works, or requirements of this development approval must be undertaken, completed, and be accompanied by a Compliance Certificate for any operational works required by this development approval:
  - 1.3.1 to Council’s satisfaction;
  - 1.3.2 at no cost to Council; and
  - 1.3.3 prior to the commencement of the useunless otherwise stated.
- 1.4 Infrastructure requirements of this development approval must be contributed to the relevant authorities, where applicable, at no cost to Council, prior to the commencement of the use, unless otherwise stated.
- 1.5 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:
  - 1.5.1 Operational Works:
    - (i) Access and Parking Works;
    - (ii) Roof and Allotment Drainage;
  - 1.5.2 Plumbing and Drainage Works;
  - 1.5.3 Building Works:
    - (i) Demolition Works; and
    - (ii) Building Works.
- 1.6 All Development Permits for Operational Works and Plumbing and Drainage Works must be obtained prior to the issue of a Development Permit for Building Works.
- 1.7 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.
- 1.8 All engineering drawings/specifications, design and construction works must be in accordance with the requirements of the relevant *Australian Standards* and must be approved, supervised and certified by a Registered Professional Engineer of Queensland.
- 2.0 APPROVED PLANS AND DOCUMENTS
- 2.1 The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by any condition of this development approval:

<u>Plan/Document Name</u>	<u>Plan/Document Reference</u>	<u>Dated</u>
Stormwater Management Plan	201801smpA, Rev A	02 March 2019
Locality Map & Schedule of Drawings	2018018-C00 A, Rev B	22 March 2019
Proposed Carpark Layout Plan	2018018-C02 A, Rev B	22 March 2019
Proposed B85 Turning Plan	2018018-C03 A, Rev B	22 March 2019
Proposed WCV Turning & Collection Plan	2018018-C04 A, Rev B	22 March 2019
Proposed Stormwater Layout Plan	2018018-C05 A, Rev B	22 March 2019
Sight Distances Plan	2018018-C06 A, Rev B	22 March 2019
Site Plan	2018.10, Sheet 01	19 March 2019
Ground Floor Plan	2018.10, Sheet 02	19 March 2019
2 <sup>nd</sup> / 3 <sup>rd</sup> Floor Plan	2018.10, Sheet 03	19 March 2019
Roof Plan	2018.10, Sheet 04	19 March 2019
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East Elevation	2018.10, Sheet 06	19 March 2019
West Elevation	2018.10, Sheet 07	19 March 2019
South Elevation	2018.10, Sheet 08	19 March 2019

2.2 Where there is any conflict between the conditions of this development approval and the details shown on the approved plans and documents, the conditions of this development approval must prevail.

2.3 Where conditions require the above plans or documents to be amended, the revised document(s) must be submitted for approval by Council prior to the submission of an application for a Development Permit for Operational Works/Building Works.

### 3.0 ACCESS AND PARKING WORKS

3.1 A Development Permit for Operational Works (access and parking works) must be obtained prior to the commencement of any access and parking works on the development site.

3.2 All access and parking works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Australian Standard AS2890 "Parking facilities"* and the provisions of a Development Permit for Operational Works (access and parking works).

3.3 All car parking and access areas must be paved or sealed to Council's satisfaction. Design and construction must be in accordance with the provisions of a Development Permit for Operational Works (access and parking works).

3.4 The existing access to the development which is located centrally within the High Street frontage of the site must be closed.

- 3.5 Any redundant vehicular crossovers must be replaced by Council standard kerb and channel.
- 3.6 Access to the site must be limited to 'left in, left out' only.
- 3.7 All vehicles must ingress and egress the development in a forward gear.
- 3.8 Adequate sight distances must be provided for all ingress and egress movements at the access driveways in accordance with *Australian Standard AS2890.2 "Parking facilities - Off street commercial vehicle facilities"*.
- 3.9 Universal access parking spaces must be provided on-site in accordance with *Australian Standard AS2890.6 "Parking facilities - Off-street parking for people with disabilities"*.
- 3.10 Parking spaces must be line-marked in accordance with the approved Site Plan (refer to condition 2.1) and in accordance with the *Australian Standard AS2890 "Parking facilities"* and the provisions of a Development Permit for Operational Works (access and parking works).
- 3.11 All vehicle operations associated with the development must be directed by suitable directional, informative, regulatory or warning signs in accordance with *Australian Standard AS1742.1 "Manual of uniform traffic control devices"* and *Australian Standard AS2890.1 "Parking facilities – Off-street car parking"*.
- 3.12 All internal pedestrian pathways must be designed and constructed in accordance with *Australian Standard AS1428 "Design for access and mobility"*.
- 4.0 PLUMBING AND DRAINAGE WORKS
- 4.1 A Development Permit for Plumbing and Drainage Works must be obtained for the removal and/or demolition of any existing structure on the development site.
- 4.2 All internal plumbing and drainage works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Water Supply (Safety and Reliability) Act 2008, Plumbing and Drainage Act 2002*, Council's Plumbing and Drainage Policies and the provisions of a Development Permit for Plumbing and Drainage Works.
- 4.3 The development must be connected to Council's reticulated sewerage and water networks.
- 4.4 A new water connection point must be provided to the development. An hydraulic engineer or other suitably qualified person must determine the size of connection required.
- 4.5 Adequate domestic and fire fighting protection must be provided to the development, and must be certified by an hydraulic engineer or other suitably qualified person.
- 4.6 The proposed development must be provided with a master meter at the development site boundary and sub-meters for each sole occupancy building in accordance with the *Queensland Plumbing and Drainage Code* and Council's Sub-metering Policy.
- 4.7 All internal plumbing and sanitary drainage works must be completely independent for each unit/tenancy.
- 4.8 Sewer connections and water meter boxes located within trafficable areas must be raised or lowered to suit the finished surface levels and must be provided with heavy duty trafficable lids.
- 4.9 Alteration, disconnection or relocation of internal plumbing and sanitary drainage works associated with the existing building must be in accordance with regulated work under the *Plumbing and Drainage Act 2002* and Council's Plumbing and Drainage Policies.
- 4.10 The development must comply with *Queensland Development Code, Mandatory Part 1.4 "Building over or near relevant infrastructure."* Any permit associated with the Building Over/Adjacent to Local Government Sewerage Infrastructure Policy must be obtained prior to the issue of a Development Permit for Building Works.

## 5.0 ROOF AND ALLOTMENT DRAINAGE WORKS

- 5.1 A Development Permit for Operational Works (roof and allotment drainage works) must be obtained prior to the commencement of any drainage works on the development site.
- 5.2 All roof and allotment drainage works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Queensland Urban Drainage Manual, Capricorn Municipal Development Guidelines*, sound engineering practice and the provisions of a Development Permit for Operational Works (roof and allotment drainage works).
- 5.3 All roof and allotment runoff from the development must be directed to a lawful point of discharge and must not restrict, impair or change the natural flow of runoff water or cause a nuisance to surrounding land or infrastructure.
- 5.4 The development must not increase peak stormwater runoff for a selected range of storm events up to and including a one per cent (1%) Annual exceedance probability storm event, for the post-development conditions.

## 6.0 SITE WORKS

- 6.1 All earthworks must be undertaken in accordance with *Australian Standard AS3798 "Guidelines on earthworks for commercial and residential developments"*.
- 6.2 Site works must be constructed such that they do not, at any time, in any way restrict, impair or change the natural flow of runoff water, or cause a nuisance or worsening to surrounding land or infrastructure.

## 7.0 BUILDING WORKS

- 7.1 The existing dwelling on the subject land must be demolished and a Development Permit for Building Works (demolition) must be obtained prior to the commencement of demolition works on the development site.
- 7.2 A minimum 1.8 metre high screen fence must be erected between the subject development site and adjacent residential properties south of the development.

## 8.0 LANDSCAPING WORKS

- 8.1 All landscaping must be established generally in accordance with the approved plans (refer to condition 2.1). The landscaping must be constructed and/or established prior to the commencement of the use and the landscape areas must predominantly contain plant species that have a low water dependency.
- 8.2 Large trees must not be planted within one (1) metre of the centreline of any sewerage and/or water infrastructure; small shrubs and groundcover are acceptable.
- 8.3 Landscaping, or any part thereof, upon reaching full maturity, must not:
  - (i) obstruct sight visibility zones as defined in the *Austroads 'Guide to Traffic Engineering Practice'* series of publications;
  - (ii) adversely affect any road lighting or public space lighting; or
  - (iii) adversely affect any Council infrastructure, or public utility plant.
- 8.4 The landscaped areas must be subject to:
  - 8.4.1 a watering and maintenance plan during the establishment moment; and
  - 8.4.2 an ongoing maintenance and replanting programme.

## 9.0 ELECTRICITY

- 9.1 Underground electricity services must be provided in accordance with approved Operational Works Plans and the standards and requirements of the relevant service provider.

- 9.2 A *Certificate of Electricity Supply* from the relevant service provider must be provided to Council, prior to the commencement of the use.

Note: The applicant can enter into a *Negotiated Connection Establishment Contract* with the Supplier for the provisioning of electrical services and/or street lighting. Provided the Applicant has undertaken all the conditions of the contract, including providing performance security, the Supplier will issue a *Certificate of Electricity Supply*.

## 10.0 TELECOMMUNICATIONS

- 10.1 Telecommunications services must be provided to the development in accordance with the standards and requirements of the relevant service provider, unless otherwise stipulated by telecommunications legislation at the time of installation. This includes all necessary pits, pipes and conduits that provide a connection to the telecommunications network.

Note: The Telecommunications Act 1997 (Commonwealth) specifies where the deployment of optical fibre and the installation of fibre-ready facilities is required.

- 10.2 Provide internal and external conduit paths for all unit developments.
- 10.3 The conduits, pipes and cables required by this condition are located on private land and therefore ownership of the conduits, etc. will be with the owner of the land or a carrier that uses the conduit to carry its cables.
- 10.4 Evidence of acceptance of the works from the relevant service provider must be provided to Council, prior to the commencement of the use.

Note: This will be a letter from either:

**NBN** a *'Certificate of Practical Completion'*;

**Telstra** a *"Telecommunications Agreement/Provisioning Letter"*; or

**A Licenced Carrier** under the Telecommunications Act 1997 - *signed documentation from a Registered Professional Engineer of Queensland - electrical engineer.*

## 11.0 ASSET MANAGEMENT

- 11.1 Any alteration necessary to electricity, telephone, water mains, sewerage mains, and/or public utility installations resulting from the development or in connection with the development, must be undertaken and completed at no cost to Council.
- 11.2 Any damage to existing stormwater, water supply and sewerage infrastructure, kerb and channel, pathway or roadway (including removal of concrete slurry from public land and Council infrastructure), that occurs while any works are being carried out in association with this development approval must be repaired at full cost to the developer. This includes the reinstatement of any existing traffic signs or pavement markings that may have been removed or damaged.
- 11.3 'As Constructed' information pertaining to assets to be handed over to Council and those which may have an impact on Council's existing and future assets must be provided prior to the commencement of the use. This information must be provided in accordance with the *Asset Design and As Constructed Manual (ADAC)*.

## 12.0 ENVIRONMENTAL

- 12.1 Any application for a Development Permit for Operational Works must be accompanied by an Erosion and Sediment Control Plan that addresses, but is not limited to, the following:
- (i) objectives;
  - (ii) site location and topography;
  - (iii) vegetation;
  - (iv) site drainage;
  - (v) soils;

- (vi) erosion susceptibility;
- (vii) erosion risk;
- (viii) concept;
- (ix) design; and
- (x) implementation,

for the construction and post-construction phases of work.

- 12.2 The Erosion Control and Stormwater Control Management Plan prepared by a Registered Professional Engineer of Queensland in accordance with the *Capricorn Municipal Design Guidelines*, must be implemented, monitored and maintained for the duration of the development works, and until all exposed soil areas are permanently stabilised (for example, turfed, hydromulched, concreted, landscaped). The plan must be available on-site for inspection by Council Officers whilst all works are being carried out.

### 13.0 ENVIRONMENTAL HEALTH

- 13.1 Any lighting devices associated with the development, such as sensory lighting, must be positioned on the development site and shielded so as not to cause glare or other nuisance to nearby residents and motorists. Night lighting must be designed, constructed and operated in accordance with *Australian Standard AS4282 "Control of the obtrusive effects of outdoor lighting"*.
- 13.2 Noise emitted from the activity must not cause an environmental nuisance.
- 13.3 Operations on the site must have no significant impact on the amenity of adjoining premises or the surrounding area due to the emission of light, noise or dust.
- 13.4 Air-conditioning units must be located so as not to cause a noise nuisance and maintained in proper working order at all times. Installation is to be as per manufacturers' instructions to ensure the efficiency of the equipment'.
- 13.5 When requested by Council, noise monitoring must be undertaken and recorded within three (3) months, to investigate any genuine complaint of nuisance caused by noise. The monitoring data, an analysis of the data and a report, including noise mitigation measures, must be provided Council within fourteen (14) days of the completion of the investigation. Council may require any noise mitigation measures identified in the assessment to be implemented within appropriate timeframes. Noise measurements must be compared with the acoustic quality objectives specified in the most recent edition of the *Environmental Protection (Noise) Policy*.
- 13.6 The hours of operation are regulated by the *Trading (Allowable Hours) Act 1990*.
- 13.7 The loading and/or unloading of delivery and waste collection and service vehicles is limited between the hours of 0700 and 1900 Monday to Saturday and between the hours of 0800 and 1500 on Sundays. No heavy vehicles must enter the development site outside these times to wait for unloading/loading.

### 14.0 OPERATING PROCEDURES

- 14.1 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the development site. Storage of materials or parking of construction machinery or contractors' vehicles must not occur within High Street.
- 14.2 Operations on the development site must have no significant impact on the amenity of adjoining premises or the surrounding area due to the emission of light, noise or dust.
- 14.3 All waste storage areas must be:
- 14.3.1 kept in a clean and tidy condition; and
  - 14.3.2 maintained in accordance with *Environmental Protection Regulation 2008*.

## ADVISORY NOTES

### NOTE 1. Aboriginal Cultural Heritage

It is advised that under section 23 of the *Aboriginal Cultural Heritage Act 2003*, a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the “cultural heritage duty of care”). Maximum penalties for breaching the duty of care are listed in the Aboriginal cultural heritage legislation. The information on Aboriginal cultural heritage is available on the Department of Aboriginal and Torres Strait Islander Partnerships website [www.datsip.qld.gov.au](http://www.datsip.qld.gov.au).

### NOTE 2. Asbestos Removal

Any demolition and/or removal works involving asbestos materials must be undertaken in accordance with the requirements of the *Work Health and Safety Act 2011* and *Public Health Act 2005*.

### NOTE 3. General Environmental Duty

General environmental duty under the *Environmental Protection Act 1994* prohibits unlawful environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the development site during all stages of the development including earthworks, construction and operation.

### NOTE 4. Licensable Activities

Should an activity licensable by Rockhampton Regional Council be proposed for the development site, Council’s Environment and Public Health Unit must be consulted to determine whether any approvals are required. Such activities may include food preparation, storage of dangerous goods or environmentally relevant activities. Approval for such activities is required before ‘fit out’ and operation.

### NOTE 5. General Safety Of Public During Construction

The *Work Health and Safety Act 2011* and *Manual of Uniform Traffic Control Devices* must be complied with in carrying out any construction works, and to ensure safe traffic control and safe public access in respect of works being constructed on a road.

### NOTE 6. Infrastructure Charges Notice

This application is subject to infrastructure charges in accordance with Council policies. The charges are presented on an Infrastructure Charges Notice.

The following is an extract from the *Planning Act 2016* (Chapter 6)

### Appeal rights

#### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
- matters that may be appealed to—
    - either a tribunal or the P&E Court; or
    - only a tribunal; or
    - only the P&E Court; and
  - the person—
    - who may appeal a matter (the **appellant**); and
    - who is a respondent in an appeal of the matter; and
    - who is a co-respondent in an appeal of the matter; and
    - who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is—
- for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency or
  - for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
  - for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
  - for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
  - for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  - for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.
- Note—  
See the P&E Court Act for the court's power to extend the appeal period.
- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
- the adopted charge itself; or
  - for a decision about an offset or refund—
    - the establishment cost of trunk infrastructure identified in a LGIP; or
    - the cost of infrastructure decided using the method included in the local government's charges resolution.

#### 230 Notice of appeal

- An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
  - is in the approved form; and
  - succinctly states the grounds of the appeal.
- The notice of appeal must be accompanied by the required fee.
- The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—

- the respondent for the appeal; and
  - each co-respondent for the appeal; and
  - for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
  - for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
  - each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
  - for an appeal to the P&E Court—the chief executive; and
  - for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
- if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

#### 231 Other appeals

- Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- The Judicial Review Act 1991, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- A person who, but for subsection (1) could have made an application under the Judicial Review Act 1991 in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- In this section— **decision** includes—
  - conduct engaged in for the purpose of making a decision; and
  - other conduct that relates to the making of a decision; and
  - the making of a decision or the failure to make a decision; and
  - a purported decision; and
  - a deemed refusal.

**non-appealable**, for a decision or matter, means the decision or matter—

- is final and conclusive; and
- may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

#### 232 Rules of the P&E Court

- A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

## Schedule 1

### Appeals section 229

#### 1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—(a) the P&E court; or (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
  - (a) the refusal, or deemed refusal of a development application, for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (b) a provision of a development approval for—
    - (i) a material change of use for a classified building; or
  - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (c) if a development permit was applied for—the decision to give a preliminary approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (d) a development condition if—
    - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
    - (ii) the building is, or is proposed to be, not more than 3 storeys; and
    - (iii) the proposed development is for not more than 60 sole-occupancy units; or
  - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
  - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
  - (g) a matter under this Act, to the extent the matter relates to—
    - (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
    - (ii) the Plumbing and Drainage Act, part 4 or 5; or
  - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
  - (i) a decision to give an infrastructure charges notice; or
  - (j) the refusal, or deemed refusal, of a conversion application; or
  - (k) a matter that, under another Act, may be appealed to the tribunal; or
  - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
  - (a) for a matter in subsection (2)(a) to (d)—
    - (i) a development approval for which the development application required impact assessment; and
    - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
  - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
  - (a) column 1 states the appellant in the appeal; and
  - (b) column 2 states the respondent in the appeal; and
  - (c) column 3 states the co-respondent (if any) in the appeal; and
  - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

<b>Table 1</b>			
<b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
1. Development applications An appeal may be made against— <ol style="list-style-type: none"> <li>(a) the refusal of all or part of the development application; or</li> <li>(b) the deemed refusal of the development application; or</li> <li>(c) a provision of the development approval; or</li> <li>(d) if a development permit was applied for—the decision to give a preliminary approval.</li> </ol>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence	1 A concurrence agency that is not a co-respondent

<b>Table 1</b>			
<b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
		agency's referral response—the concurrence agency	2 If a chosen Assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application
<b>2. Change applications</b> An appeal may be made against— (a) a responsible entity's decision for a change application, other than a decision made by the P&E court; or (b) a deemed refusal of a change application.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice	The responsible entity	If an affected entity starts the appeal—the applicant	1 A concurrence agency for the development application 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 A private certifier for the development application 4 Any eligible advice agency for the change application 5 Any eligible submitter for the change application
<b>3. Extension applications</b> An appeal may be made against— (a) the assessment manager's decision about an extension application; or (b) a deemed refusal of an extension application.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 For a matter other than a deemed refusal of an extension application – a concurrence agency, other than the chief executive, for the application	The assessment manager	If a concurrence agency starts the appeal – the applicant	If a chosen assessment manager is the respondent – the prescribed assessment manager

<b>Table 1</b>			
<b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
<p><b>4. Infrastructure charges notices</b>            An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds</p> <p>a) The notice involved an error relating to –</p> <p>(i) The application of the relevant adopted charge; or</p> <p>Examples of errors in applying an adopted charge –</p> <ul style="list-style-type: none"> <li>• The incorrect application of gross floor area for a non-residential development</li> <li>• Applying an incorrect ‘use category’, under a regulation, to the development               <ul style="list-style-type: none"> <li>(i) The working out of extra demands, for section 120; or</li> <li>(ii) An offset or refund; or</li> </ul> </li> </ul> <p>b) The was no decision about an offset or refund; or</p> <p>c) If the infrastructure charges notice states a refund will be given – the timing for giving the refund; or</p> <p>d) The amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the Infrastructure charges notice	The local government that gave the infrastructure charges notice	-	-
<p><b>5. Conversion applications</b>            An appeal may be made against—</p> <p>(a) the refusal of a conversion application; or</p> <p>(b) a deemed refusal of a conversion application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The local government to which the conversion application was made	-	-
<p><b>6. Enforcement notices</b>            An appeal may be made against the decision to give an enforcement notice.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the enforcement notice	The enforcement authority	-	If the enforcement authority is not the local government for the premises in relation to which the offence is alleged to have happened—the local government

<b>Table 2</b>			
<b>Appeals to the P&amp;E Court only</b>			
<p><b>1. Appeals from tribunal</b>            An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of—</p> <p>(a) an error or mistake in law on the part of the tribunal; or</p> <p>(b) jurisdictional error.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A party to the proceedings for the decision	The other party to the proceedings for the decision	-	-

<b>Table 2 Appeals to the P&amp;E Court only</b>			
<p><b>2. Eligible submitter appeals</b>            An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to—            (a) any part of the development application for the development approval that required impact assessment; or            (b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
<p><b>3. Eligible submitter and eligible advice agency appeals</b>            An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—            (a) any part of the development application or the change application, for the development approval, that required impact assessment; or            (b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
<p><b>4. Compensation claims</b>            An appeal may be made against—            (a) a decision under section 32 about a compensation claim; or            (b) a decision under section 265 about a claim for compensation; or            (c) a deemed refusal of a claim under paragraph (a) or (b).</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	-	-
<p><b>5. Registered premises</b></p>			

<b>Table 2 Appeals to the P&amp;E Court only</b>			
An appeal may be made against a decision of the Minister under chapter 7, part 4.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 A person given a decision notice about the decision 2 If the decision is to register premises or renew the registration of premises—an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision	The Minister	-	If an owner or occupier starts the appeal – the owner of the registered premises
6. Local laws An appeal may be made against a decision of a local government, or conditions applied, under a local law about— (a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or (b) the erection of a building or other structure.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who— (a) applied for the decision; and (b) is dissatisfied with the decision or conditions.	The local government	-	-

<b>Table 3 Appeals to the tribunal only</b>			
1. Building advisory agency appeals An appeal may be made against giving a development approval for building work to the extent the building work required code assessment against the building assessment provisions.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A building advisory agency for the development application related to the approval	The assessment manager	The applicant	1 A concurrence agency for the development application related to the approval 2 A private certifier for the development application related to the approval
3. Certain decisions under the Building Act and the Plumbing and Drainage Act An appeal may be made against a decision under— (a) the Building Act, other than a decision made by the Queensland Building and Construction Commission; or (b) the Plumbing and Drainage Act, part 4 or 5.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)

**Table 3  
Appeals to the tribunal only**

A person who received, or was entitled to receive, notice of the decision	The person who made the decision	-	-
<p>4. Local government failure to decide application under the Building Act            An appeal may be made against a local government's failure to decide an application under the Building Act within the period required under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive, notice of the decision	The local government to which the application was made	-	-