

5.1. REQUEST FOR MINOR CHANGE TO DEVELOPMENT APPROVALS - WHYANBEEL ROAD

REPORT AUTHOR	Daniel Lamond, Planning Officer
MANAGER	Paul Hoyer, Manager Planning and Environment
DEPARTMENT	Environment and Planning
APPLICATION NO	ROL 2019_3071 & SUP 2018_2941
PROPOSAL	Request for minor change to boundary realignment for development approvals ROL 2019_3071 and SUP 2018_2941
APPLICANT	M A Showniruk PO Box 1033 MOSSMAN QLD 4873
LOCATION	Whyanbeel Road, Whyanbeel
PROPERTY	Lots 4, 5 and 6 on RP851512 and Lot 10 on RP748614
PLANNING SCHEME	2018 Douglas Shire Council Planning Scheme Version 1.0 & 2006 Douglas Shire Planning Scheme
ZONING	Rural Zone & Rural Settlement Planning Area
LEVEL OF ASSESSMENT	Code
PROPERLY MADE DATE	15 May 2020
STATUTORY ASSESSMENT DEADLINE	3 July 2020
REFERRAL AGENCIES	N/A

LOCALITY

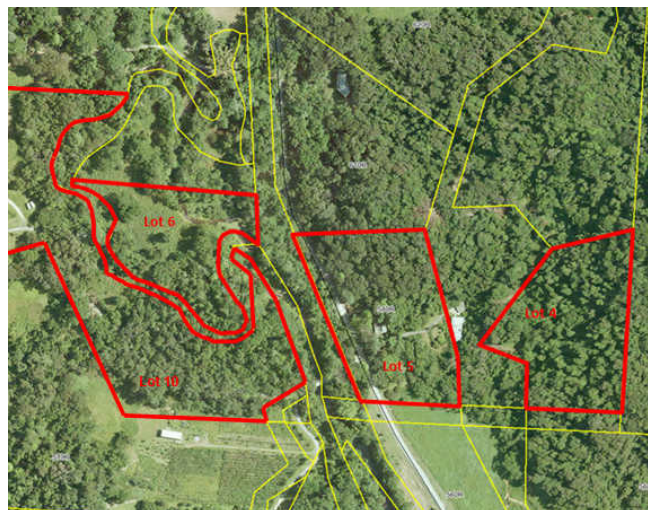


Figure 1 – Locality Plan

RECOMMENDATION

That Council approves the request for minor change to boundary realignment development approvals SUP 2018_2941 and ROL 2019_3071 over land described as Lots 4, 5 and 6 on RP851512 and Lot 10 on RP748614, subject to the following changes to conditions:

ASSESSMENT MANAGER CONDITIONS AND ADVICES

SUP 2018_2941

1. Condition 3 be amended to read as follows:-

Storm Water Drainage

3. It is evident that the existing drainage path accommodating flows from approved Lot 2 across approved Part Lot 1 has scoured the footing of the awning attached to the adjacent timber class 10a building. Remove the footing and post supporting the awning of the adjacent timber class 10a building and amend the awning design to include a cantilevered solution or alternative solution to the satisfaction of the Chief Executive Officer.
- ~~3. The existing drainage path accommodating flows from Lot 2 across Lot 1 currently affecting the footing of the timber class 10 structure on Lot 1 must be formalised by way of an RPEQ certified engineering assessment. The assessment must be submitted and endorsed by the Chief Executive Officer and works must be completed prior to endorsement of the plan of survey.~~

2. Condition 6 be deleted.

Structural Integrity of Timber Class 10 Structure

- ~~6. Determine whether the structural integrity of the class 10 structure on Lot 1 has been compromised by the storm water scouring the buildings footing. Provide advice from a suitably qualified person and undertake remediation works if required. The certification and remediation works if required, must be submitted and completed prior to the endorsement of the Plan of Survey.~~

ROL 2019_3071

3. Condition 3 be amended to read as follows:-

Storm Water Drainage

3. It is evident that the existing drainage path accommodating flows from approved Lot 2 across approved Part Lot 10 has scoured the footing of the awning attached to the adjacent timber class 10a building. Remove the footing and post supporting the awning of the adjacent timber class 10a

building and amend the awning design to include a cantilevered solution or alternative solution to the satisfaction of the Chief Executive Officer.

- ~~3. The existing drainage path accommodating flows from Lot 2 across Lot 10 currently affecting the footing of the timber class 10 structure on Lot 10 must be formalised by way of an RPEQ certified engineering assessment. The assessment must be submitted and endorsed by the Chief Executive Officer and works must be completed prior to endorsement of the plan of survey.~~
4. Condition 6 be deleted.

Structural Integrity of Timber Class 10 Structure

- ~~6. Determine whether the structural integrity of the class 10 structure on Lot 1 has been compromised by the storm water scouring the buildings footing. Provide advice from a suitably qualified person and undertake remediation works if required. The certification and remediation works if required, must be submitted and completed prior to the endorsement of the Plan of Survey.~~
5. All other conditions remain the same and be renumbered accordingly.

REASONS FOR DECISION

The reasons for this decision are:

Sections 60, 62 and 63 of the *Planning Act 2016*:

- to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0 and the 2006 Douglas Shire Planning Scheme;
- and;
- to ensure compliance with the *Planning Act 2016*.

Findings on material questions of fact:

- a) the development application was properly lodged to the Douglas Shire Council on 15 May 2020 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
- b) the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.

Evidence or other material on which findings were based:

- a) the development triggered assessable development under the Assessment Table associated with the Rural Zone Code;
- b) Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
- c) the applicant's reasons have been considered and the following findings are made:

Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.

EXECUTIVE SUMMARY

Council is in receipt of a request for minor change to conditions of two development approvals over land titles adjacent to each other and in the same ownership at 580 and 583 Whyanbeel Road, Whyanbeel. The development approvals allow the reconfiguration of titles to ultimately create three titles from four.

Both development approvals SUP 2018_2941 and ROL 2019_3071 include a condition which seeks to have a drainage path formalised in order to protect the footing of a building awning that has been scoured due to its proximity to the open drain. The applicant, who owns all the titles concerned, has determined that due to impracticalities, it is a better solution to remove the footing and post from the edge of the drain rather than to formalise the drain and divert the drain requiring substantial engineering works.

Condition 3 and condition 6 have been changed to reflect the proposal and are recommended for approval.

TOWN PLANNING CONSIDERATIONS

Background

On 22 January 2019 Council resolved to approve a request for a superseded planning scheme assessment and resolved to approve the reconfiguration of a lot development application associated with the proposal. Under the 2006 Douglas Shire Planning Scheme, the land was all within the Rural Settlement Planning Area (zoning) which allowed subdivision of allotments down to a minimum of 4000 square metres in size. When the 2018 Douglas Shire Planning Scheme came into effect on 2 January 2018, the zoning of the allotments was changed to Rural. The owner exercised their ability to lodge a superseded planning scheme request in accordance with section 29 of the Planning Act 2016 in order to have a boundary realignment supported by Council resulting in the new allotments being consistent with the minimum lot sizes as prescribed within the superseded planning scheme.

Subsequent to this, Council approved an additional development application by the applicant to further reconfigure the shape of the allotments on 23 May 2019. This subsequent approval did not allow the creation of additional allotments or result in a further rural subdivision, it essentially changed the location of boundaries to make the allotments more functional.

One particular consideration for both development approvals was the proximity and effect of the existing drainage path that takes storm water flows from the house on approved Lot 2 past the shed on part of approved Lot 10. This informal drainage path has scoured the footing of the awning attached to the shed. The boundary realignment results in concentrated flows from approved Lot 2 traversing an easement and drain through approved part Lot 10 in order to arrive at the lawful point of discharge being Whyanbeel Road. Condition 3 of both development approvals was imposed to have the alignment of the informal drainage path corrected and diverted away from the footing of the awning of the timber shed structure so that in the event of separate disposal of the properties, the house lot discharging storm water is not affecting structural integrity of the shed on the lower allotment adjacent to the road.

Proposal

It is proposed to make a minor change to development approvals SUP 2018_2941 and ROL 2019_3071 in order to change condition 3 on both approvals. This condition requires the formalisation of an existing drainage path which carries storm water from approved Lot 1 past the footing of a timber shed structure on approved part Lot 10. See figure 2 below for an extract of the approved boundary configuration showing the path of stormwater discharge which is detailed as 'open unlined drain'.

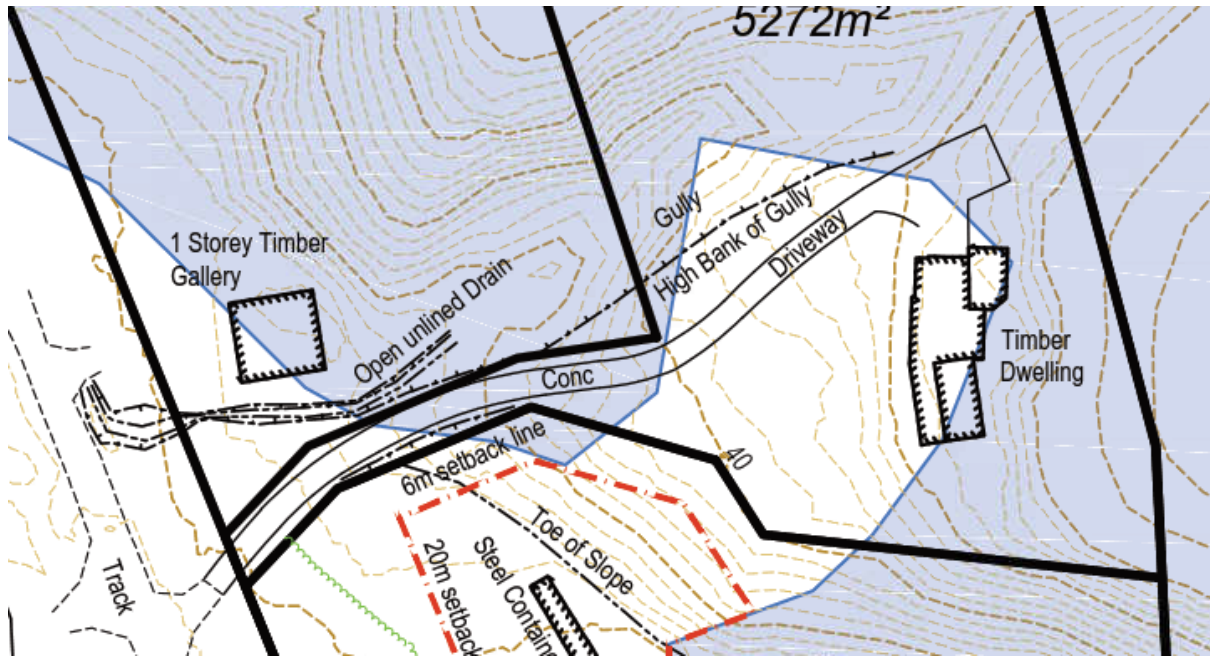


Figure 2 – Location of open unlined drain and relevant buildings

Condition 3 on both approvals currently requires that the applicant formalise the open unlined drain by way of an RPEQ Engineering certified solution. This was determined to be particularly costly requiring significant excavation and vegetation damage. Officers have determined in conjunction with the applicant that the only part of the timber shed structure (noted as 1 Storey Timber Gallery in Figure 2) that is at significant risk of further erosion is the awning at the buildings front and side. The footing and upright post of the awning which has experienced scouring and erosion is proposed to be removed from the drain and the awning design is proposed to be amended to be held up with a cantilevered solution. Changes to conditions 3 have been proposed to reflect this. Officers have proposed to remove condition 6 as part of this exercise as its content will no longer be relevant should changes to condition 3 be supported. See attachments 1 and 2 for a list of the existing development approval conditions.

2018 Douglas Shire Planning Scheme Assessment

The planning scheme benchmarks have little relevance to the proposed minor change. The minor change is not in conflict with the relevant benchmarks and is consistent with the requirements of the Queensland Urban Drainage Manual which is referenced by Planning Scheme Policy SC6.5- FNQROC Regional Development Manual.

Internal Referrals

Nil. Referrals not necessary due to the minor nature of the proposal.

ADOPTED INFRASTRUCTURE CHARGES

The development did not trigger Infrastructure Charges.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

Regulator: Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

ATTACHMENTS

1. Attachment 1- SUP 2018 2941 Decision Notice [5.1.1 - 11 pages]
2. Attachment 2- ROL 2019 3071 Decision Notice [5.1.2 - 10 pages]

29 January 2019

Enquiries: Daniel Lamond
Our Ref: SUP2941/2018 (889173)
Your Ref: PR139521/OCK/IL/L78102

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

E F Showniruk & M A Showniruk
C/- RPS Australia East Pty Ltd
PO Box 1949
CAIRNS QLD 4870

Dear Sir/Madam

**Superseded Planning Scheme Request & Development Application for
Reconfiguring a Lot (3 Lots into 2 Lots)
580R Whyanbeel Road WHYANBEEL:
Land Described as LOT: 5 RP: 851512, LOT: 4 RP: 851512 & LOT: 6 RP: 851512**

Thank you for lodging the above Superseded Planning Scheme Request and Development Application with Council on 26 November 2018.

Please find attached the Decision Notice for the above-mentioned request and development application.

Please quote Council's application number: SUP2941/2018 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9456.

Yours faithfully

PAUL HOYE
Manager Environment and Planning

encl.

- Decision Notice
- Approved Plan

**DECISION NOTICE —
APPROVAL (WITH CONDITIONS)
(GIVEN UNDER SECTION 63 OF *THE PLANNING ACT 2016*)**

Please be aware that Douglas Shire Council has assessed your request and application and decided it as follows:

1. Applicant's details

Name: E F Showniruk & M A Showniruk

Postal Address: C/- RPS Australia East Pty Ltd
PO Box 1949
CAIRNS QLD 4870

2. Location details

Street Address: 580R Whyanbeel Road WHYANBEEL

Real Property Description: LOT: 5 RP: 851512, LOT: 4 RP: 851512, LOT: 6 RP: 851512

Local Government Area: Douglas Shire Council

3. Details of proposed development

Request for Superseded Planning Scheme Assessment and Development Application for Reconfiguring a Lot (3 lots into 2).

4. Decision

Date of decision: 22 January 2019

Decision details: Approved in full with conditions. These conditions are set out in Schedule 1.

5. Approved plans and specifications

Copies of the following plans, specifications and/or drawings are enclosed.

Drawing or Document	Reference	Date
Proposed Reconfiguration Proposed Lots 1 & 2 cancelling Lots 4-6 on RP851512	Plan prepared by RPS Australia East Pty Ltd. Drawing Number PR139521-3	2 October 2018

6. Conditions

This approval is subject to the conditions in Schedule 1.

7. Further development permits

Not applicable

8. Properly made submissions

Not applicable — No part of the application required public notification.

9. Currency period for the approval

This development approval will lapse at the end of the period set out in section 85 of *Planning Act 2016*. This is a four (4) year period from the date the approval takes effect.

10. Rights of appeal

The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions 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*).

A copy of the relevant appeal provisions are included in Schedule 2.

SCHEDULE 1 – CONDITIONS AND ADVICE**PART 1A—RECOMMENDATION CARRIED UNANIMOUSLY AT THE 22 JANUARY 2019
ORDINARY COUNCIL MEETING**

- A. That Council agrees to the request (lodged on 28 November 2018 under section 29 of the Planning Act 2016) for assessment against the 2006 Douglas Shire Planning Scheme for reconfiguration of a lot (3 Lots into 2 Lots) over land described as Lot 4, 5 and 6 on RP851512, located at 580R Whyanbeel Road, Whyanbeel.***

And;

- B. That Council agrees to cancel Local Government Agreement 601479919 (T7000444R) from the titles of Lots 4, 5 and 6 on RP851512.***

And;

- C. That Council approves the development application for reconfiguring a lot (3 lots into 2 lots), subject to the following; (Conditions of approval below).***

PART 1B—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

- 1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:**
 - a. The specifications, facts and circumstances as set out in the application submitted to Council; and**
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.**

Except where modified by these conditions of approval

Timing of Effect

- 2. The conditions of the Development Permit must be effected prior to the endorsement of the Plan of Survey, except where specified otherwise in these conditions of approval.**

Storm Water Drainage

- 3. The existing drainage path accommodating flows from Lot 2 across Lot 1 currently affecting the footing of the timber class 10 structure on Lot 1 must be formalised by way of an RPEQ certified engineering assessment. The assessment must be submitted and endorsed by the Chief Executive Officer and works must be completed prior to endorsement of the plan of survey.**

Storm Water Drainage Easement

- 4. The existing drainage path accommodating flows from Lot 2 across Lot 1 must be contained within an easement burdening Lot 1 in favour of Lot 2. Easement documentation must be endorsed by the Chief Executive Officer prior to endorsement of the Plan of**

Survey.

Electricity and Telecommunications

5. Written evidence of negotiations with Ergon Energy and the telecommunications authority must be submitted to Council stating that both an electricity supply and telecommunications service will be provided to the development prior to endorsement of the Plan of Survey.

Structural Integrity of Timber Class 10 Structure

6. Determine whether the structural integrity of the class 10 structure on Lot 1 has been compromised by the storm water scouring the buildings footing. Provide advice from a suitably qualified person and undertake remediation works if required. The certification and remediation works if required, must be submitted and completed prior to the endorsement of the Plan of Survey.

PART 1C—ADVICE NOTES

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act 2016*.
2. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements.
3. For information relating to the *Planning Act 2016* log on to <https://planning.dsdmip.qld.gov.au/>.
4. To access the FNQROC Development Manual, Douglas Shire Local Laws and other applicable Policies log on to www.dsc.qld.gov.au

PART 1D— STATEMENT OF REASONS

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
 - a. the approved plan(s) and document(s);
 - b. the Conditions and advices;
 - c. The proposed development generally satisfies the benchmarks of the 2006 Douglas Shire Planning Scheme; and
 - d. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application can be considered properly lodged to the Douglas Shire Council on 22 January 2019 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules; and

- b. the development application contained information from the applicant which Council reviewed together with Council's own investigation of assessment against the 2006 Douglas Shire Planning Scheme in making its assessment manager decision.**

3. Evidence or other material on which findings were based:

- a. the development triggered assessment under the Assessment Table associated with the Rural Areas and Rural Settlements Locality;**
- b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and**
- c. the applicant's reasons have been considered and the following findings are made:**
 - i. Subject to conditions the development is considered to meet the Planning Scheme requirements.**

SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

CHAPTER 6, PART 1 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.
- (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—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

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).
- (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.

SCHEDULE 1 APPEALS

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.

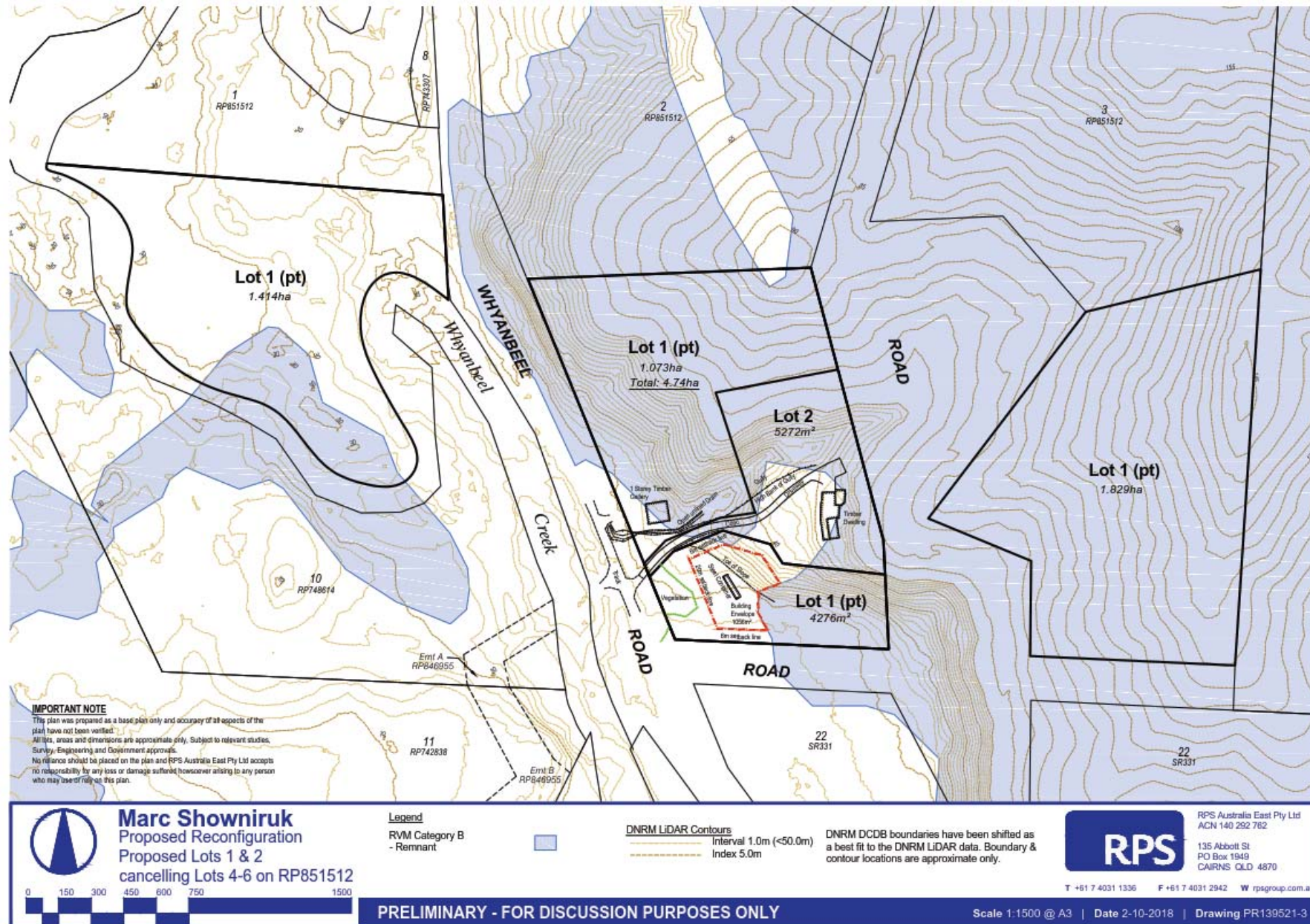
Extract of Schedule 1 of the Planning Act 2016

Table 1 Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— <ul style="list-style-type: none"> (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval. 			
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 agency's referral response—the concurrence agency	1 A concurrence agency that is not a co-respondent 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

Table 2 Appeals to the P&E Court only			
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 (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
3. Eligible submitter and eligible advice agency appeals 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.			
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

Note:

Attached is a Rights of Appeal Waiver form (Schedule 3). Please complete and return this form if you are satisfied with the approval and agree to the conditions contained therein and you wish to waive the 20 day appeal period available under the *Planning Act 2016*

APPROVED PLAN

23 May 2019

Enquiries: Daniel Lamond
Our Ref: ROL3071/2019 (903315)
Your Ref: PR139521

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

E F Showniruk & M A Showniruk
C/- RPS Australia East Pty Ltd
PO Box 1033
CAIRNS QLD 4870

Dear Sir/Madam

**Development Application for Reconfiguring a Lot (Boundary realignment)
Whyanbeel Road, Whayanbeel, 580 Whyanbeel Road, Whyanbeel, 583 Whyanbeel
Road, Whyanbeel:
Land Described as LOT: 4 on RP: 851512, LOT: 5 on RP: 851512, LOT: 6 on RP:
851512 and LOT: 10 on RP: 748614**

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: ROL3071/2019 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9444.

Yours faithfully

PAUL HOYE
Manager Environment and Planning

encl.

- Decision Notice
- Approved Plans

**DECISION NOTICE —
APPROVAL (WITH CONDITIONS)
(GIVEN UNDER SECTION 63 OF *THE PLANNING ACT 2016*)**

Thank you for your development application detailed below which was properly made on 15 April 2019. Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

1. Applicant's details

Name: E F Showniruk & M A Showniruk

Postal Address: C/- RPS Australia East Pty Ltd
PO Box 1033
CAIRNS QLD 4870

2. Location details

Street Address: Whyanbeel Road, Whyanbeel, 580 Whyanbeel Road, Whyanbeel, 583 Whyanbeel Road, Whyanbeel.

Real Property Description: LOT: 4 RP: 851512, LOT: 5 RP: 851512, LOT: 6 RP: 851512, LOT: 10 RP: 748614

Local Government Area: Douglas Shire Council

3. Details of proposed development

Reconfiguring a Lot (Boundary Realignment)

4. Decision

Date of decision: 23 May 2019

Decision details: Approved in full with conditions. These conditions are set out in Schedule 1.

5. Approved plans and specifications

Copies of the following plans, specifications and/or drawings are enclosed.

Drawing/report title	Prepared by	Date	Reference no.
Aspect of development: Reconfiguring a Lot (Boundary realignment)			
Proposed Lots 3 & 10 cancelling Lot 1 on RPS Drawing PR139521-3 & Lot 10 on	RPS Australia East Pty Ltd	21 March 2019	PR139521-5

RP748614			
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6. Conditions

This approval is subject to the conditions in Schedule 1..

7. Further development permits

Not applicable

8. Properly made submissions

Not applicable — No part of the application required public notification.

9. Currency period for the approval

This development approval will lapse at the end of the period set out in section 85 of *Planning Act 2016*. This is a four (4) year period from the date the approval takes effect.

10. Rights of appeal

The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions 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*).

A copy of the relevant appeal provisions are included in Schedule 2.

SCHEDULE 1 – CONDITIONS AND ADVICE

PART 1A—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
 - a. The specifications, facts and circumstances as set out in the application submitted to Council; and
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

Timing of Effect

2. The conditions of the Development Permit must be effected prior to the endorsement of the Plan of Survey, except where specified otherwise in these conditions of approval.

Storm Water Drainage

3. The existing drainage path accommodating flows from Lot 2 across Lot 10 currently affecting the footing of the timber class 10 structure on Lot 10 must be formalised by way of an RPEQ certified engineering assessment. The assessment must be submitted and endorsed by the Chief Executive Officer and works must be completed prior to endorsement of the plan of survey.

Storm Water Drainage Easement

4. The existing drainage path accommodating flows from Lot 2 across Lot 10 must be contained within an easement burdening Lot 10 in favour of Lot 2. Easement documentation must be endorsed by the Chief Executive Officer prior to endorsement of the Plan of Survey.

Electricity and Telecommunications

5. Written evidence of negotiations with Ergon Energy and the telecommunications authority must be submitted to Council stating that both an electricity supply and telecommunications service will be provided to the development prior to endorsement of the Plan of Survey.

Structural Integrity of Timber Class 10 Structure

6. Determine whether the structural integrity of the class 10 structure on Lot 1 has been compromised by the storm water scouring the buildings footing. Provide advice from a suitably qualified person and undertake remediation works if required. The certification and remediation works if required, must be submitted and completed prior to the endorsement of the Plan of Survey.

PART 1B – ADVICE NOTES

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act 2016*.
2. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements.
3. For information relating to the *Planning Act 2016* log on to <https://planning.dsdmip.qld.gov.au/>.
4. To access the FNQROC Development Manual, Douglas Shire Local Laws and other applicable Policies log on to www.dsc.qld.gov.au

PART 1C— STATEMENT OF REASONS

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
 - a. the approved plan(s) and document(s);
 - b. the Conditions and advices;
 - c. The proposed development generally satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme; and
 - d. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application can be considered properly lodged to the Douglas Shire Council on 15 April 2019 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules; and
 - b. the development application contained information from the applicant which Council reviewed together with Council's own investigation of assessment against the 2006 Douglas Shire Planning Scheme in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessment under the Assessment Table associated with the Rural Zone;
 - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions the development is considered to meet the Planning Scheme requirements.

SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

CHAPTER 6, PART 1 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.
- (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—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

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).
- (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.

SCHEDULE 1 APPEALS

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.

Extract of Schedule 1 of the Planning Act 2016

Table 1 Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— <ul style="list-style-type: none"> (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval. 			
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 agency's referral response—the concurrence agency	1 A concurrence agency that is not a co-respondent 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

Table 2 Appeals to the P&E Court only			
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 (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
3. Eligible submitter and eligible advice agency appeals 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.			
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

Note:

Attached is a Rights of Appeal Waiver form (Schedule 3). Please complete and return this form if you are satisfied with the approval and agree to the conditions contained therein and you wish to waive the 20 day appeal period available under the *Planning Act 2016*

APPROVED PLANS (ATTACHING TO THE DECISION NOTICE)

