

13 February 2019

Enquiries: Jenny Elphinstone  
Our Ref: BW 2970/2019 (Doc ID 890866)  
Your Ref: 20185023

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

Scott Howard and Ella Bennett  
C/ Patrick Clifton, GMA Certification  
PO Box 831  
**PORT DOUGLAS QLD 4877**

Dear Sir

**MINOR CHANGE TO DEVELOPMENT PERMIT TPC453  
MATERIAL CHANGE OF USE FOR MULTIPLE DWELLING (DUPLEX)  
AT 11 PECTEN AVENUE, PORT DOUGLAS  
ON LAND DESCRIBED AS LOTS 0, 1 AND 2 ON SP212668.**

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

Please quote Council's application number: BW 2970/2019 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9482.

Yours faithfully

  
**PAUL HOYE**  
Manager Sustainable Communities

encl.

- Decision Notice
- Approved Plans
- Rights of Appeal

**DOUGLAS SHIRE COUNCIL**  
**DECISION NOTICE**  
**APPROVAL (WITH CONDITIONS)**  
**(GIVEN UNDER SECTIONS 81 & 83 OF THE PLANNING ACT 2016)**

Council refers to your development application detailed below which was properly made on 26 February 2019. Please be aware that Douglas Shire Council has assessed your application and decided it as follows.

**1. Applicant's details**

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Name: Scott Howard and Ella Bennett  
Postal Address: C/ Patrick Clifton, GMA Certification  
PO Box 831  
Port Douglas Qld 4877

**2. Location details**

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Street address: 11 Pecten Avenue, Port Douglas  
Real property description: Lots 0, 1 and 2 on SP212668  
Assessment Manager: Douglas Shire Council

**3. Development permit**

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Development Permit TPC453 issued 16 June 1988 by the former Douglas Shire Council for the development of a duplex on land at 11 Pecten Avenue, more particularly described as Lot 23 on RP726588, now known as Lots 0, 1 and 2 on SP212668. A copy of the Development Permit is included in Attachment 2.

**4. Details of the proposed development**

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A minor change to the Development Permit TPC453 to convert the garage areas to habitable room for each unit, to remove the established vegetation in the area of the building setback and to construct two carports, one for each dwelling.

**5. Decision**

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Decision details: Development Permit approved in full with additional conditions. These additional conditions are set out in Schedule 1.

Reasons for supporting the decision, despite the conflict with benchmarks – as tabled below.

## 6. Approved plans and specifications

Copies of the following plans, specifications and/or drawings are enclosed in Attachment 1.

Drawing/report title	Prepared by	Date	Reference no.	Version/issue
Proposed new Carports	Applicant	Undated -as submitted to Council on the 7 January 2019	Refer to Council document ID 886606.	No issue version and as varied by the conditions of the approval.

## 7. Further development permits

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

- All Building Work.

All Plumbing and Drainage Work must only be carried in compliance with the Queensland *Plumbing and Drainage Act 2002*.

## 8. Properly made submissions

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

## 9. Referral agencies for the application

Not applicable

## 10. Currency period for the approval

This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85(1)(a)(i) of the *Planning Act 2016*.

## 11. Reasons for decision

The reasons for this decision are:

- i. Section 81 of the *Planning Act 2016*:
  - a. The original application together with the approved minor changes as above;
  - b. To ensure the development satisfies the benchmarks of the 1981 Planning Scheme for the whole of the Douglas Shire;
  - c. To ensure the development satisfies the benchmarks of the 2018 Douglas Shire Council Planning Scheme; and
  - d. To ensure compliance with the *Planning Act 2016*.
- ii. Findings on material questions of fact:

- a. The application for a minor change was properly lodged to the Douglas Shire Council on the 29 January 2019 under sections 78-80 of the *Planning Act 2016*;
3. Evidence or other material on which findings were based:
- a. Council undertook an investigation of assessment of the development, including the proposed minor change, against the State Development Requirements, the 1981 Planning Scheme for the Whole of the Douglas Shire and the 2018 Douglas Shire Council Planning Scheme in making its assessment manager decision;
  - b. Council undertook an assessment in accordance with the provisions of section 81 of the *Planning Act 2016*; and
  - c. The following findings are made:
    - i. Subject to the additional assessment manager's conditions the development satisfactorily meets the planning considerations sufficient for the assessment of the applications against section 81 of the *Planning Act 2016*; and
    - ii. In respect to section 83(9)(e) of the *Planning Act 2016*:

Benchmark reference	Reasons for the approval or approval subject to conditions despite non-compliance with any of the benchmark.
<b>1981 Planning Scheme for the Whole of the Douglas Shire</b>	
By-Law 3(1)(b)(iii) configuration of open space whereby 50% of the requirement is provided in one area with a maximum length and width ratio of two and one-half to one (2.5:1).	The proposed private open space yards, now appurtenant to each unit meets the 2018 Douglass Shire Planning Scheme Dual Occupancy code requirement
It is understood the requirement for a 6m setback of buildings from the street, the Residential Zone, was regulated under the Building codes in 1988 when the Multiple Dwellings (duplex) was constructed. By-Law 3(1)(e) car spaces are not to be located between the building and the street frontage.	Assessment as considered against the 2018 Douglas Shire Planning Scheme and the development is found to be suitable having regard to the conditions requiring further landscaping.
<b>2018 Douglas Shire Planning Scheme</b>	
<b>Port Douglas / Craiglie Local Plan Code</b> PO2 Development retains and enhances key landscape elements including character trees and areas of significant vegetation contributing to the character and quality of the local plan area and significant views and vistas and other landmarks important to the context of Port Douglas / Craiglie (as identified on the Port Douglas / Craiglie Townscape Plan map contained in Schedule 2).	The impact of the large trees on the buildings supports the removal of the trees and conditions of the approval require appropriate replacement landscaping to screen the carport and reduce the impact of this structure on the amenity of the streetscape.

<p><b>Flood and Storm Tide Overlay</b></p> <p>PO1 Development is located and designed to:</p> <ul style="list-style-type: none"> <li>• ensure the safety of all persons;</li> <li>• minimise damage to the development and contents of buildings;</li> <li>• provide suitable amenity;</li> <li>• minimise disruption to residents, recovery time, and rebuilding or restoration costs after inundation events.</li> </ul> <p>Note – For assessable development within the flood plain assessment sub-category, a flood study by a suitably qualified professional is required to identify compliance with the intent of the acceptable outcome.</p>	<p>A condition of the approval requires the new habitable floor area to meet the current level for habitable rooms of the units and this is considered sufficient and reasonable.</p>
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## 12. Infrastructure charges notice

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Developer contributions were paid for the original development approval. The current adopted charges are not weighted against the number of habitable rooms or size of the flats and there is no further infrastructure charge requirement in this instance.

## 13. Rights of appeal

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

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## **SCHEDULE 1 ADDITIONAL ASSESSMENT MANAGER CONDITIONS**

The following additional conditions apply to the Development Permit TPC 453

### **Approval Plans**

10. 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;
  - 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**

11. The conditions of the Development Permit must be effected prior to the Commencement of use of the additional floor area and structures, except or as specified otherwise in these conditions of approval.

### **Tree Removal**

12. The existing trees in the front yard cannot be removed until a Building Approval has issued for the new carport structures.

### **Landscape Setback**

13. The setback area between the front boundary and the new carport structure (minimum distance of 2.5 metres) must be established with deep planted vegetation that within 5 years from planting will have a minimum height of at least 2m height and provide a dense screening of the carport and parking area. The new landscaping must be established within 2 months of the date the carport is erected, irrespective of whether a final has or has not issued for this structure.

### **New Habitable Room Floor Level**

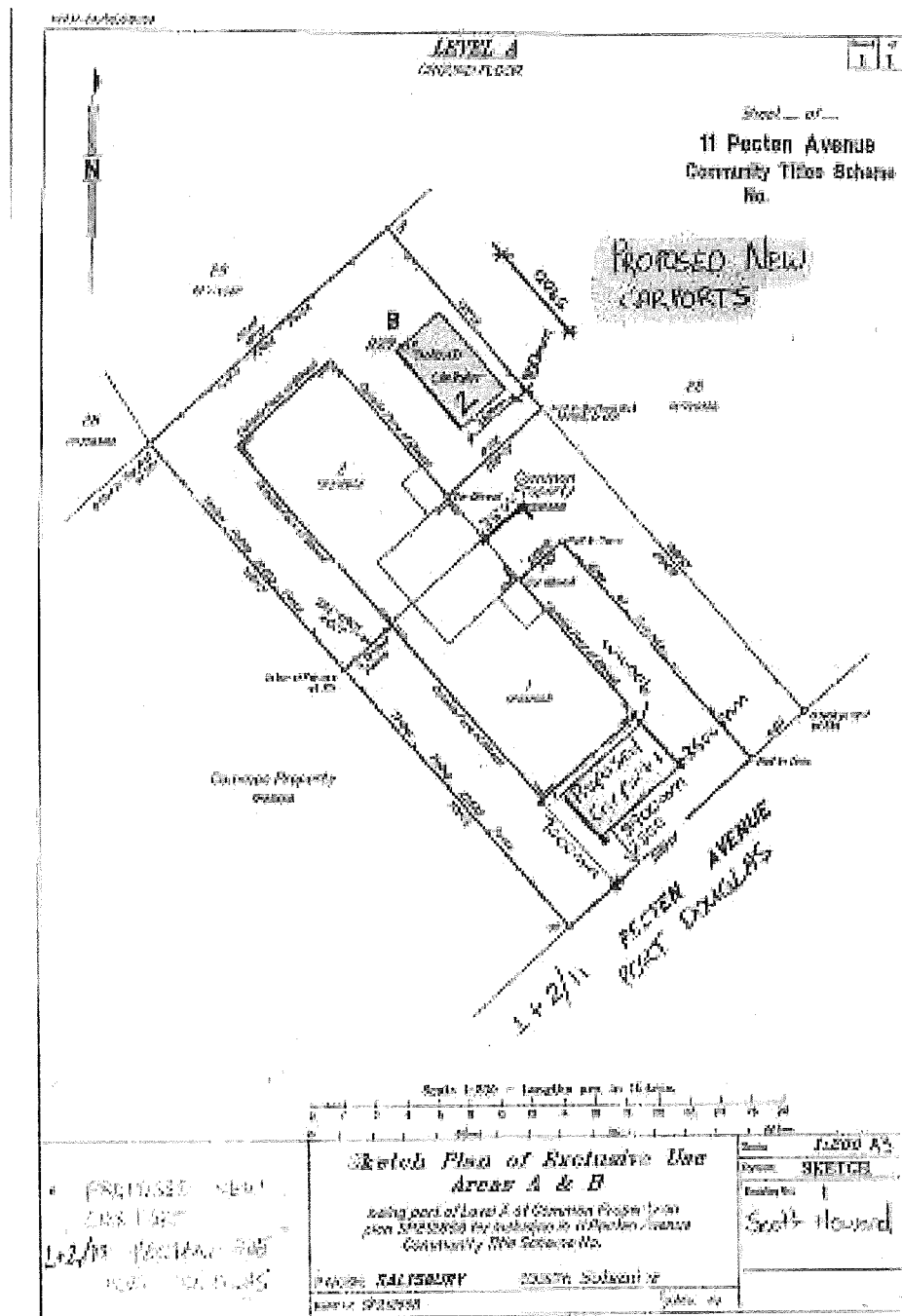
14. The new habitable floor areas must be at least the same or similar to the current level for habitable rooms of the units.
13. The length of the proposed wall in the common property area between the units must not limit the manoeuvrability for vehicles to make a reverse turn from the carport associated with the rear unit, enabling the vehicle to exit the land in a forward gear.

**The following Advice applies to the Development Permit TPC 453.**

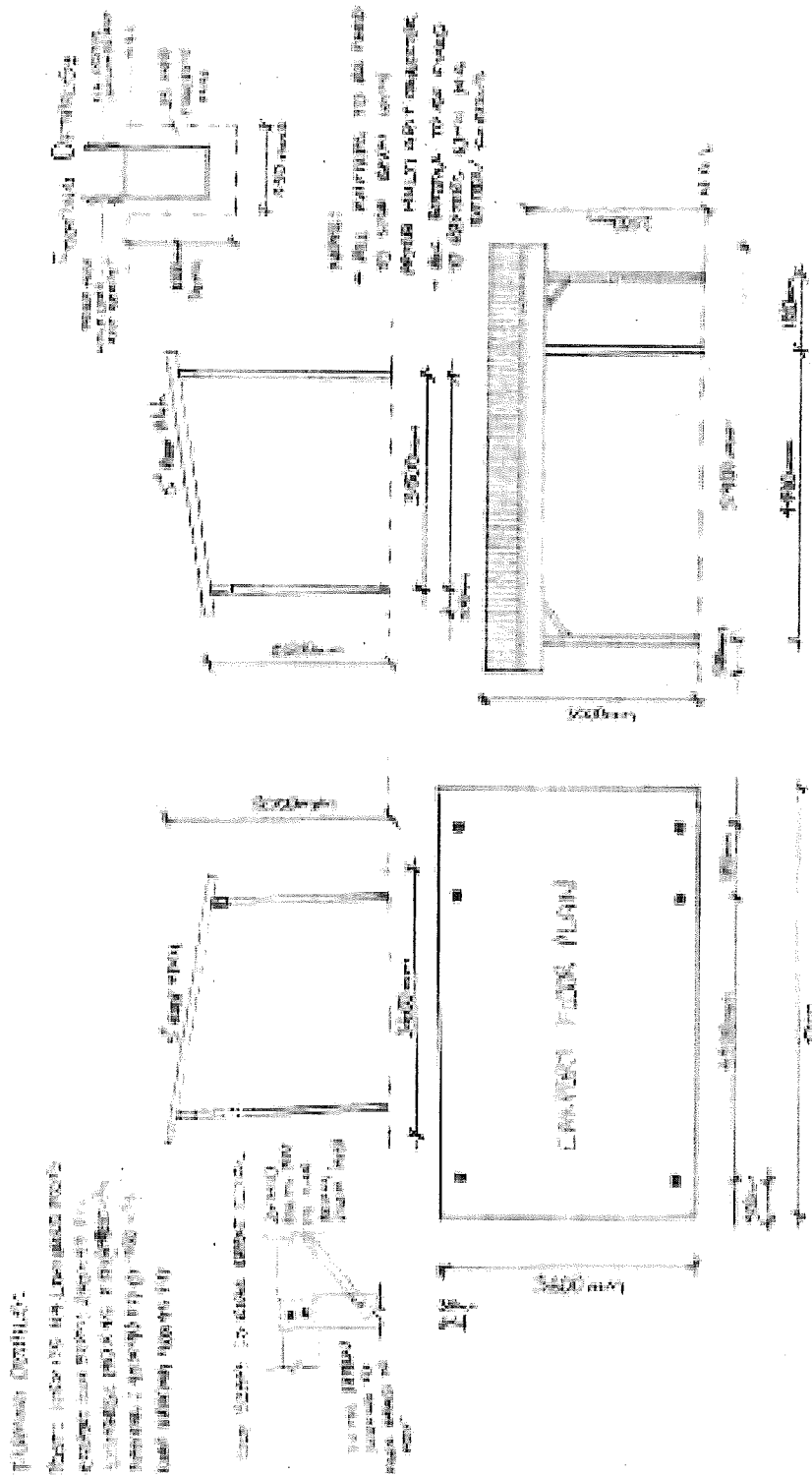
### **Advice**

1. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
2. All building site managers must take all action necessary to ensure building materials and/or machinery on construction sites are secured immediately following the first potential cyclone warning and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. For information relating to the *Planning Act 2016* log on to [www.dsdmip.qld.gov.au](http://www.dsdmip.qld.gov.au).. To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au).
4. Note as the approval is for a minor change to the original application no separate approval is necessary for building work made assessable against the Planning Scheme.

# Attachment 1. Approved Plans

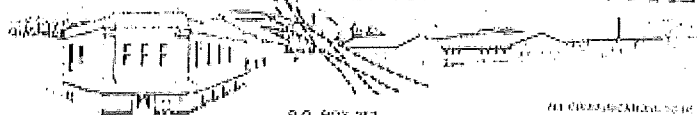


PROPOSED SPECIAL DISTRICT #2  
FOR THE CITY OF DENVER





# DOUGLAS SHIRE COUNCIL



TELEPHONE (077) 98 1655 - ADMINISTRATION OFFICES  
50 1644 - WORKS DEPT  
50 1652 - ENGINEERING OFFICE  
FAX No (077) 98 1910  
88/

P.O. BOX 357  
MOSSMAN Q. 4873

ALL CORRESPONDENCE IS ANSWERED BY  
THE SHIRE CLERK

IF CALLING OR TELEPHONING ON THE MATTER  
ASK FOR:

Mr J F Parsons  
QUOTE REFERENCE  
T2 A JFP:SAS  
YOUR REFERENCE

R J & A F Hammett,  
19 Langley Road,  
PORT DOUGLAS QLD 4871.

16th June, 1988

Dear Sir/Madam,

RE: TOWN PLANNING SCHEME APPLICATION NUMBER. 453

I refer to your undated application for land use approval under the provisions of the Town Planning Scheme for the development of a Duplex on land described as Lot 23 on RP 26588, Parish of Salisbury, County of Solander.

This application has been considered by Council and I advise that consent has been granted thereto subject to the following conditions:-

1. This approval does not constitute a Building Permit and a Building Permit must be obtained before any building operations proceed.
2. The Building Application when submitted must be in accordance with the Building Act and must also substantially comply with the sketch plan submitted with the consent application.
3. The applicant is to contribute, in accordance with Council's policy provided for in Section 33 (18e) and 33 (18f) of the Local Government Act, towards the provision of water headworks. The contribution is to be paid at the time of the building application at the rate current at that time. On the basis of the Facts and Circumstances set out in the application and the current provisions of the policy the estimated contribution is \$5,280-00.
4. If sewerage is available at the time of lodgement of the building application, the applicant is to contribute, in accordance with Council's policy provided for in Section 33 (18e) and 33 (18f) of the Local Government Act, towards the provision of sewerage headworks. The contribution is to be paid at the time of the building application at the rate current at that time. On the basis of the Facts and Circumstances set out in the application and the current provisions of the policy the estimated contribution is \$4,600-00.

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..PAGE 2..

..R J & A F HAMMETT..

5. The required area of landscaped area as outlined in Chapter 53 of the Council's By-Laws shall be planted and maintained to the satisfaction of the Building Surveyor.

6. The development must comply with the provisions of:-

(a) Council's Town Planning Scheme;

(b) Council's Development Control Plans;

(c) The Local Government Act, The Building Act, The Fire Safety Act, and all other relevant acts and regulations and the By-Laws of the Council shall at all times be observed and performed in relation to the land, the building, and the use and occupation thereof.


(d) The Traffic Act with particular reference to the ingress and egress of vehicles of the site in a forward gear.

7. All internal driveways, parking areas and vehicle manoeuvring areas shall be bitumen or otherwise imperviously sealed, drained and line marked to the satisfaction of the Building Surveyor.

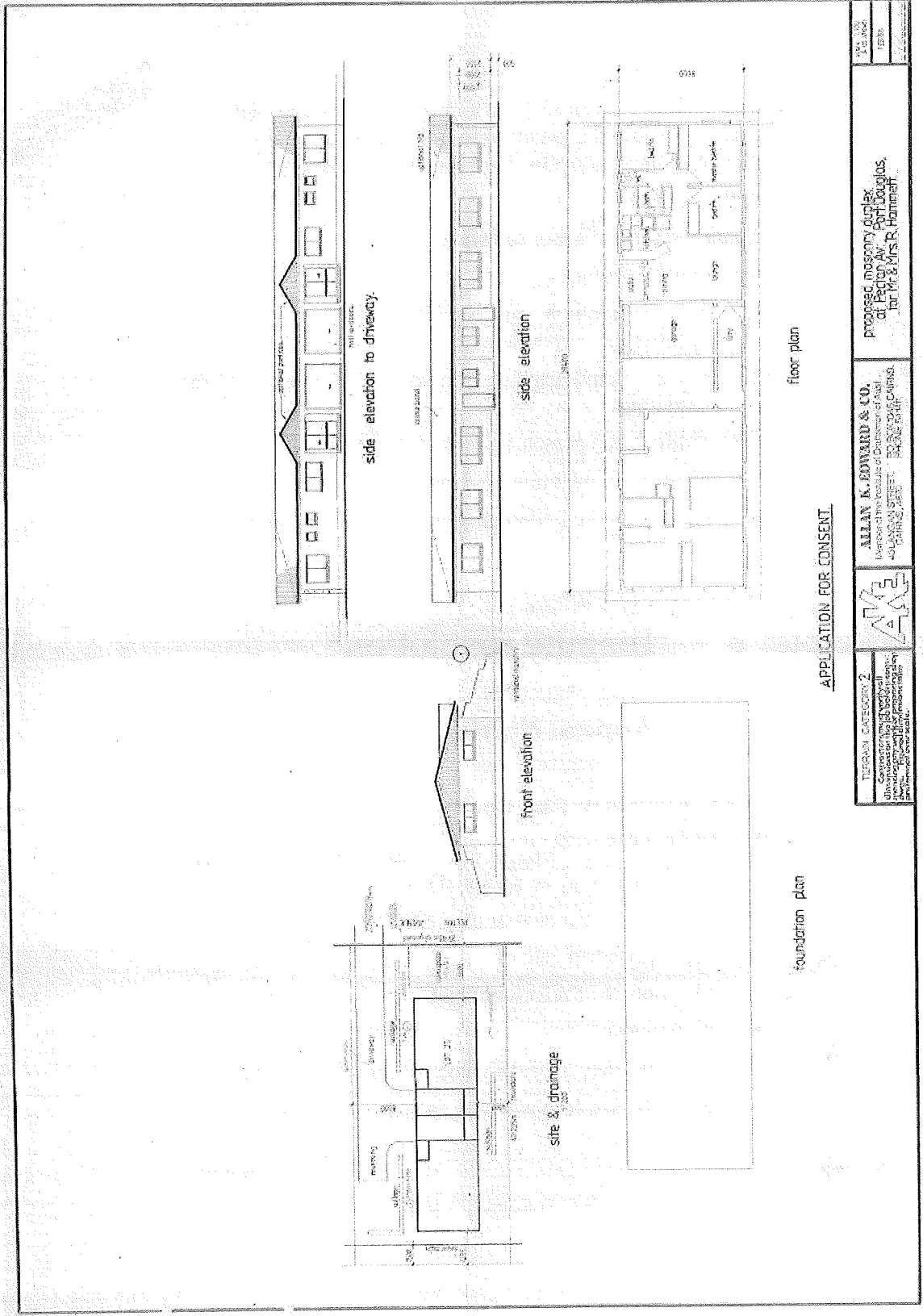
8. Should work on the development as approved not be commenced within a period of two (2) years from the date of the permit, Council may implement action to revoke the approval as given.

9. The conditions of the Town Planning consent are to be effected prior to the commencement of the specific use of the said consent.

Yours faithfully,



A J TWOMEY,  
SHIRE CLERK.



- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
  - conduct* means an act or omission.
  - representative* means—
    - (a) of a corporation—an executive officer, employee or agent of the corporation; or
    - (b) of an individual—an employee or agent of the individual.
  - state of mind*, of a person, includes the person's—
    - (a) knowledge, intention, opinion, belief or purpose; and
    - (b) reasons for the intention, opinion, belief or purpose.

## Chapter 6 Dispute resolution

### 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.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

## 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, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any 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.