



# Decision Notice Approval (amended)

Planning Act Form 5 (version 1.2 effective 7 February 2020) made under Section 282 of the Planning Act 2016 for a decision notice (approval) under s83 Planning Act 2016

Application number:	D/67-2019	Contact:	Bevan Koelmeyer
Notice Date:	20 May 2020	Contact Number:	1300 22 55 77

## APPLICANT DETAILS

Name:	R & T Sweeney		
Postal address:	C/- Capricorn Survey Group (CQ) Pty Ltd		
Phone no:	Mobile no:	Email:	

I acknowledge receipt of the above change application on 14 May 2020 and confirm the following:

## DEVELOPMENT APPROVAL

<b>Development Permit for Reconfiguring a Lot (five lots into four lots) and a Material Change of Use for four Dual Occupancies</b>
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## PROPERTY DESCRIPTION

Street address:	107 Talford Street, and 148 and 150 Fitzroy Street, Allenstown
Real property description:	Lots 1, 2 and 3 on RP604408, and Lots 2 and 3 on RP602384, Parish of Rockhampton

## OWNER DETAILS

Name:	R K Sweeney and T R Sweeney
Postal address:	
<b>Dear R &amp; T Sweeney</b>	
I advise that, on 15 May 2020 the above change 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.	

## CHANGES TO CONDITIONS

The conditions which have been changed or cancelled are as follows:

1)	Condition 7.1	Changed	15 May 2020
2)	Condition 8.1	Deleted	15 May 2020
3)	Condition 8.2	Deleted	15 May 2020
4)	Condition 16.3	New	15 May 2020

**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Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use - Reconfiguring a lot	<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 Works</i> <i>Sewerage Works</i>
Building Works	<i>Demolition Works</i>
Plumbing and Drainage Works	

**4. REFERRAL AGENCIES**

NIL

**5. THE APPROVED PLANS**

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

Drawing/report title	Prepared by	Date	Reference number	Revision /Issue
Reconfiguration Plan	Capricorn Survey Group	11 October 2019	7438-03-ROL	B
Siting Plan	Two Clicks Design	20 September 2019	BP1101/L148/WD3	E
Dual Occupancy 200 - Ground Floor Plan	Two Clicks Design	20 September 2019	BP000####L####/WD2	D
Dual Occupancy 200 - Ground Floor Dimension Plan	Two Clicks Design	20 September 2019	BP000####L####/WD3	D
Dual Occupancy 200 - Elevations	Two Clicks Design	20 September 2019	BP000####L####/WD4	D
Dual Occupancy 222 - Ground Floor Plan	Two Clicks Design	10 May 2019	BP000####L####/WD2	B
Dual Occupancy 222 - Ground Floor Dimension Plan	Two Clicks Design	10 May 2019	BP000####L####/WD3	B

Drawing/report title	Prepared by	Date	Reference number	Revision /Issue
Dual Occupancy 222 - Elevations	Two Clicks Design	10 May 2019	BP000####L####/WD4	B
Dual Occupancy 217 (H1) - Floor Plan	Two Clicks Design	Undated	BP000/DO210/L000/WD1	A
Dual Occupancy 217 (H1) - Dimension Plan	Two Clicks Design	Undated	BP000/DO210/L000/WD2	A
Dual Occupancy 217 (H1) - Elevations	Two Clicks Design	Undated	BP000/DO210/L000/WD3	A

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

The standard relevant periods stated in section 85 of *Planning Act 20016* apply to each aspect of development in this approval, if not stated in the conditions of approval attached.

## 7. STATEMENT OF REASONS

<b>Description of the development</b>	The proposed development is for a Minor Change to Development Permit D/67-2019 for Reconfiguring a Lot (five lots into four lots) and a Material Change of Use for four Dual Occupancies
<b>Reasons for Decision</b>	<p>a) The Reconfiguring a Lot results in appropriate lot sizes and dimensions which can accommodate land uses that are consistent with the intent of the Low-Medium Density Residential Zone;</p> <p>b) The dual occupancies are designed and sited in a manner that is functional and safe whilst catering to the privacy, recreation and living space needs of residents;</p> <p>c) 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>d) The proposed development does not compromise the relevant <i>State Planning Policy</i>; and</p> <p>e) 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 code;</li> <li>• Access, parking and transport code;</li> <li>• Landscape code;</li> <li>• Stormwater management code;</li> <li>• Waste management code;</li> <li>• Water and sewer code;</li> <li>• Reconfiguring a lot code;</li> <li>• Acid sulfate soils code; and</li> <li>• Airport environs overlay 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 listed below.	
	<b>Assessment Benchmark</b>	<b>Reasons for the approval despite non-compliance with benchmark</b>
	Low-Medium Density Residential Zone	The development is considered functional in design whilst catering to the safety, privacy, recreation and living space needs of residents. The development is not anticipated to detrimentally impact upon the character or amenity of the surrounding area.
<b>Matters prescribed by regulation</b>	(i) The <i>State Planning Policy – Part E</i> ; (ii) The <i>Central Queensland Regional Plan</i> ; (iii) The <i>Rockhampton Region Planning Scheme 2015</i> ; (iv) Surrounding use of adjacent premises in terms of commensurate and consistent development form; and (v) The common material, being the material submitted with the application.	

## 8. RIGHTS OF APPEAL

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*. 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*).

### 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*.

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 down the applicant's appeal rights and the appeal rights of a submitter.

## 9. 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.

## 10. ORIGINAL DECISION ASSESSMENT MANAGER

Name: <b>Tarnya Fitzgibbon</b> <b>COORDINATOR</b> <b>DEVELOPMENT ASSESSMENT</b>	Date: 6 November 2019
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**11. ASSESSMENT MANAGER**

Name: <b>Tarnya Fitzgibbon</b> <b><u>COORDINATOR</u></b> <b><u>DEVELOPMENT ASSESSMENT</u></b>	Signature:	Date: 20 May 2020
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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**

**PART A – GENERAL CONDITIONS (Applies to all stages of the development)**

1.0 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 issue of the Survey Plan Approval Certificate for Stage One and prior to commencement of the use for Stages Two to Five,
- unless 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 issue of the Survey Plan Approval Certificate for Stage One of the development and prior to the commencement of use for Stages Two to Five, unless otherwise stated.
- 1.5 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.
- 1.6 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:

<b>Drawing/report title</b>	<b>Prepared by</b>	<b>Date</b>	<b>Reference number</b>	<b>Revision /Issue</b>
Reconfiguration Plan	Capricorn Survey Group	11 October 2019	7438-03-ROL	B
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Dual Occupancy 200 - Elevations	Two Clicks Design	20 September 2019	BP000####L####/WD4	D
Dual Occupancy 222 - Ground Floor Plan	Two Clicks Design	10 May 2019	BP000####L####/WD2	B
Dual Occupancy 222 - Ground Floor Dimension Plan	Two Clicks Design	10 May 2019	BP000####L####/WD3	B
Dual Occupancy 222 - Elevations	Two Clicks Design	10 May 2019	BP000####L####/WD4	B
Dual Occupancy 217 (H1) - Floor Plan	Two Clicks Design	Undated	BP000/DO210/L000/WD1	A
Dual Occupancy 217 (H1) - Dimension Plan	Two Clicks Design	Undated	BP000/DO210/L000/WD2	A
Dual Occupancy 217 (H1) - Elevations	Two Clicks Design	Undated	BP000/DO210/L000/WD3	A

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.

### 3.0 STAGED DEVELOPMENT

3.1 This development approval is for a development to be undertaken in five discrete stages, namely:

3.1.1 Reconfiguring of Lot (five lots into four lots) (Stage One);

3.1.2 Dual Occupancy – proposed Lot 1 (Stage Two);

3.1.3 Dual Occupancy – proposed Lot 2 (Stage Three);

3.1.4 Dual Occupancy – proposed Lot 3 (Stage Four); and

3.1.5 Dual Occupancy – proposed Lot 4 (Stage Five),

in accordance with the approved plans (refer to condition 2.1).

Stage One must be completed prior to any other stage. All other stages however are not required to be undertaken in any chronological order.

3.2 Unless otherwise expressly stated, the conditions must be read as being applicable to all stages.

#### 4.0 ASSET MANAGEMENT

- 4.1 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.
- 4.2 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.
- 4.3 '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 issue of the Survey Plan Approval Certificate. This information must be provided in accordance with the Asset Design and As Constructed Manual (ADAC).

#### 5.0 ENVIRONMENTAL

- 5.1 An Erosion Control and Stormwater Control Management Plan in accordance with the *Capricorn Municipal Design Guidelines*, must be implemented, monitored and maintained for the duration of the 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.

#### 6.0 OPERATING PROCEDURES

- 6.1 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 Talford Street or Fitzroy Street.

### **PART B – Reconfiguring a Lot (five into four lots)**

#### 7.0 ADMINISTRATION

- 7.1 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:
- 7.1.1 Operational Works:
- (i) Deleted;
  - (ii) Sewerage Works;
- 7.1.2 Plumbing and Drainage Works; and
- 7.1.3 Building Works:
- (i) Demolition Works.

- 7.2 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.

#### 8.0 ACCESS WORKS

- 8.1 Deleted.
- 8.2 Deleted.

#### 9.0 SEWERAGE WORKS

- 9.1 A Development Permit for Operational Works (sewerage works) must be obtained prior to the commencement of any sewerage works required by this development approval.
- 9.2 All sewerage 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 2018* and the provisions of a Development Permit for Operational Works (sewerage works).



- 9.3 All lots within the development must be connected to Council's reticulated sewerage network. Each lot must be provided with its own separate sewerage connection point, located wholly within its respective property boundary.
- 9.4 The existing sewerage connection point located within the proposed Lot 1 must be retained to service proposed Lot 1.
- 9.5 The existing sewerage connection point for the combined line servicing Lot 2 on RP602384 and Lot 2 on RP604408 must be disconnected.
- 9.6 A new 150 millimetre diameter sewer main must be constructed from the existing manhole located within proposed Lot 1 along the rear boundary of proposed Lot 2 to service proposed Lot 2 and Lot 3. A Lamphole must be provided at the termination point and new sewerage connection points must be provided for proposed Lot 2 and Lot 3. This non-trunk infrastructure is conditioned under section 145 of the *Planning Act 2016*.
- 9.7 All finished sewerage access chambers or lamphole surface must be at a sufficient level to avoid ponding of stormwater above the top of the chamber.
- 10.0 WATER WORKS
- 10.1 All water 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*, and *Plumbing and Drainage Act 2018*.
- 10.2 All lots within the development must be connected to Council's reticulated water network. Each lot must be provided with its own separate water connection point, located wholly within its respective property boundary.
- 10.3 If applicable, any existing water connection point(s) to be retained must be relocated to be contained within the lot it services.
- 11.0 PLUMBING AND DRAINAGE WORKS
- 11.1 A Development Permit for Plumbing and Drainage Works must be obtained for the removal and/or demolition of any existing buildings and/or structures on the development site.
- 11.2 The alteration, disconnection or relocation of internal plumbing and sanitary drainage works associated with the existing buildings must be in accordance with regulated work under the *Plumbing and Drainage Act 2018* and Council's Plumbing and Drainage Policies.
- 12.0 BUILDING WORKS
- 12.1 A Development Permit for Building Works must be obtained for the removal and/or demolition of any existing structure on the development site, prior to the issue of the Survey Plan Approval Certificate.
- 13.0 ELECTRICITY
- 13.1 Electricity services must be provided to each lot in accordance with the standards and requirements of the relevant service provider.
- 13.2 A *Certificate of Electricity Supply* from the relevant service provider must be provided to Council, prior to the issue of the Survey Plan Approval Certificate.
- 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*.
- 14.0 TELECOMMUNICATIONS
- 14.1 Telecommunications services must be provided to each lot 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 and pipes, and conduits that provide a connection to the telecommunications network.

- 14.2 Evidence (see below) of acceptance of the works from the relevant service provider must be provided to Council, prior to the issue of the Survey Plan Approval Certificate e.g. This will be a letter from either :-

**NBN** a 'Certificate of Practical Completion",

**Telstra** a "Telecommunications Agreement/Provisioning Letter",

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

## **PART C – Material Change of Use for four Dual Occupancies**

### 15.0 ADMINISTRATION

- 15.1 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:

15.1.1 Operational Works:

(i) Access Works; and

15.1.2 Plumbing and Drainage Works; and

15.1.3 Building Works.

- 15.2 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.

### 16.0 ACCESS WORKS

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

- 16.2 A new access and driveway must be provided for each dual occupancy. All access works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines*, and the provisions of a Development Permit for Operational Works (access works).

- 16.3 Any redundant vehicular crossovers must be replaced by Council standard kerb and channel. All access works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines*, and the provisions of a Development Permit for Operational Works (access works).

### 17.0 PLUMBING AND DRAINAGE WORKS

- 17.1 The development must be connected to Council's reticulated sewerage and water networks.

- 17.2 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 2018*, Council's Plumbing and Drainage Policies and the provisions of a Development Permit for Plumbing and Drainage Works.

- 17.3 Each dual occupancy building(s) 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.

- 17.4 All internal plumbing and sanitary drainage works must be completely independent for each unit/tenancy.

- 17.5 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.

- 17.6 All finished sewerage access chambers or lamphole surface must be at a sufficient level to avoid ponding of stormwater above the top of the chamber.

## 18.0 ROOF AND ALLOTMENT DRAINAGE WORKS

- 18.1 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*, and sound engineering practice.
- 18.2 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.

## 19.0 BUILDING WORKS

- 19.1 All building works must be undertaken in accordance with *Queensland Development Code, Mandatory Part 1.4 "Building over or near relevant infrastructure."* Alternatively, an application must be submitted to Council in accordance with Council's Building Over/Adjacent to Local Government Sewerage Infrastructure Policy.
- 19.2 All proposed structures must be located a minimum of 1.0 metre from the sewerage connection point in accordance with the *Queensland Development Code, Mandatory Part 1.4* for building over or near relevant infrastructure.
- 19.3 All external elements such as air conditioner units must be adequately screened from public view to Council's satisfaction. All external elements must be maintained in proper working order at all times and installation must be undertaken in accordance with the manufacturer's directions to ensure the efficiency of the equipment.
- 19.4 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"*.
- 19.5 A fixed, open-air clothes drying facility must be provided for each dwelling and be screened from public view.
- 19.6 A minimum 1.8 metre high screen fence must be provided as follows:
- 19.6.1 Between the subject development site and adjacent residential properties;
  - 19.6.2 For all side boundaries within the development site; and
  - 19.6.3 A dividing fence for each individual dual occupancy to separate the two (2) dwellings located on the same lot. This must be provided for the full extent between the building's rear exterior wall and the rear property boundary.
- 19.7 For 'Unit 2' of each dual occupancy, an internal access path must be provided for the full extent between the driveway and 'Porch' (as per the approved plans, refer to condition 2.1). This access path must be a minimum width of 1 metre and be designed and constructed in accordance with *AS1428.1-2009 "Design for access and mobility"*.

## 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 and 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. 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 5. Works in Road Reserve Permit

It is advised that a Works in Road Reserve Permit (including a fee for the vehicle crossover and compliant with Standard *Capricorn Municipal Development Guidelines*, Standard Drawings) may be accepted in place of the application for a Development Permit for Operational Works (access works).

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—
    - (a) matters that may be appealed to—
      - (i) either a tribunal or the P&E Court; or
      - (ii) only a tribunal; or
      - (iii) only the P&E Court; and
    - (b) the person—
      - (i) who may appeal a matter (the **appellant**); and
      - (ii) who is a respondent in an appeal of the matter; and
      - (iii) who is a co-respondent in an appeal of the matter; and
      - (iv) 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—
    - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency or
    - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
    - (c) 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
    - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
    - (e) 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
    - (f) 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.

#### 230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) 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—

- (a) the respondent for the appeal; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
  - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
  - (e) 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
  - (f) for an appeal to the P&E Court—the chief executive; and
  - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - (b) 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

- (1) 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.
- (2) The Judicial Review Act 1991, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) 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.
- (4) In this section— **decision** includes—
  - (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision; and
  - (d) a purported decision; and
  - (e) a deemed refusal.

- non-appealable**, for a decision or matter, means the decision or matter—
- (a) is final and conclusive; and
  - (b) 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
  - (c) 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

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) 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.

**Table 1**  
**Appeals to the P&E Court and, for certain matters, to a tribunal**

<p>1. Development applications An appeal may be made against—</p> <ul 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> </ul>			
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>4. Infrastructure charges notices</b> An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds a) The notice involved an error relating to – (i) The application of the relevant adopted charge; or Examples of errors in applying an adopted charge – <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> b) The was no decision about an offset or refund; or c) If the infrastructure charges notice states a refund will be given – the timing for giving the refund; or d) The amount of the charge is so unreasonable that no reasonable relevant local government could have			

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
imposed the amount.			
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	-	-
5. Conversion applications An appeal may be made against— (a) the refusal of a conversion application; or (b) a deemed refusal of a conversion application.			
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	-	-
6. Enforcement notices An appeal may be made against the decision to give an enforcement notice.			
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>			
1. Appeals from tribunal An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of— (a) an error or mistake in law on the part of the tribunal; or (b) jurisdictional error.			
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	-	-
2. Eligible submitter appeals 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.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent	Column 4 Co-respondent by election



<b>Table 2 Appeals to the P&amp;E Court only</b>			
		(if any)	(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>3. Eligible submitter and eligible advice agency appeals</p> <p>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—</p> <p>(a) any part of the development application or the change application, for the development approval, that required impact assessment; or</p> <p>(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>4. Compensation claims</p> <p>An appeal may be made against—</p> <p>(a) a decision under section 32 about a compensation claim; or</p> <p>(b) a decision under section 265 about a claim for compensation; or</p> <p>(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>5. Registered premises</p> <p>An appeal may be made against a decision of the Minister under chapter 7, part 4.</p>			
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	The Minister	-	If an owner or occupier starts the appeal – the owner of the registered premises

<b>Table 2 Appeals to the P&amp;E Court only</b>			
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			
<p><b>6. Local laws</b>            An appeal may be made against a decision of a local government, or conditions applied, under a local law about—</p> <p>(a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or</p> <p>(b) the erection of a building or other structure.</p>			
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>			
<p><b>1. Building advisory agency appeals</b>            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.</p>			
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
<p><b>3. Certain decisions under the Building Act and the Plumbing and Drainage Act</b>            An appeal may be made against a decision under—</p> <p>(a) the Building Act, other than a decision made by the Queensland Building and Construction Commission; or</p> <p>(b) the Plumbing and Drainage Act, part 4 or 5.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, notice of the decision	The person who made the decision	-	-
<p><b>4. Local government failure to decide application under the Building Act</b>            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	Column 4 Co-respondent by election

<b>Table 3</b>			
<b>Appeals to the tribunal only</b>			
		(if any)	(if any)
A person who was entitled to receive, notice of the decision	The local government to which the application was made	-	-